



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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July 10th, 2018

Hon. Margery Perlmutter, Chair
Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re: BSA Cal. # 264-13-BZ
Application for Special Permit Extension for PCE at 257 West 17th Street

Dear Ms. Perlmutter:

Manhattan Community Board 4's (CB4) Chelsea Land Use Committee (CLU) held a duly noticed public hearing on June 18th. Subsequently, on June 25th the CB4 Executive Committee, voted, by a vote of 8 in favor, 2 opposed, 0 abstaining and 0 present but not eligible to vote, to support the consensus of CLU Committee and recommended the **denial** of a proposed Board of Standards and Appeals (BSA) ten-year extension of a special permit for a Physical Culture Establishment (PCE) at 257 West 17th Street. This letter is subject to ratification by the Full Board to be held on Wednesday, July 25th.

Background

Pursuant to 73-36 of the Zoning Resolution, a ten-year Special Permit extension is proposed for a gym known as Brick New York ("Brick") which has a total floor area of approximately 8,387 square feet and is located on the ground floor and cellar of a 10-story mixed-use building with condominium residences directly above the gym on floors two through ten. The gym, which currently has 650 members, is accessed from its own entrance on the ground floor. The "Brick Sport Performance" is a fitness approach which focuses on gymnastics, weightlifting, strength training and varied workouts performed at a high intensity.

This Brick facility has a long, difficult history. The Brick Crossfit gym opened in August 2013. The applicant filed an application with BSA on September 6, 2013 for the required BSA special permit for a Physical Culture Establishment (PCE) after the facility had been operating for a month. The applicant notified CB4 the same day.

2013 Issues

At the October 21st and November 18th CB4 Chelsea Land Use Committee meetings and at the December 4th CB4 public hearing, residents at 257 West 17th Street complained that the noise

from the gym was unbearable and that vibrations shook their apartments. They hired an acoustical consultant who issued three reports on noise levels caused by the gym in apartments. Brick gym also had an acoustical consultant test noise and vibrations from the gym in apartments; that consultant also issued a report.

On November 13, 2013, the Condominium Board initiated a lawsuit in the New York State Supreme Court over about the gym's disturbing noise and vibrations. On November 15, 2013, the judge issued an interim court order that the gym was not to have classes before 7:30 a.m. or after 8:30 p.m. Condo owners were ordered to allow access to their apartments for additional sound and vibration testing.

At the November 18, 2013 CB4 Chelsea Land Use Committee meeting, two Brick gym owners and their attorney stated that they are committed to modifying the gym so that residents would no longer be disturbed by sounds and vibrations, and wanted to set up a dialogue with residents to address issues. The attorney for the gym and employees repeated these statements at the December 4, 2013 public hearing.

At the October and November 2013 Chelsea Land Use Committee meetings and at the December 4, 2013 CB4 public hearing, residents stated the following:

- Gym members drop heavy weights; the thudding sounds are heard in apartments. These sounds wake residents up between 5:30 and 6:30 a.m. The bangs are not occasional but occur every 20 to 30 seconds. Children are disturbed doing their homework in the evening from these thumping sounds.
- The vibrations from the weights dropping shake the entire building. China rattles on shelves. The vibrations travel to the 6th floor.
- Bass noise is heard from music; instructors' directions are also heard.
- Joggers gather in the morning in front of the building and jog on the sidewalks, blocking pedestrians, creating an unsafe condition for pedestrians.
- Residents agreed to allow access to their apartments for sound/vibration testing on a regular schedule.

The consulting acoustical engineers reported their test findings as follows:

- *Acoustilog* (Condo residents' consultant). "The impulsive sound (and vibration) levels from the weight drops are unreasonable and violates the Noise Code in every tested apartment." "...the primary weight drop sound transfer is structure borne to all of the floors through the inside of the building. Weight drop sound from the 1st floor to the 2nd floor is also partly airborne." (September 2013 report)
- *Shen Milsom Wilke* (Brick gym's consultant). "...weight drops were clearly audible all the way up the building. Vibration from the weight drops was also perceptible in the apartment floors. Typical music noise levels in the gym were not clearly audible in the 2nd floor apartments, and results showed no increase over the ambient levels when the music was off." "...it appears that typical drops of the 135 lb barbell frequently exceeds the code limits for impulsive noise on the 2nd floor, and while not as frequent, can exceed code limits on the upper floors." (October 2013 report)

Both acoustical consultants suggested various solutions to correct the noise/vibration problem and to bring Brick gym into noise compliance. These modifications included:

- Adjusting the first floor floating floor by disconnecting it from adjacent building elements such as walls and columns
- Changing the spring or increasing airspace beneath the first floor floating floor
- Adding a lightweight wood floating floor on springs to the first floor and basement
- Adding soundproofing to the walls and ceilings of the first floor and basement
- Adding a heavy acoustically-isolated dropped ceiling to the first floor
- Disconnecting the basement slab from the surrounding structure
- Adding rubber padding or flooring on top of the floating floor
- Lowering music levels
- Prohibiting the dropping of weights.

Neither consultant could guarantee that any of the above mitigations would be sufficient to reduce noise levels enough to be code compliant.

CB4 2013 Recommendations

In its December 10, 2013 letter, CB4 stated that because of the disturbances caused by the Brick operation, the applicant failed to meet the finding in ZR 73-03 (a):

"...that...the hazards or disadvantages to the community at large of such special permit #use#...are outweighed by the advantages to be derived by the community by the grant of such special permit. In each case the Board shall determine that the adverse effect, if any, on the privacy, quiet, light and air in the neighborhood of such special permit #use#...will be minimized by appropriate conditions governing location of the site, design and method of operation."

In that letter CB4 stated that the facility was having an adverse impact on the residents at 257 West 17th Street and that it was unclear whether or not the gym could mitigate this problem. Therefore, CB4 voted to deny the granting of the special permit for PCE unless the following conditions were met:

1. The sound and vibrations levels from the Brick gym, as measured in the residential units above, comply with the New York City Noise Code.
2. Noise and vibration levels are satisfactory to the condominium board.
3. If issued, the permit should incorporate the restricted hours of operation determined by the court in response to the residents' suit: no lifting of weights or classes before 7:30 a.m. or after 8:30 p.m.
4. Gym members who jog in groups no longer block city sidewalks.
5. A regular, structured communication system is established and utilized between building residents and the Brick gym.
6. Compliance with the above conditions is verified before the BSA grants approval of the special permit for the Brick gym.

In 2014 and 2017 CB4 deferred any recommendations regarding the extension of the special permit pursuant to ZR 73-03 because of the on-going law suit.

January 2015 Court Decision and Order

On January 16, 2015 the Court ordered a Preliminary Injunction which, among other things, prohibited the gym from dropping any weights. The court concluded that “Defendants have clearly failed to cure the noise problems in the building, and have had ample time to make the necessary renovations to abate the vibrations and noise.” Following the Preliminary Injunction the gym was closed for five months. During that time the gym’s floors were re-built, and residents did not complain about noise and vibrations.

October 2015 BSA Order

After numerous hearings that included testimony from residents and reports from acoustical engineers, on October 27, 2015 BSA issued a decision, an “Order”, that temporarily approved Brick’s application for a PCE permit to operate the gym for one year with conditions:

1. A third party acoustical engineer be hired to determine the gym’s impacts
2. The gym adheres to a strict operational plan
3. Rogue pads be placed on top of sound absorbing weight platforms at weight lifting stations
4. No barbells with a weight in excess of 135 pounds could be used
5. No “Overhead Drops” of weights permitted.

This order provided that if BSA believed that evidence showed that Brick failed to comply with the Order, the Condominium could move for relief with contempt penalties and reimbursement of attorney’s fees.

Following this Order the gym reopened and almost immediately residents complained of repeated noise and vibrations in their apartments. These complaints were brought to Brick’s attention but the problems persisted.

2016 Investigation by Condominium

Because noise and vibration disturbances continued and because cameras did not cover the entire gym, the Condominium hired an investigator to take classes at the gym at different times in 2016. The investigator reported the use of weights above the stipulated limit, the failure to install Rogue pads, and the dropping of weights from shoulder to head height causing loud noise and vibration. Weights of 175, 205, 235, and 325 pounds were observed in use.

2017 Contempt Proceedings

On February 6, 2017 the Condominium moved the Supreme Court for an Order of Contempt which was supported by sworn statements from the investigator, and several residents along with numerous written complaints. At a hearing in December 2017 the investigator testified that Brick routinely violated the 2015 Stipulation and Order. Brick did not refute this testimony. The Court directed Brick to pay the Condominium’s legal fees and to abide by operational conditions specified by the Court:

- Placing cameras at eight weight stations in the lower level
- Installing signs to indicate maximum weight to be used
- Instruction that Rogue pads must be used

- Posting rules that if members exceed weight limit, they will be penalized.

CB4 Analysis and Recommendations

Residents attending the June 18th Chelsea Land Use Committee meeting once again spoke of very disturbing thumping noises and vibrations. There have been hundreds of complaints. The Condominium plans to correlate the complaints to gym videos by time of complaint.

BSA provided a temporary one-year PCE special permit to ascertain if the gym modified its equipment and activities, and abided by all conditions and stipulations ordered the both the Court and BSA. Brick has been given several chances to modify the gym’s practices to stop disturbing the residents. Instructions and stipulations have been very specific.

The evidence indicates that Brick has not complied with the limitations imposed by the Orders of BSA or the Court. The gym has exceeded the specified weight limit, not used Rogue pads, and has not prohibited weights from being dropped from head or shoulder. Condominium residents continue to be seriously disturbed by the noise and vibrations.

CB4 is not convinced that the applicant has met all the conditions and stipulations stated by BSA and the Court. CB4 recommends that the proposed 10-year extension of the PCE special permit be denied. CB4 will only support the applicant’s proposal if all the BSA and Court conditions are met, and the gym no longer has an adverse impact on the community.

In the event that BSA approves the proposed ten-year extension of the PCE special permit over our recommendation, we strongly recommend that all previous conditions and stipulations by BSA and the Court by included in the terms of the special permit. Even though the gym has not abided by these stipulations in the past, their inclusion in the special permit may be useful in future court actions if the gym continues its operation in violation of the stipulations.

Sincerely,



Burt Lazarin
Chair
Manhattan Community Board 4



John Lee Compton, Co-Chair
Chelsea Land Use Committee



Betty Mackintosh, Co-Chair
Chelsea Land Use Committee

cc: Hon. Corey Johnson, City Council
Hon. Gale A. Brewer, Manhattan Borough President