



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**CHRISTINE BERTHET**  
Chair

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District Manager

December 10, 2013

Hon. Meenakshi Srinivasan, Chair  
Board of Standards and Appeals  
40 Rector Street New York, NY 10006

**Re: BSA No. 264-13 BZ; Special Permit at 257 West 17<sup>th</sup> Street, Manhattan**

Dear Ms. Srinivasan:

On the recommendation of its Chelsea Land Use Committee, and after a duly noticed public hearing at the regular Board meeting on December 4, 2013, Manhattan Community Board 4 voted unanimously to deny the granting of a special permit pursuant to ZR 73-03 to Brick Crossfit for a Physical Culture Establishment (PCE) at 257 West 17<sup>th</sup> Street.

Brick gym has been operating illegally without the required special permit since August, and its manner of operation has disrupted the lives of the residents in the building where it is located sufficiently that the residents have initiated a law suit and have appeared in large numbers at three public meetings and hearings held by MCB4.

The Board believes that the applicant fails to meet the required finding in ZR 73-03 (a) and feels strongly that BSA should not grant approval of this application until the finding and the conditions discussed below are met. The Board also feels strongly that the gym should be required to cease operation until the BSA special permit is approved.

The Board also has determined that the gym does not have a certificate of occupancy and, based on testimony at the public hearing, also believes that the gym may not have a properly marked and accessible emergency exit in its basement space. The Board therefore requests that the Department of Buildings and FDNY take appropriate action on these issues.

**Background**

The Brick Crossfit gym opened in August 2013 before obtaining the required BSA special permit for a Physical Culture Establishment. The applicant filed the application to BSA on September 6, 2013 and notified MCB4 that same day.

According to the applicant, the facility consists of a total of 8,397 square feet, with 6,457 square feet on the ground floor and 1,930 square feet in the cellar. "Brick Sport Performance" is a fitness approach which focuses on gymnastics, weightlifting, strength training and varied

workouts performed at a high intensity. Developing community-building among members is also a goal. The gym's hours are:

Monday – Thursday: 6 am to 9 p.m.

Friday: 6 a.m. to 8 p.m.

Saturday: 8 a.m. – 2 p.m.

Sunday: 9 a.m. to 1 p.m.

The gym, which currently has 500 members, is accessed from its own entrance on the ground floor. Condominium residences are located directly above the gym on floors two through ten.

At the October 21<sup>st</sup> and November 18<sup>th</sup> MCB4 Chelsea Land Use Committee meetings and at the December 4<sup>th</sup> MCB4 public hearing, residents at 257 West 17<sup>th</sup> Street complained that the noise from the gym was unbearable and that vibrations shook their apartments (see below). They hired an acoustical consultant who issued three reports (August, September and October 2013, attached) on noise levels in apartments caused by the gym. Brick Crossfit gym also had an acoustical consultant test noise and vibrations from the gym in apartments; that consultant issued a report (October 2013, attached).

The 257 West 17<sup>th</sup> Street Condominiums brought a lawsuit about the gym's disturbing noise and vibrations to the New York Supreme Court. On November 15<sup>th</sup>, the judge issued an interim court order that the gym is not to have classes before 7:30 a.m. or after 8:30 p.m. Condo owners are to allow access to their apartments for additional sound and vibration testing. The case is to be reviewed by the judge on December 4<sup>th</sup>.

At the November 18<sup>th</sup> MCB4 Chelsea Land Use Committee meeting, the 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 want to set up a dialogue with residents to address issues. The attorney for the gym and employees repeated these statements at the December 4 public hearing.

## **Issues**

The gym opened in August before obtaining the required special permit pursuant to Section 73-03 of the Zoning Resolution, and thus has been operating illegally.

At the October and November Chelsea Land Use Committee meetings and at the December 4<sup>th</sup> MCB4 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 6<sup>th</sup> 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 would 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 1<sup>st</sup> floor to the 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> floor, and while not as frequent, can exceed code limits on the upper floors." (October 2013 report)

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

- 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 can confirm that any of the above mitigations would be sufficient to reduce noise levels enough to be code compliant.

### **MCB4 Recommendations**

In order to be granted the requested special permit, BSA must determine that the applicant meets the required findings in ZR 73-03. The Board believes that because of the disturbances caused by the current operation, the applicant fails 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."

Clearly the current facility is having an adverse impact on the residents at 257 West 17<sup>th</sup> Street. They do not have quiet in their apartments. Their homes vibrate. It is unclear whether or not the gym can mitigate this condition. Therefore, MCB4 voted to deny the granting of the special permit for PCE unless the following conditions are 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 restrictions determined by the court in response to the residents' suit.
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.

Despite claims to the contrary, in the Board's experience opening a health club before receiving the required special permit from BSA is not a common practice. While we have written in the past that board review of an application for a physical culture establishment was unnecessary, the egregious actions of the applicant in opening illegally and operating in a manner harmful to the community have forced us to reconsider our position. The possibility of preventing some of the harm the residents have suffered is a compelling reason for continued board review of similar applications.

Sincerely,



Christine Berthet  
Chair



J. Lee Compton  
Co-Chair  
Chelsea Land Use Committee



Betty Mackintosh  
Co-Chair  
Chelsea Land Use Committee

cc: FDNY  
DOB  
Landlord of building