

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF LIVINGSTON
NEW JERSEY**

Case # 2012-12-V

Motion by: Mr. Ozarow

Second by: Mr. Hochberg

FINDINGS AND CONCLUSIONS

The Zoning Board of Adjustment of the Township of Livingston, having considered the Application and plans filed in this matter, and the testimony and evidence presented at the hearing on May 22, 2012 and July 24, 2012, the following findings of fact and conclusions are made:

1. The applicant is B& S Service NJ, Inc./Oriental Gifts.
2. The property is commonly known as 112 Eisenhower Parkway and is taxed as Block 6002, Lot 1.01. The property is in the D-S Zone.
3. The applicant has satisfied the statutory procedural requirements of service and publication of notice, and there are no taxes or assessments due or in arrears.
4. The applicant proposes to conduct massage therapy services as the primary use in a store in Livingston Mall.
5. Violation of Livingston Zoning Ordinance
 - (a) The proposed use violates Section 170-113C through incorporation of Section 170-108B(31) which prohibits establishments that provide body massage services except as an ancillary service in a medical office, hospital, health club, beauty salon or similar facility.
6. The applicant was represented by Susan Rubright, Esq. of Brach Eichler, Roseland, NJ.
7. The following persons testified at the hearing: On May 22, 2012, Mr. Wei Ma, the owner of the applicant testified on his proposed use and his qualifications and licenses in New Jersey to provide massage services. Matthew Jarmel, AIA, the architect, described the proposed improvements to the store. Mr. John McDonough, P.P., gave his reasoning and opinion that the applicant was entitled to a use variance under the applicable standards. On July 24, 2012, the applicant withdrew without prejudice its request for a use variance and asked for an interpretation of the Ordinance. Mr. Wei Ma testified along with Mei Chou, a licensed acupuncturist licensed in New Jersey by the New Jersey State Board of Medical Examiners that the applicant intended to have Ms. Chou as the primary user of the premises at Livingston Mall and massage therapy would be offered as an ancillary use. The applicant asked for an interpretation that massage therapy services could be offered as an ancillary service in the premises of a licensed acupuncturist under the Ordinance.

8. The following persons objected to or expressed interest the application at the hearing: none.

9. The Board voted unanimously in favor of the interpretation that massage therapy services could be provided ancillary to the services of a licensed acupuncturist under the applicable Ordinance because acupuncture services, licensed by the New Jersey State Board of Medical Examiners, was a "similar facility" referenced in the Ordinance to a medical office.

The Resolution is a memorialization of the interpretation of the Board of Adjustment of the Township of Livingston made on July 24, 2012 in which Board voted with seven votes cast in favor and none opposed to provide the above interpretation.

CHAIRMAN:



ALAN OZAROW

Dated: August 14, 2012

Prepared by: HERBERT S. FORD, ESQ.