

**AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF
MAMARONECK, HELD ON APRIL 26, 2022, THE FOLLOWING RESOLUTION WAS
ADOPTED:**

APPLICATION NO. _____

Name: Xiang Shen and Richin, Inc.
Premises: 397 Palmer Avenue
District: R2-F
Tax I.D.: Section 9, Block 16, Lot 5

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VILLAGE OF MAMARONECK

WHEREAS, on December 15, 2021, Xiang Shen / Richin, Inc. ("Applicant") applied to this Board for a special permit to operate a massage establishment within a legally non-conforming pre-existing "professional building" at 397 Palmer Avenue in the Village of Mamaroneck ("Premises") within the R2-F zoning district pursuant to Article X Chapter 342 (Zoning) of the Code of the Village of Mamaroneck; and

WHEREAS, the Premises is improved with a legally non-conforming pre-existing "professional building," which received a certificate of occupancy as a "professional building" on December 9, 1958 (the "Professional Building"); and

WHEREAS, the Professional Building has, currently and in the past, been occupied with various professional uses; and

WHEREAS, the Premises, and the Professional Building located thereon, are within the R2-F residential zoning district, where professional buildings are not permitted but the Professional Building is permitted to remain pursuant to Article IX of the Village of Mamaroneck Zoning Code ("Zoning Code"); and

WHEREAS, the Applicant seeks to operate a professional massage establishment within the existing space located on the "lower level 1" of the Professional building (the "Application"); and

WHEREAS, the Applicant is not proposing to alter, enlarge or expand the Professional Building; and

WHEREAS, the Applicant will only be offering massage services within the Professional Building, to be conducted by two massage therapists with the potential to add a third massage therapist as demand requires; and

WHEREAS, the massage therapists are regulated and licensed by Title 8 of New York State's Education Law; and

WHEREAS, Zoning Code § 342-62 provides that

Except as otherwise provided herein, the lawfully permitted use of land or buildings existing at the time of the adoption of this chapter may be continued, although such use does not conform to the standards specified for the zone in which such land or building is located. Said uses shall be deemed "nonconforming uses."

WHEREAS, Zoning Code § 342-64(A) provides that:

A building or structure the use of which does not conform to the use regulations for the district in which it is situated shall not be altered, enlarged or extended, unless the use therein is changed to a conforming use. Notwithstanding the above, the Board of Appeals, after public notice and hearing, may grant a special permit to allow a nonconforming use to be extended throughout those parts of a building which were manifestly arranged or designed for such use prior to the time of enactment of the chapter provision that made the use nonconforming, and provided that no structural alterations, other than those required for health or safety, are made therein. Any other alteration, enlargement or new construction shall require a variance to be granted by the Board of Appeals.

WHEREAS, Zoning Code § 342-64(B) states that:

A nonconforming use of a building shall not be changed to another nonconforming use, except where approved by the Board of Appeals after a finding that the change will be to a less nonconforming use and one that will be more harmonious with the surrounding area.

WHEREAS, the proposed massage establishment use is a professional use based on its licensing from New York State pursuant Title 8 of the New York State Education Law; and

WHEREAS, the term "massage establishment" is not an enumerated permitted use within any zoning district but is a permitted within the Village as a "professional" use with the required special permit pursuant to Zoning Code § 342-42.1; and

WHEREAS, consistent with New York law, the Village of Mamaroneck Zoning Code § 342-68 provides that uses permitted by a Special Permit are deemed to be permitted uses within the Village; and

WHEREAS, in accordance with the above, the Application is for a professional use, which encompasses a massage establishment requiring a special permit pursuant to Zoning Code § 342-42.1; and

WHEREAS, the Applicant does not proposes to make, alter, enlarge or extend the Professional Building; nor to change the nature of the structure's use from that of a professional building, and

WHEREAS, the Village has represented that the Professional Building has continuously been occupied with a professional use and such professional uses has never ceased for more than 6-months in compliance with Zoning Code § 342-46(C); and

WHEREAS, by correspondence dated January 5, 2022, the Applicant represented that they have reviewed the special permit requirements in Zoning Code § 342-42.1, have provided the required licensing information and have represented that they are required to comply with said requirements; and

WHEREAS, the proposed "professional" use is not an adult use as defined by the Zoning Code and therefore Article XVI of the Zoning Code is inapplicable, which is consistent with the manner in which ZBA has consistently and previously applied and interpreted massage establishment applications, and is also consistent with the location of other similar massage establishments operating in the Village;

WHEREAS, after due notice, this Board held a public hearing on the Application on January 6, 2022; and

WHEREAS, on January 6, 2022, the public hearing was closed; and

WHEREAS, the Board deliberated on the application at its February 3, 2022, March 3, 2022, March 15, 2022, April 7, 2022 and April 21, 2022 meetings; and

WHEREAS, the proposed action is a Type II pursuant to the New York State Environmental Quality Review Act ("SEQRA"); and

NOW, THEREFORE BE IT RESOLVED, that, after duly reviewing the Application and related materials, and considering the same, the Board hereby grants the requested special permit for the proposed massage establishment on the Premises.

BE IT FURTHER RESOLVED, the following conditions shall apply:

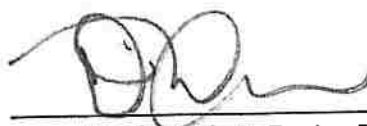
- A. That the special permit granted herein shall be valid for two (2) years pursuant to Zoning Code § 342-4201(A) (1) beginning April 21, 2022, with the renewal application having to be made by Applicant no less than four (4) months prior to the expiration date; and, upon the Applicant's failure to make said renewal application, the special permit granted herein shall expire without further notice to the Applicant.

- B. That the special permit is granted to the Applicant and shall terminate upon any change in the use, a change in the intensity of the use, a change in services provided, a change in operations and/or a change in the configuration of the Premises.
- C. That the granting of this application shall not be deemed to relieve the Applicant of the need to obtain approval of any other board or agency or officer prescribed by law or ordinance with regard to the plans or construction or any other phase of the proposed project.
- D. The hours of operation shall be no greater than 10:00am to 8:00pm, six (6) days a week.
- E. That the failure to substantially observe and perform any of these conditions shall render this permit invalid.

BE IT FURTHER RESOLVED that the Board directs that a complete copy of this resolution be filed with the Village Clerk in compliance with New York State Village Law.

On the motion of ZBA member **NEUFELD**, seconded by ZBA member **GLATTSTEIN**, the foregoing resolution was adopted with all ZBA members voting as follows:

David Neufeld, Chair	YES
Robin Kramer	YES
Gretta Heaney	YES
Brian Glattstein	YES



David Neufeld, Chair, Zoning Board of Appeals

DATED: Mamaroneck, New York
April 26, 2022