

The City of Fairhope Board of Adjustments and Appeals met on Monday, July 16, 2012 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

Members Present: Chairperson Cathy Slagle; Anil Vira, Vice-Chair; Troy Strunk; Debra Green; Ray Clark; Jonathan Smith, Planning and Building Director; and Emily Boyett, Secretary.

Absent: Sam Andrews and Clyde Panneton

The meeting was called to order at 5:00 PM by Chairperson Slagle.

The minutes of the June 18th, 2012 meeting were considered. Troy Strunk moved to accept the minutes as written and was 2nd by Anil Vira. Motion carried unanimously.

ZBA 12.03 Request of the City of Fairhope Planning and Building Department for an interpretation of use for a Tattoo Studio, to be allowed under the General Personal Services use category outlined in Article IX, Section B. (Description of Uses) in the Fairhope Zoning Ordinance.

Mrs. Slagle stated the case was tabled at the June meeting for further study and additional public notice to be given. She stated the Service Use Category is defined in the Zoning Ordinance as follows: for businesses that offer clients, customers, or patrons goods for consumption on the premises, or offer services for performance and delivery on the premises. She also gave the definition of General Personal Services as defined in the Zoning Ordinance as follows: a business that provides including uses such as post office, bank, barber shop, or beauty salon, film processing, small appliance repair, tailor, office support, or other similar service. Any personal service that is more specifically described is excluded from this use.

Jonathan Smith, Planning and Building Director, came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: City staff recently received a business license application from Mr. Kevin Black to open a Body Art/Graphic Design/Tattoo Studio in the City of Fairhope B-2 (General Business) zoning district. A Body Art/Tattoo Studio is not specifically allowed or denied in the Zoning Ordinance. The category of use that a Body Art/Tattoo Studio most closely fits is the General Personal Services Category, which is defined as follows: “a business that provides including uses such as post office, bank, barber shop or beauty salon, film processing, small appliance repair, tailor, office support, or other similar service. Any personal service that is more specifically described is excluded from this use.”

Mr. Black has provided information pertaining to his business. The information provided by Mr. Black is included in the BOA packets.

The subject property is just outside the City's Central Business District (CBD) at 212 Magnolia Avenue.

Under "Planning Goals" in the City's Comprehensive Plan it states that one of the City's Objectives is to "develop land use arrangements that consider the compatibility of adjacent activities." Another objective is to "define downtown Fairhope as the community and regional focal point, and evaluate the impact of proposed development and redevelopment with regard to the continued vitality of the Downtown" and to "encourage high quality development that supports the scale and character of existing neighborhoods." The subject use has not been proposed to Planning staff until now. Staff is concerned that by allowing the use the City may be steering land use in a direction that is uncharacteristic to Fairhope and the downtown area.

STAFF RECOMMENDATION: Staff recommends the Board of Adjustments render an official position on behalf of the City of Fairhope to establish whether or not a Body Art/Tattoo Studio is an allowable use under the General Personal Services use classification.

Mr. Smith stated the Mayor Kant wanted the Board to know that the City Council decided last week that the Board of Adjustment is the appropriate legislative body to make this decision. He also added that neither the Mayor nor staff has said whether they would be in favor or against such operation.

Mrs. Slagle opened the floor to the applicant. Kevin Black stated his attorney is present and would like for him to address the Board. Josh Myrick of the Stankoski Law Firm addressed the Board saying the question is not whether a tattoo studio is what Fairhope wants but whether it is allowed by the Zoning Ordinance in the district in which Mr. Black's studio is proposed. Mr. Myrick stated the answer is yes, and even the staff has stated the proposed use is most consistent with a general personal service category which is allowed in a B-2 zoned area. He said the Board should find that Mr. Black is allowed to obtain his business license and operate his business. Clark Stankoski of Stankoski Law Firm spoke on Mr. Black's behalf saying the Standard Industrial Classification Code (SIC), which is used by the United States Government, lists a Tattoo Studio under the General Personal Services category as does the North American Industry Classification System which came out in 1997. He said he looked at Charleston, SC; Carmel, CA; and Savannah, GA which has had similar cases in the recent years and all found that a Tattoo Studio is allowed as a general personal service. Mr. Black addressed the Board saying the reason the case was tabled to allow for adequate public notice and he hopes the Mayor is happy with the turn out this time. He added the case was also tabled for further study and he hoped the Board has further educated themselves on the issue. He stated that Mr. Strunk and Mr. Vira both stated they were confident he would be a responsible business owner and they would contact him to discuss his issue. He said they did not contact him but Debra Green did and he thought it was a productive conversation. He briefly recapped the events that have led up to this point and then he gave a slideshow presentation of his artwork to show what type of clients he has and the work he will be doing. Mr. Black stated he will not have an outward mention of tattooing and the only

sign will be a small logo on the door. He asked for a show of hands for those in the audience who were there in favor of his request and approximately 90 % of the audience raised their hand.

Mrs. Slagle opened the public hearing.

Tim Hudnall - 55 N. Summit Street – He stated that Mr. Black has explained his business in a much different light and it is not nearly as offensive as what was originally presented to him. He stated concerns with the proximity to the residential area and the possibility that a tattoo studio would degrade the property values.

Bobby Kilpatrick – 10427 Southside Loop – He stated he is a business owner in Fairhope, lifelong resident and Mr. Black’s best friend. He said he is in favor of the tattoo studio and there have been lots of negative comments said about Kevin Black and they are not true. He said Mr. Black is a good guy and people should get to know him and they will see the truth.

Billy Michalopoulos – 11341 Belize River Street – He stated he is a husband, father of 2 children, resident of Fairhope since 1989, graduate of Fairhope High School, boy scout, community volunteer, chairman of the committee that built the City Skateboard Park, and he also has over 100 hours of tattoos. He stated he has been a top producing real estate agent in this community for over 7 years and has sold more than \$15 million in real estate. He said that property values probably have a better chance of being decreased by vacancies in the community than by Mr. Black’s business. He added the community should embrace and show support to those who want to come into their community.

Calvin Hunt – 7695 Lloyd Lane – He stated that the City can not afford another lawsuit and Mr. Black should be given his license and allowed to open his business.

Samuel Box – 51 N. Summit Street – He said he is a life long resident of Fairhope and his mother was an artist. He said he feels that Mr. Black’s proposal is reasonable but he is concerned with subsequent owners and adjacent properties. He referenced Hermosa Beach, CA where the real estate agents have said it does affect the property values and takes longer to sell property that is in close proximity to a tattoo studio. He stated that a tattoo studio would be better suited in a different venue or locale.

Amy Stubler – Declined

Diane Hudnall – 55 N. Summit Street – She stated she has lived here for 15 years and she is saddened that this issue has not already been addressed by the City. She said she is concerned with the business’s close proximity to the schools, neighborhoods, and family areas. She said Orange Beach took tattoo studios out of the personal use category and made it its own category to regulate them better.

Paul Ripp – 22985 Highridge Road – He stated Mr. Black’s request should be granted and he should not be going through this now. He said the timeline is askew and it is

wrong that the City Council was even considering a moratorium before this case could be heard. He said he was glad to see so many people come out to support Mr. Black.

Tricia Niemeyer – Declined

Jason Padgett – 9339 County Road 32 – He stated he was born and raised in Fairhope and it is a very unique city. He has known Mr. Black for 6-7 years and he is a very talented artist. He said he knows the stereotype that is associated with tattoo parlors and that is not Kevin or what he is trying to do.

Jason Opperud – 14410 Brook Hollow Road – He stated he owns a family friendly tattoo parlor in Foley. He said he does not know Mr. Black but he would like to and he supports him. He stated that a tattoo studio will only survive if the market supports it and Mr. Black will be closely watched by all of these people who are here in opposition of him.

William Sullivan – 106 Oak Street – He said he has been a resident of Fairhope for 15 years and it is incongruous to have a tattoo parlor which is an adult establishment in a family neighborhood.

Ben Gibson – 408 Patlynn Drive – He stated he is a life long resident of Fairhope and he does not have any tattoos but he supports Mr. Black. He said the City should welcome new business and the revenue they bring to the City. He added that Mr. Black has not done anything wrong and he should be allowed to open his business.

Analece Pew – 20570 Valley – She stated her business is located at 395-A Fairhope Avenue and is Analece Designs and Bayside Beads and it is the third largest retail store in Downtown. She said she is covered in tattoos and she got them from Kevin Black. She said she has a husband and five children and she lives here because it is a family community. She listed several business owners that have tattoos and said they are the younger generation and the ones who are the future of Fairhope and the City needs to start listening to what they want.

Jeanine Rillo – 8610 Dyer Road – She stated she has lived in Fairhope for 40 years and she has know Kevin Black for years. She said she was a massage therapist for 8 years in the building next door. She stated some cities tried to have them listed with sexual oriented businesses which is not what they wanted associated with their licenses so she understands the stereotypes. She said she knows Kevin will have a reputable and professional business.

Lisa Box – 51 N. Summit Street – She said the point is setting a precedent that will allow other tattoo studios in Fairhope and not whether Mr. Black is a good person or not. She said if the Board is going to allow a tattoo studio then it should not be close to residential areas. She said she does not want them banned just located in a more appropriate location.

Matt Brown – 19 S. Summit Street – He stated that he is a member of the younger generation and he does not support Mr. Black and he moved to Fairhope for its unique, family atmosphere and allowing tattoo parlors will drastically change it.

Mrs. Slagle closed the public hearing.

Mr. Vira asked why property owners within 300' of the proposed location were not notified by mail and is permanent makeup allow in the City. Mr. Smith stated this request is an interpretation and is not limited to this particular location. He said the Board's decision will apply to the entire City and any B-2 zoned property or any property that allows General Personal Services. He also said he has never granted a business license for permanent makeup. Mr. Vira asked Mr. Black if permanent makeup is considered a tattoo and Mr. Black responded yes, both the County and State regulate them the same way. Mr. Strunk asked if Mr. Black was willing to not have signage on the road and only have it on the door and Mr. Black responded yes. Mr. Strunk apologized for any miscommunication regarding future communication about the case but he has done extensive research over the last month. Mr. Strunk also stated that he is not in the pocket of any of the City officials or anyone else. Mr. Clark stated this is not about Mr. Black but a business and an allowed use. He said he feels that the guidelines and regulations should be made by elected officials with recommendations from staff and not a sub-committee but the question at hand is whether a tattoo parlor is allowed in the general personal services category as outlined in the Zoning Ordinance. Mrs. Green thanked everyone for coming and she said she has always stood up for the businesses and the citizens in Fairhope. She stated that she is a nurse by profession and her husband owns a nursery and both are heavily regulated. She said she understands the concerns of the property values and she agrees with the comments of the other Board members. She said she does not feel that the citizens of Fairhope will allow an unprofessional establishment to survive. Mrs. Slagle said her comments have already been expressed by the other Board members. Debra Green made a motion that tattoo studios be allowed under the General Personal Services use category outlined in Article IX, Section B. (Description of Uses) in the Fairhope Zoning Ordinance. Anil Vira 2nd the motion and the motion carried with the following vote: AYE – Debra Green, Cathy Slagle, Anil Vira, and Troy Strunk. NAY – Ray Clark.

Having no further business, Anil Vira made a motion to adjourn. Troy Strunk 2nd the motion and the motion carried unanimously. The meeting was adjourned at 6:34 P.M.