

The City of Fairhope Board of Adjustments and Appeals met on Monday, June 18, 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; Sam Andrews; Clyde Panneton; Debra Green; Ray Clark; Jonathan Smith, Planning and Building Director; and Emily Boyett, Secretary.

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

The minutes of the May 21st, 2012 meeting were considered. Sam Andrews moved to accept the minutes as written and was 2nd by Debra Green. Motion carried unanimously.

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

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 he was contacted by Mayor Kant earlier in the day with concerns regarding the need of additional advertisements and notice to the public because this use will not only affect this location and surrounding area but the entire City and any property that is zoned B-2 General Business District. Mr. Smith recommended the Board table this case for further discussion, study, and additional advertisement for the public.

There was discussion regarding what advertisement was done for this meeting and Mr. Smith stated the agenda was posted on the City's website, sent to the press, and e-mailed to the City's Neighborhood contact list. The Board questioned what additional advertisements would be done for the next meeting and Mr. Smith stated he was not certain but most likely, a legal ad in the newspaper and maybe letters to property owners within 300'.

Mrs. Green stated she feels that a body art/tattoo studio use is comparable to a beauty shop or barber shop, all of which make alterations of the body. She stated the City permitted permanent make-up and she would like to proceed and hear the case because she doesn't want the City to get in trouble.

The Board questioned whether the request would change if the use were proposed in the CBD or if there was any retail involved and Mr. Smith responded no, it would not change. He stated the request is for the use and whether it falls under the General Personal Services category. Mr. Smith stated the City does not have anything that even references this type of use. He said most City's have ordinances that regulate tattoo studios. Mrs. Slagle stated the Town of Summerdale has an 18 page ordinance just for tattoo parlors. The Board asked if the case is tabled will it be heard next month, will the City cover the advertising costs, and will staff provide copies of ordinances from surrounding areas regarding tattoo studios to the Board and Mr. Smith responded yes.

Mrs. Slagle opened the floor to public comments. Kevin Black addressed the Board saying he was surprised to hear Mr. Smith's recommendation to have the case tabled. He stated he has worked extremely hard and put all of his time, energy, and money into opening his tattoo studio only to have his business license denied by the City. He said he has already lost time and money by being required to come before this Board and now the Mayor is trying to delay him further for public input. He provided letters of support for his business from surrounding business owners and citizens. Mr. Black said he has met all of the state and county requirements and brought the building up to code and now it is just sitting there. He said he has bills to pay and without being able to work he doesn't know how he will make it. He stated that tabling this case will cause further issues for him and he wants the Board to make a decision tonight. Mr. Black explained he grew up in Fairhope and wants to be a part of Fairhope. He said Fairhope is an art community and

he is an artist. He stated that he understands the image and stereotypes that come with a tattoo studio but he will have an upscale and professional business. He explained that he would be working by appointment only and there will not be any piercing or retail sales. He said typically a city of this size will only be able to support one tattoo studio which usually will keep the lower-end studios out. The market will not allow survival if a studio is not up to the standards in the area. Mr. Black said he is here to address any concerns the Board has but he needs a decision tonight.

The Board discussed possible restrictions and conditions for a body art/tattoo studio use such as business hours, limiting procedures, retail sales, and health safety. The Board concurred that tabling the case may be a short term setback for Mr. Black but a long term benefit for protecting his business.

Anil Vira moved to table the request for further information and to give additional public notice. Troy Strunk 2nd the motion and the motion carried with the following vote: AYE – Cathy Slagle, Sam Andrews, Anil Vira, and Troy Strunk. NAY – None. ABSTENTION - Debra Green.

Mr. Black questioned the language that would be used for the legal ad and Mr. Smith stated it will be the same wording as the agenda. Mr. Smith said he will let Mr. Black review the ad prior to publication.

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 6:25 P.M.