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May 5, 2016

Via: Email and Hand Delivery

Ms. Chevelle D. Nubin, MMC
City Clerk
City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444
Email: cityclerk@mydelraybeach.com

Re: Tattoo Studio
File: TRAD002

Dear Chevelle:

Enclosed is a copy of the transcript from the March 21, 2016 Planning and Zoning Board approval of the Similarity of Use Determination for our client, Tradition Tattoo LLC, to relocate a tattoo establishment from Boca Raton to Delray Beach. On behalf of our client, we are writing to include this transcript in the record, along with the items we submitted in a letter to Tim Stillings, Director, Planning and Zoning, dated April 27, 2016.

We look forward to making our presentation for our client at the City Commission's meeting on May 17, 2016.

Very truly yours,



Michael S. Weiner
MSW:rz

Enclosure

CC: Tim Stillings, Director, Planning and Zoning
Noel M. Pfeffer, City Attorney

PLANNING and ZONING MEETING

RE: TRADITION TATTOO

March 21, 2016

6:04 p.m. to 6:12 p.m.

100 N.W. 1st Avenue
Delray Beach, Florida 33444

Reported By:
Maria C. Powers, Florida Stenographic Reporter
Signature Court Reporting, Inc.
105 Narcissus Avenue, Suite 400
West Palm Beach, Florida
(561) 659-2120
Job #17170

1 APPEARANCES:

2 On behalf of the Tradition Tattoo:

3 MICHAEL S. WEINER, ESQ.
4 WEINER & THOMPSON, P.A.
5 10 S.E. 1st Avenue, Suite C
6 Delray Beach, Florida 33444
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P R O C E E D I N G S

PRESENT: Janice Rustin, Esq., Steve Mackey, Jay Jacobson, Joyce Patrick, Louis Smith, Robin Bird.

MR. BIRD: State your name, address, and we like to remind also that you have been sworn in.

MR. WEINER: Michael S. Weiner. This is an agenda item, but we are classified with respect to the determination of similarity of use as a legislative item.

I just wanted to hear the procedures that you will follow. I assume that you will allow the applicants to make a presentation on the issue. I just need to know whether or not the public could come to the microphone or not. Thank you.

MR. BIRD: Let's get through all the public first and then we'll get to that in a second. Anybody else wish to speak on anything else not on the agenda?

MS. RUSTIN: The legislative items are not quasi judicial. The applicant doesn't have the same amount of time to speak on it. Michael, you will be limited to the same as a rest of the public, three minutes

1 a --

2 MR. WEINER: Will I make that presentation at
3 time the application is called?

4 MR. BIRD: Come up to the microphone, Mike.

5 MR. WEINER: Will I make that presentation at
6 the time the item is called?

7 MS. Rustin: I've got Tim standing behind you.
8 Tim, if you --

9 MR. STILLINGS: I would just say that proposed
10 Items A and B as these are privately-initiated
11 applications, that we do give the applicant the same
12 amount of time as staff then up to the board whether
13 they want to open it up to the -- I assume they want
14 all items up to public comment.

15 MS. RUSTIN: Yes, we open it up to the public
16 comment, so it would be the additional
17 cross-examination.

18 MR. BIRD: My opinion would be -- I mean, I
19 don't know how strict our rules have been in the
20 past, but if these are applications by an applicant,
21 I would give them equal time to staff and the public
22 will have normal three minutes, so it would be
23 similar but, just not -- any objections from the
24 board?

25 ALL: No.

1 MR. WEINER: Thank you so much.

2 - - -

3 MR. BIRD: Okay. Now Item 7-B, Consideration of
4 determination similarity of use pursuant to Section
5 LDR 4.3.2(C)(2) to determine that a tattoo studio has
6 similar characteristics to personal service
7 providers.

8 MR. STILLINGS: Good evening, again.

9 Tim Stillings, Planning Director.

10 Tonight before you is a request for a similar
11 use for a tattoo establishment similar to personal
12 service providers. On the screen you see the
13 definition for personal service providers within our
14 land development regulations. It also is referenced
15 as a services and facilities in certain zoning
16 districts, and I'll go through some more details with
17 respect to the request.

18 The process is that the -- if a use is not
19 specifically listed within the LDR, an applicant can
20 request a similarity of use by the director. For the
21 director to make that determination, it needs to be
22 identical to another use listed.

23 The determination I made was that it was not
24 identical to another use listed and, therefore,
25 required board consideration for similarity of use;

1 in which case, the board may determine that it's not
2 identical but has similar characteristics in their
3 determination.

4 Now, the reason we're here, we can thank -- they
5 were -- they had a court case where a tattoo artist
6 was trying to open a facility in their historic
7 business district where they allowed them within
8 their general commercial district but not within
9 their historic business district and filed suit.

10 And, at the end of this past year, the city lost that
11 suit, where the Court, the 11th Circuit, determined
12 that it was artistic expression, similar to other
13 expression protected under the First Amendment of the
14 U.S. Constitution.

15 This was also a similar ruling that had
16 previously been made by the Ninth Circuit in 2010 and
17 2012. So you could see this happening across the
18 country. And, in fact, generally you've seen the
19 attitudes and opinions about tattoos been changing as
20 a society.

21 This was in the Palm Beach Post just the other
22 day regarding an exhibition at the Morikami; not that
23 that's necessarily an indication of a use
24 consideration.

25 As I mentioned, it's currently not specifically

1 listed, the determination, while not identical, it is
2 similar. And we found in our research, particularly
3 with those communities that we're dealing with, the
4 ruling coming out of Ninth Circuit, was that they
5 found that they were all -- that they were similar to
6 personal service providers in that they occupied a
7 similar amount of commercial space; they had a
8 similar set up, in terms of appointments and
9 walk-ins; traffic and parking were comparable. It
10 was, albeit a little different, similar to a haircut
11 or a manicure and another service you would receive
12 at a salon. And, in fact, in some cases, at a few
13 medical offices and salons you can get permanent
14 makeup, which is effectively the same thing, just on
15 a certain part of your body or your face.

16 Therefore, staff is recommending a similarity of
17 use determination but felt it would be reasonable for
18 the board to make that determination.

19 Just for your information, we are in the process
20 of developing text amendments to the LDR to bring
21 forth for your consideration that would formally
22 address these establishments and potentially provide
23 some distance and separation requirements to
24 sensitive land uses, as well as hours of operation
25 and other operational consideration.

1 I think that is the end of my presentation.

2 MR. BIRD: Okay. Thank you. Mr. Weiner.

3 MR. WEINER: Michael Weiner, 10 S.E. 1st Avenue,
4 here on the behalf of Rebecca Loveless and Tradition
5 Tattoo. I know you've got things to cover on the
6 agenda.

7 Some interesting things about tattooing.
8 Actually, the first tattoos were discovered on
9 mummies almost 3000 years ago. It fell out of favor
10 and into favor; gosh, in Chile, Siberia, Japan,
11 almost every culture has tattooing involved in it.
12 Finally came back into favor with sailors. We all
13 know about the sailors. And what that meant was it
14 was really a niche, and it was a niche that was
15 provided in military base communities.
16 Unfortunately, the locations got bad reputations, but
17 that's certainly over.

18 By the 1990s -- he mentioned before the Morikami
19 exhibit -- by the 1990s, tattoo was a serious
20 artistic expression; galleries in Soho were featuring
21 them; the American Museum of Natural History
22 presented Body Art: Marks of Identity, and that was
23 in 1999. And, now, over this last 20 years, of
24 course, it's been accepted.

25 An interesting statistic is that Life Magazine

1 found that 6 percent of the population had one tattoo
2 in 1936, and now in 2016, it's over 21 percent, one
3 out of five people in the United States. I don't
4 know if Americans agree on anything else, one out of
5 five time, but they agree to get tattoos.

6 A couple of things: Tattoo studios and tattoo
7 artists are regulated pursuant to Chapter 381 of the
8 Florida Statutes on public health; they are licensed
9 and they are regularly inspected.

10 While this is the first exclusive tattoo parlor
11 within the city limits, as Tim mentioned, if you
12 review the city approved and state licensed tattoo
13 establishments, they include: Changing Faces Makeup,
14 Dr. Melissa's Medical Boutique, New Permanent Makeup;
15 all of these are within the city limits, have their
16 tattoo license, but because they're only permanent
17 makeup, they've never been subject to this similarity
18 of use, but they're open and they use the same tools
19 and the same procedures; it's just that they don't
20 exclusively do tattooing.

21 As Tim said, since the procedures are exactly
22 the same, since those procedures are actually going
23 on in things that are called salons, we originally
24 thought that it was identical, but it's got
25 ordinances that are crafted and they're crafted with

1 some important words, and Tim could not reach the
2 conclusion that it is identical.

3 We only need to demonstrate similarity, and
4 Tim's report is in favor of that. And when you see
5 that in fact they are doing the same things, just not
6 exclusively and that they have, as Tim suggested, the
7 same kind of activity, size, traffic, clientele, then
8 certainly, if we're not identical we fall under the
9 standard of similar and that particular standard is
10 met.

11 My client found property at 165 Avenue L in
12 Delray Beach, Florida, which is zoned GC. GC allows
13 for services, including, but not limited to, barber
14 and beauty shops and salons; hence, personal services
15 are a permitted use.

16 Section 2.4.5(N) of the LDR allow for a
17 determination of similarity of use by the Planning
18 and Zoning Board, and that's you; you're the
19 decision-making body.

20 Our LDRs were originally written in 1986, long
21 before the reemergence of this as an art form. The
22 identification of a tattoo studio in a seedy
23 neighborhood is long gone.

24 The federal courts, as had been discussed, just
25 recently is said that this an expression covered and

1 protected by the First Amendment. A serious person,
2 like a federal judge, Judge Pryor, on behalf of a
3 three-judge panel wrote: "Tattooing, as practiced by
4 tattoo artists, emphasizes creativity and
5 expression." Then she went on to say that: "We see
6 no meaningful basis on which to distinguish their
7 work from that of any other artist practicing in a
8 visual medium." As has also been mentioned, this
9 case followed and is following other cases similarly
10 decided.

11 So under the circumstances, where the practices
12 and procedures are already allowed within the similar
13 zoning districts and where the tattoo studio is
14 subject to the same regulation as those procedures
15 related to permanent makeup and where the tattoo has
16 become a part of the American mainstream and where
17 the courts have found it to be a form of expression
18 that deserves protection under the First Amendment,
19 we ask for your vote tonight as to a similarity of
20 use, so that my client may become part of the Delray
21 Beach business community and open her doors to her
22 clientele and the public.

23 Rebecca Loveless is here tonight if you should
24 have any questions. That's her artwork that's being
25 displayed. We're here to answer any additional

1 questions you may have. Thank you for your time.

2 MR. BIRD: Thank you. Any questions before we
3 move to the public?

4 Okay. Very good.

5 Anyone in the public wish to speak on this
6 subject, either for or against?

7 State your name.

8 MR. WHITEMAN: Ari Whiteman, Washington Road.
9 In reference to this proposal and Mr. Weiner's
10 comments, I'm actually here to support it. This is a
11 business no different than anybody else's, and, as
12 long as they adhere with our LDRs, I have no issue
13 with it. Thank you.

14 MR. BIRD: Thank you. Anybody else wish to
15 speak on this item?

16 MS. CREDLE-ROSENTHAL: I did not come prepared
17 to speak on this because I did not know this was a
18 topic.

19 I do want to say that I'd like to know if these
20 tattoo parlors or stores have specifications in terms
21 of the people who are running them. Do they have
22 some sort of medical background? Because my
23 understanding is that tattoos have increased and hep
24 C is aligned with this particular procedure. Thank
25 you.

1 MR. BIRD: I could defer to either City Counsel
2 or Mr. Weiner, but I believe state statute still
3 requires that they be attached to some kind of doctor
4 that oversees them that they could call in a medical
5 emergency. I don't think they have to have a medical
6 doctor on staff, but they do have to have somebody
7 registered, that they have a direct line to, should
8 they get into an allergic reaction or something to
9 that effect; that's something that a lot of people
10 don't take into consideration. I would bring up a
11 barbershop does not have the contact tattoo people
12 do, but that's an excellent question, by the way,
13 ma'am.

14 MS. MILLER: Would you give us your name and
15 address?

16 MR. BIRD: Sorry about that. Would you give us
17 your name and address, please.

18 MS. CREDLE-ROSENTHAL: My name is McCall
19 Credle-Rosenthal. I live at 817 Lake Avenue North,
20 I'm president of La Hacienda.

21 MR. BIRD: Thank you. Tim want to come back?
22 Anybody else from the public wish to speak?
23 Close the public portion. Any questions of Tim?

24 MS. PATRICK: Tim, could you tell me where
25 Avenue L is, please.

1 MR. STILLINGS: Sure. It's in the southeast
2 portion of the city, just off of Federal Highway next
3 to -- or north of one of the access points to Tropic
4 Isle neighborhood.

5 MS. PATRICK: Thank you.

6 MR. BIRD: Right where the Wal-Mart shopping
7 center is, right? I could walk there.

8 MR. STILLINGS: Just west of it.

9 MR. BIRD: Got it. I'll probably ride bike or
10 drive. They don't have a sidewalk on the boulevard.

11 MR. KRALL: Part of that is 7-C.

12 MR. BIRD: Okay.

13 MR. MACKEY: I don't have any issues with the
14 tattoo parlor itself. I do remember some city having
15 some issues with their tattoo parlors as far as -- I
16 don't think was a zoning issue. I think it's more,
17 you know, as they start becoming more prevalent --
18 whichever city I was in -- I remember somebody was
19 talking about they had a problem with regulating the
20 tattoo parlors themselves, whether that's the issue.
21 I think it was like a health code issue.

22 I remember -- I forget which city it was, out
23 west somewhere -- that all the tattoo parlors had
24 decided to kind of banded together and self-regulate
25 for, I think, that cleanliness, health, whatever. I

1 don't know if any of the existing salons have to
2 adhere to a certain standard of cleanliness with the
3 needles and all that kind of stuff. That would be
4 something that I would just voice right now while I
5 have the opportunity.

6 I don't see this so much a zoning issue but more
7 regulating the health and the practice.

8 MR. STILLINGS: The facility is licensed by the
9 state and regularly inspected and also regulated by
10 the health department.

11 MR. KRALL: Two things. One concerned about the
12 text amendment language that you guys are coming up
13 with.

14 Number one, does this cover just tattoo
15 establishments, or does it morph into body piercing
16 and all the rest of the stuff that we usually see
17 advertised in --

18 MR. STILLINGS: We are narrowing our focus on
19 tattooing, not addressing piercing and other forms
20 of --

21 MR. KRALL: Okay. Second question.

22 What's the thought process behind regulating
23 distance and location, etc.? Why is it thought of
24 any differently than a hair salon, a full-service
25 salon that you could open up one every 20 feet if we

1 wanted to?

2 MR. STILLINGS: It might be better for us to
3 present when we actually get into the evidence to
4 support whatever the language is that we are
5 presenting.

6 Basically what we're finding there are some
7 studies that address issues with concentration of the
8 use, as well as -- because it's effectively an
9 adult -- you have to be 16 with an adult present or
10 18 by yourself. It's adult activity versus you
11 know -- if you're an industrious 12 year old, they
12 could go --

13 MR. KRALL: Okay.

14 MR. BIRD: I think part of the industry brought
15 it on itself, the perception of a deleterious effect.
16 I don't know that when you get to it, you're going to
17 find those numbers, but you're going to need to --
18 you're going to have to -- or have any regulations at
19 all. I know people have thought about that, and it's
20 a simple prohibition.

21 I guess the -- we've gotten by on a big bluff by
22 having it as a prohibited use. Now it's been
23 determined it's a First Amendment situation, you
24 can't outright prohibit any First Amendment use
25 throughout the city; you have to allow it somewhere.

1 So --

2 MR. STILLINGS: You could regulate by time,
3 manner, and place.

4 MR. BIRD: Right, but you can't have an outright
5 prohibition.

6 MR. STILLINGS: You cannot, which is why we're
7 here this evening.

8 MR. SMITH: No questions.

9 MR. BIRD: That's the reason why we have
10 psychics, but we don't have tattoo parlors, that's
11 really amazing to me. I don't know how we road this
12 train this long.

13 Anything else? Call for a motion, I guess.

14 I find it hard pressed to say it's not a
15 personal service of some kind and they -- you have to
16 have them somewhere. All the cities I know are now
17 kind of rocking in their boots after the Kew West
18 decision where the artists themselves are considered
19 the expression, not just the tattoo, which I thought
20 was kind of unique about the case. So, anyway...

21 MR. MACKEY: I'd like to make a motion to
22 approve the similarity of use request that a tattoo
23 studio is similar to services in facilities,
24 professional service providers, as listed in LDR
25 Section 4.9 of the GC Zoning District A, definition

1 as presented --

2 MR. KRALL: Second.

3 MR. BIRD: Second.

4 One last issue before you vote. It is a zoning
5 regulation and the signage that typically make it
6 different and bring attention to the tattoo parlors
7 and what they've done goes beyond stuff that we've
8 seen, so I'm assuming the rest of our regulations
9 will be treated the same and have no exceptions.

10 Please call roll.

11 MS. MILLER: Steve Mackey?

12 MR. MACKEY: Yes.

13 MS. MILLER: Jay Jacobson?

14 MR. JACOBSON: Yes.

15 MS. MILLER: Joyce Patrick?

16 MS. PATRICK: Yes.

17 MS. MILLER: Louis Smith?

18 MR. SMITH: Yes.

19 MS. MILLER: Robin Bird?

20 MR. BIRD: Yes.

21 (Time noted: 6:12 p.m.)

CERTIFICATE OF REPORTER

THE STATE OF FLORIDA

COUNTY OF PALM BEACH

I, MARIA C. POWERS, Florida Stenographic Reporter, certify that I was authorized to and did stenographically transcribe the foregoing proceedings pages 3 through 18; that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 3rd day of May 2016.



Maria C. Powers

MARIA C. POWERS

FLORIDA STENOGRAPHIC REPORTER

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