

## **City of Coral Gables City Commission Meeting**

**Agenda Item E-2**

**October 14, 2008**

**City Commission Chambers**

**405 Biltmore Way, Coral Gables, FL**

### **City Commission**

**Mayor Donald D. Slesnick, II**

**Vice Mayor William H. Kerdyk, Jr.**

**Commissioner Maria Anderson**

**Commissioner Rafael “Ralph” Cabrera, Jr.**

**Commissioner Wayne “Chip” Withers**

### **City Staff**

**City Manager, David Brown**

**City Attorney, Elizabeth Hernandez**

**City Clerk, Walter J. Foeman**

**City Clerk Staff, Billy Urquia**

**Zoning Administrator, Martha Salazar-Blanco**

### **Public Speaker(s)**

**Arturo Alfonso, Attorney**

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E-2 [Start: 12:14:55 p.m.]

Mayor Slesnick: Item E-2, for those of you here with us today, we will take E-2, that is another appeal, and then we will move to a short break for lunch. And to announce to everyone one the reason we need to keep moving today is that we have a 4 o'clock ceremony with the Garden Club on inaugurating the new 8<sup>th</sup> Street and Ponce de Leon entrance. This is a concurrency appeal, Robert Espinosa, applicant, has filed an appeal to the Coral Gables City Commission due to a negative concurrency determination from the Concurrency Administrator on September 24, 2008, in connection with the operation of a tattoo parlor to be located at 5258 SW 8<sup>th</sup> Street, Coral Gables, FL 33134. Those of you who are appearing please raise your hands to be sworn-in by the Clerk.

City Clerk Foeman: Do you solemnly swear or affirm that the testimony you will offer here today, will be the truth and nothing but the truth?

Mayor Slesnick: Thank you, please introduce yourselves and this is your opportunity to state your case.

Arturo Alfonso: Good afternoon, my name is Arturo Alfonso, I am an attorney and I represent Robert Espinosa, the applicant.

Mayor Slesnick: Just pull the mic a little bit more directly. That is it. Good.

Arturo Alfonso: Today we are appealing the denial of the certificate of use and we are requesting an interpretation of the Zoning Code definition of problematic uses as it relates to a tattoo parlor; and also a determination identifying which zoning district that falls under when you read the Code it is silent as to the tattoo parlor. The only place where to put it is the definition of problematic use, but the Code does not specify one way or the other under which zoning district it falls under. The Code specifically prohibits tattoo parlors. Mr. Espinosa has been in the tattoo business for seven (7) years his office. The retail store that he plans to open is a professional one. It is decorated beautifully, we have pictures.

Mayor Slesnick: If you wish to pass those around you may.

Arturo Alfonso: The store plans to open from 12 (noon) to 9 p.m. Monday through Saturday. It is approximately 1,000 square feet. It is in a good neighborhood. It is mainly by appointment only and the clients are going to be upscale clients. He is going to charge \$150 per hour for his work; obviously everything is with ID, no minors. His rental under the lease is \$1,500 per month. The landlord has had the building there for 10 years. He is a good friend of Mr. Espinosa they know each other and have a good relationship. He has got a reception area, he has got an office for him and three small offices for his workers. He has got three employees apart from himself, and he is requesting that the certificate of use be granted, so he be allowed to conduct his business. Again, the Code is silent it does not prohibit tattoo parlors in the area and when you look at the definition of problematic use it characterizes them as poorly maintained facilities, you can see from the pictures it is not a poorly maintained facility and he is not there to attract rift rafts or anything like that; very upscale clients and he was to maintain the Coral Gables image. It faces 8<sup>th</sup> Street, it is near 57<sup>th</sup> Avenue. So we are asking the board to approve this certificate.

Mayor Slesnick: Thank you very much, and we will give you a chance to close, if you hear something said that you feel you have to respond to. I am going to call on the department now to talk about how this case came here and what the position of our department is.

Martha Salazar-Blanco: On August 4<sup>th</sup>, 2008 Mr. Robert Espinosa filed an application for a certificate of use to the Concurrency Division for the operation of Body Arts Studio. Now upon review of the application and subsequent meetings with the applicant it was determined that the Body Arts Studio is in fact a tattoo parlor; and tattoo parlors are not listed use under the zoning district use category article 4. It is not and when the use is not listed is prohibited use; however because it is a prohibited use and because it is not listed, we also have a section in the Zoning Code that shows problematic uses. Problematic uses is a section where definitions that mentions tattoo parlors; and although it doesn't say that problematic use is a prohibited use, however staff feels that it is an additional layer to come to the Commission for direction to possibly either take it to the Planning and Zoning Board either as a conditional use or as a more direction as far as what zoning category this tattoo parlor that is under problematic use can be allowed and that is what staff recommends for this to go to before the Planning Zoning Board for further guidance, for this type.

Mayor Slesnick: So your recommendation for us is to send it to the Planning and Zoning Board?

Martha Salazar-Blanco: That is correct.

Commissioner Withers: But I have a question. Why do you think this is a problematic use? I mean what about a tattoo parlor is problematic?

Martha Salazar-Blanco: Well in the definition of problematic uses which I'll read out it says; "a problematic use means commercial retail and service uses which are typically characterized by poorly maintained facilities, loitering and other neighborhood deterioration or urban blight, including but not limited to, day labor agencies, tattoo parlors, body piercing, pawn shops, check cashing centers and blood plasma centers." These are problematic uses, and these are uses that are not listed in the Zoning Code as allowed uses or as conditional uses. They are categorized as problematic uses; so therefore I think, I believe when these problematic uses come up, this is a way that it comes to Commission, we let the Commission know, OK this is a problematic use a tattoo parlor, or this is a pawn shop, or this is a piercing; and then we get guidance by the Commission to take it to the Planning and Zoning Board.

Commissioner Withers: Those problematic situations that you just described could take place with any business. They could take place with restaurants, they could take place with Doctor's offices, they could take place with, you know loitering, disrepair; they could take place with any type of business, not just a tattoo parlor couldn't they?

Martha Salazar-Blanco: It could happen, but in order for them let's say they have a restaurant like you said and they want to use a tattoo parlor as the side they still need to come to get approval of that.

Commissioner Withers: No, that is not my point; my point is we have a way of dealing with problematic uses through Code Enforcement, so my concern is that we are restricting use through an anticipated problematic problem that we don't even know that we are going to have. I mean how do we know there is going to be loitering? How do we know there is not going to be in disrepair? I am just concerned that we are restricting someone's rights for a situation that could never ever occur. I mean do you have facts that tattoo parlors are in disrepair? That tattoo parlors have loitering? That they have day laborers? I mean do you have those facts?

Martha Salazar-Blanco: Not at all, this is basically as far as use is concern and any complaints to Code Enforcement we would need to guide them as to what section of the Code they would need to cite these individuals by and if there is not a section of the Code that prohibits them, then there is no way we can enforce it.

Commissioner Withers: I just think we are threading on thin ice, I think we are biasing ourselves on certain things that may not be a problem, and it worries me, the conservative that I am, worries me that we are moving into this area. I am serious...

Mayor Slesnick: But we are not moving, the Code is already written. It is already listed there, it is described there, whether we agree with it or not, that is the Code.

Commissioner Anderson: It talks about the issues of facilities being in disrepair.

Martha Salazar-Blanco: Right, because that is the definition under problematic use.

Commissioner Withers: They are denying it based on problematic use not on that is a tattoo parlor.

Martha Salazar-Blanco: We denied it based on the use not being listed. Any use that is not listed...

Mayor Slesnick: It is prohibited.

Martha Salazar-Blanco: Then it is not allowed. However, in addition to that there is a definition of problematic use and based on the fact that a tattoo parlor is a problematic use.

Mayor Slesnick: So there are two things, one is not listed in permitted uses, and secondly is problematic.

Martha Salazar-Blanco: That is correct.

Commissioner Withers: So that is the reason you want to send it back to the Planning and Zoning Board.

Martha Salazar-Blanco: At this point there is nothing in the Code that allows or disallows, that allows tattoo parlors.

Commissioner Withers: Or disallows you said it.

Mayor Slesnick: But we don't need to send it back?

Martha Salazar-Blanco: No.

Mayor Slesnick: OK, thank you.

Commissioner Cabrera: Yeah that is what I am trying to do, I think we need to make a decision on this, it is good for the City, it would be good for the applicant [inaudible]

Mayor Slesnick: Do I have a motion? Or do you have a motion?

Commissioner Cabrera: I don't have any questions regarding this.

Vice Mayor Kerdyk: I don't either.

Commissioner Cabrera: This is very black and white for me. And I feel bad for the applicant, but I'll make a motion to support staff's decision on this matter.

Vice Mayor Kerdyk: I'll second it.

Mayor Slesnick: OK, we have a motion to support staff's decision which we would read in a second, motioned by Mr. Cabrera, seconded by Mr. Kerdyk; and it would be for the Commission to uphold the concurrency administrator denial of an application for a certificate of use; and we did have one Citizen who was here to speak to this matter. He lives at 910 Madrid Street, his name is Manuel Valdez and he had come to oppose the use as a tattoo parlor, and said that his two comments were "is not a good idea" and "inappropriate use". I have a motion and a second any other questions, I did say that you could come back up; and if you would like to come back up to address anything that you heard us say please do so. And before I forget, please you can have the photographs if you don't get them back make sure we don't keep them.

Arturo Alfonso: I think with all due respect the Code does define those uses that are prohibited and a tattoo parlor is not listed as a prohibited use; and to come forward and say because is not listed it is assumed to be prohibited is putting the cart before the horse, and it is not being analyzed or interpreted correctly I think if it wanted to be a prohibited use it should have been listed as a prohibited use. It is a problematic use it doesn't necessarily mean it is going to be a problem, and Mr. Espinosa is going to run it in a professional manner; and you are interfering with his right to conduct a business and to move forward with it. Now it means that he needs to go outside of the City and do it somewhere else.

Commissioner Cabrera: and I understand that and I appreciate your argument I am just trying to bring closure to this. I know is not the closure you want but then this allows whatever actions you decide to take after this to take place.

Mayor Slesnick: Yes and let me respond to your points too, I think they are good points, but I think what I would say to you in return, again I am speaking as me, this isn't from God, so you could be right and I could be wrong, but because is not an allowed usage it does give the administrator and the City the right to deny its usage because it is not allowed usage. Forgetting the listing in problematic or not listing in problematic, and so the administrator has denied the usage. I think it is within their discretion I think that is what the courts are going to determine. Have they acted within their discretion? And this Commission's motion, if it is passed, I believe is within the discretion of the Commission. I know again if it passes is not what you are asking for, but I have been trying to address your point specifically.

Arturo Alfonso: I respect your decision I just think that the Code needs to be worked on and be more specific because I am sure he is not going to be the only one to come forward with an application; and unfortunately this is a case of first impression and he is being used as the "guinea pig."

Mayor Slesnick: Well actually in twelve (12) years in the Planning and Zoning Board and seven (7) years on the Commission it is the first time I have handled a tattoo parlor request. I am not saying that they haven't come and being handled by staff, but I have never seen it in either of those situations.

Commissioner Cabrera: I think Ms. Anderson was going to say something.

Commissioner Anderson: No, I understand, and I think it should go through the Planning Board process whatever we do here, and I don't know what the appeals are, but we should have it clarified for the future.

Mayor Slesnick: Mr. Clerk.

City Clerk Foeman: Vice Mayor Kerdyk?

Vice Mayor Kerdyk: Yes.

City Clerk Foeman: Commissioner Withers?

Commissioner Withers: No.

City Clerk Foeman: Commissioner Anderson?

Commissioner Anderson: Yes.

City Clerk Foeman: Commissioner Cabrera?

Commissioner Cabrera: Yes.

City Clerk Foeman: Mayor Slesnick?

Mayor Slesnick: Yes. We have voted yes, and you can get a copy of that when it is done by the Clerk denying the appeal and upholding the administrator's decision; and Building and Zoning with you and Planning I think that we would like to see the Code tighten up in this area and prohibited use, and so that there would be no question in the future. Now I don't know how the Commission would vote, but I think that you should present to us something prohibiting tattoo parlors in the City of Coral Gables. Thank you.

[End: 12:29:45 p.m.]