



Minutes of the Board of Adjustment REGULAR MEETING April 17, 2024

Minutes of the Regular Meeting of the Board of Adjustment, of the City of Tempe, which was held in Council Chambers
31 East Fifth Street, Tempe, Arizona

Present:

Staff:

Chair John 'Jack' Confer	Jeff Tamulevich, Community Development Director
Vice Chair Kevin Morrow	Ryan Levesque, Deputy Director Comm Dev
Board Member Kaelee Palmer	Drew Yocom, Comm Enhancement Deputy Director
Board Member Raun Keagy	Matthew Mansfield, Assistant City Attorney
Board Member Mary Foy	Ambika Adhikari, Principal Planner, Comm Dev
Board Member Rickey Lynn Gans	Chris Jasper, Senior Planner, Comm Dev
Board Member Sean McCarley	Jennifer Daniels, Administrative Assistant II

Meeting convened at 6:00 p.m. and was called to order by Chair Confer.

Chair Confer asked new board member Sean McCarley to give a quick introduction about himself. This was Board Member McCarley's first BOA Meeting.

Board Member McCarley introduced himself.

1) Voting of the Meeting Minutes:

Study Session & Formal Meeting Minutes from January 24, 2024.

Motion by Vice Chair Morrow to approve Meeting Minutes from Study Session and Regular Meeting January 24, 2024; second by Board Member Gans. Motion passed on **6-0** vote.

Ayes: Chair Confer, Vice Chair Morrow, Board Members Palmer, Keagy, Foy, and Gans

Nays: None

Abstain: Board Member McCarley

Absent: None

-
- 2)** Request for an Appeal of the Zoning Administrator's Opinion regarding the exemption of a business from being defined as a tattoo establishment for **DAZEY AESTHETIC COLLECTIVE**, located at 522 South Mill Avenue. The appellant parties are Joseph Conti and Mark D. Walters. **(PL240091)**

Appellant Presentation:

Mr. Mark Walters, owner of Living Canvas Tattoo in Tempe gave a presentation. Mr. Walters stated that a tattoo business attempted to go into the same location as Dazey Aesthetic Collective is currently in and was denied last year. They then applied for a variance and was denied once again. The applicant for Dazey Aesthetic Collective applied for regular tattoo use first and were denied. They then reapplied with a different narrative which then was approved by the Zoning Administrator, Mr. Ryan Levesque. Mr. Walters asked to have a meeting with Mr. Ryan Levesque about the approval. Mr. Walter's discussed the definition of Fine Line tattoos and spoke about several tattoo shops in Tempe offering Fine Line tattoos including his own business. Mr. Walter's discussed single needle versus multiple needles. Whether one needle or multiple needles are used it is all tattooing. A video Mr. Walter's obtained from Dazey's Aesthetic Collective Instagram shows an artist setting up her tray for a tattoo using a three needle not the original one needle stated in the approval. More pictures shown from the Instagram show that Dazey Aesthetic Collective is using colored ink which was not approved in the Zoning Administrator's letter. There is no designated Fine Line tattoo machine. Needles can be changed out in each machine, from one needle to eleven needles. The definition of tattoo removal has not changed in many years. You can get a tattoo removal from any med spa today. The removal of a tattoo currently is very easy. The tattoos from Dazey are not removed any easier than tattoos from another shop.

Mr. Neal Bookspan, attorney with the law firm Jaburg and Wilk in Phoenix Arizona was representing Living Canvas and Mr. Walters. Mr. Bookspan explained the different codes for tattoo shops, separation requirements in relation to other tattoo shops, residential areas, and schools. Dazey is located ½ a block from another tattoo shop that has been in that location for many years. Allowing Dazey to continue with these services of tattooing after denying a tattoo business last year in the same location can expose the city to legal action. There have been no changes in the code since the denial last year. Fine Line tattoos still require a needle and ink going into the skin. Fine Line tattoos are just a type of tattoo using one to three needles.

Original Applicant Presentation:

Ms. Darin Sender, attorney with Sender and Associates. Ms. Sender was representing Dazey Aesthetic Collective and owners Ms. Malia Sonn and Ms. Amari Sonn. Ms. Sender stated that the business is 80% other services and 20% fine line tattoos. Ms. Sender stated that Fine Line tattooing uses one to three needles. The City of Tempe Zoning and Development Code definition of tattoo and body piercing establishment is defined as a mark on the skin deposited by ink and needle and can only be removed with a surgical procedure. It does not discuss needles or color. Laser surgery is the most popular surgical surgery to remove a tattoo. This must be done by a medical professional. Surgical removal is the second way to have a tattoo removed. The skin is cut out and stitched back together by a medical professional. Dermabrasion is also another form of surgical removal, which uses a medical grinding tool to scrape away the tattoo. All three of these procedures are what traditional tattoos require for their removal. Fine Line tattoos are set higher up in the skin level and do not sit as deep as traditional tattoos, so they tend to fade faster. They can be removed by a salt and saline procedure. This can take one to four applications to remove the Fine Line tattoo. The second option is a removal cream with a lighting ingredient. The third option is passing of time. Fine Line tattoos must continue to be redone if you want to keep it. Fine Line tattoos do not require a surgical procedure for removal; therefore, they are not considered tattoos under the City of Tempe Zoning Ordinance nor the state statutes.

Ms. Malia Sonn, owner of Dazey Aesthetic Collective gave a presentation. Ms. Sonn went over the education and training that both her and her sister, Ms. Amari Sonn have completed. Both were trained by an accredited academy on Fine Line tattoos. Ms. Sonn explained how the salt and saline (osmosis) process works to remove a Fine Line tattoo. Ms. Sonn showed pictures of completed saline removal services. When doing Fine Line tattoos the ink is only deposited into the dermis. Some regular tattoos can accidentally hit the subcutaneous layer of the skin making it harder to remove the ink. We make sure that we keep all of our tattoos at the dermal layer, which is very similar to microblading and avoids blurred lines. The shop also offers permanent makeup, permanent jewelry, piercings, tooth gems and facials. 144 sq ft of the establishment of the 2,000 sq ft shop is used for tattoos.

Staff Presentation:

Mr. Chris Jasper, Senior Planner presented the board with a brief summary of what the board was making a decision on tonight. Mr. Jasper stated the board can approve the appeal finding the Zoning Administrators opinion was incorrectly determined, deny the appeal, or continue the appeal if more information is needed to make a decision on this request.

Board Member Keagy asked, reading the definition 7.121 they exempt one type of thing from the definition. It appears that a business that offers piercing of ears only is exempt from this. Does this mean that any other type of piecing is not exempt from this ordinance? Mr. Jasper stated that is correct, ear piercings are permissible by right. They fall under beauty parlor use definition. The definition of tattoo body piercing establishment contains a wide range of body modification activities.

Vice Chair Morrow asked are we putting this business under the exemption for ancillary for the primary business? There has been discussion stating that this is only 20% of their business. Is that exemption part of where we came to this decision? Mr. Ryan Levesque, Deputy Director, Community Development stated the description of the business and type of primary uses on there was a portion of the factor in the final determination, it was not the primary decision-making process. It mainly had to do with how the Fine Line tattoo is applied, uniquely from a tattoo and the definitions associated with the removal process. Vice Chair Morrow asked if someone wanted to put in a business that was only Fine Line tattoo, they would not need a permit under 7.121. Mr. Levesque stated they would need to evaluate the business roles and aspects of the business, according to the Administrators Opinion if a request were to come in that was just solely Fine Line tattoo it would be a permissible exemption. Vice Chair Morrow asked in regard to needle versus needles, do you know if Dazey Collective is using the three needle cartridges? Mr. Levesque stated he was not aware of that, we just relied on the information that provide to us in the application form, they described it as a single needle process. Vice Chair Morrow asked if the city would be concerned if a Fine Line tattoo establishment was using three needle cartridges? Mr. Levesque stated that it does get into a grayer area. Are the mechanics of the materials the same? That would bring up a level of concern. It was also described that the equipment was different than what the tattoo industry is using. But as we have seen here today, there are some similarities with the equipment used to apply the tattoo.

Board Member McCarley asked how the city describes a surgical procedure? Mr. Levesque stated that the surgical process requires a physician. Any of these other level services that might be provided that does not require surgery is the major difference between the services provided.

Vice Chair Morrow asked if the board were to approve your decision with conditions what are the types of conditions we could pose on the business? Mr. Levesque stated that the board would have to present one to him to make that determination.

Public Comment:

Chair Confer indicated the following people submitted comment cards at the hearing in support of Dazey Aesthetic Collective

Briana Fletes, Isaiah Vigil, Tanya Young, Jacob Young, Michelle Vigil, Jackson Coughlin, Francisco Vigil, Claudia Rooney, Isabel Perez and Cheyenne Javey

Mr. Sean Dowdell, owner of Club Tattoo in Tempe. Mr. Dowdell stated that if you look up the definition of tattooing this is what it is. Tattooing sits in the dermis layer of the skin, that is what makes it permanent. Saline can pull out any type of tattoo. Whether it is using one needle, three needle or five needle, it is all tattooing. Needles are preset in the cartridges; they are not putting the ink in at any different level. The video shown earlier from Dazey's Instagram it showed them using the three needles. A picture shown of a tattoo done at Dazey does not fall under the fine line category. What is going to happen in the future? If this permit is granted, there will be legal action from the last person who was denied. It then opens a more serious problem for the City of Tempe.

Ms. Jenna Mansberger, tattoo artist at Living Canvas Tattoo in Tempe. The applicants have stated they are doing a unique work that is not offered elsewhere on Mill Avenue. The applicants also state they are providing a safe space for younger demographic, particularly female demographic. Ms. Mansberger stated she herself is a fine line specialist working with a clientele that is mostly made up of the younger female demographic. Ms. Mansberger stated she provides a safe space for her clients to get fine line single needle tattoos on Mill Avenue. I see no credible difference between what I am doing and what Dazey has claimed to start doing. I use one needle, three, seven and twelve needles. When I apply a tattoo whether I am using a one needle or a seven needle it goes into the exact same layer of skin. My studio and other studios use the saline solution frequently. It is not a process that is unique to Dazey tattooing.

Ms. Tiffany Molina, former business owner in Tempe. Ms. Molina stated she owned the exact same business model as Dazey Aesthetic Collective, located at Mill and Baseline. The City of Tempe shut down the business for being a tattoo shop. Ms. Molina still practices fine line tattooing as well as traditional tattooing at Club Tattoo. It does not matter what size gauge needle you are using. All tattooing goes into the dermis of the skin. It does take Fine Line tattoos between 10-12 sessions, the same as any other tattooing for removal. As a female business owner with the exact same business model and was not provided a variance, I find this as my honestly to the city was punished by having my business closed. I have not heard of any training where they are told the tattoo would be semi-permanent.

Ms. Cassidy Lujan, owner of Plant Mill Business on Mill Avenue. Ms. Lujan stated she is very invested in having a dynamic and full range of services to people. I have a tattoo from Mr. Walters and had tattoos removed. I am very familiar with the processes. I would like to focus on the business side of things. Walking into a tattoo parlor and walking into a beauty parlor are two different experiences. I have a direct interest in having Dazey's specific clientele walk past my store. I think they are providing a wonderful service and the kind of business I would want to walk into.

Mr. Joseph McClellan, co-owner of Plant Mill on Mill Avenue. Mr. McClellan stated he spent the last three months renovating building for Plant Mill. I saw the customers that walk into Dazey. I believe that Dazey brings a completely different experience to the clientele that visit there. The clients that visit Dazey are not the same clients that would visit a tattoo parlor. I myself have a tattoo by Mr. Walters. I believe they are two different businesses.

Original Applicant Response:

Ms. Sender stated she would like the board to uphold the interpretation issued by the Zoning Administrator because Fine Line tattooing salon and the Fine Line tattoos they do there do not meet the definition of a tattoo or body piercing establishment. They do not perform body piercing other than ear piercing and do other services that are not included in the definition, such as facials. The Fine Line tattoos are distinctive and unique. Other tattoo establishments can do Fine Line tattoos as well. As long as they are doing typical regular tattoos that must be removed by a surgical procedure, they are considered to be a tattoo shop. Fine Line tattoos do not meet that definition. It does not matter what the needles are, what the ink is or what the machine is. Fine Line tattoos are distinctive and different. They do not require any surgical procedure to be removed. Fine Line tattoos are not a main component of Dazey's business. We are here tonight to decide what is in the main definition of a tattoo shop. We do not fall into that definition.

Board Member Foy stated there has been a lot of talk about Fine Line and tattooing being the same and then a distinction made by your side that they are completely different, besides the surgical removal because we have heard testimony that regular tattoos do not need to be surgically removed anymore. Besides that, what is the difference between Fine Line and traditional? Ms. Sender stated that regular tattoos do need surgical procedures to be removed. You can put saline on them they will not be removed completely. It would be a partial removal. Ms. Sonn stated that because they are licensed estheticians, we have been trained in the skin by an accredited academy, so we have a deep understanding of the skin. With a laser, it is still a surgical procedure because there must be a medical director on site. Board Member Foy asked what is the difference? Are you going down less deep than a regular tattoo, are you using different inks, are you using different techniques? If you are going down the same depth and using the same ink and the only difference is one needle as opposed to three needles, that does not seem like a difference. Ms. Sonn stated that because she has the knowledge of the skin, she knows what layers she is actually in. If you see a tattoo that is shadowed that is below the dermis layer and that is where cannot be drawn back out. A

lot of time with traditional tattoos, they end up doing that. Those cannot be removed with saline solution. The difference is I have a very in depth understanding of where I am placing when I am performing the tattoo.

Vice Chair Morrow asked, at your shop do you use three needle cartridges on your clients? Ms. Sonn stated, we have three needle cartridges. I have mostly used 0601. We do have 0603. It is a matter of preference. With a one needle is it easier to go too deep. With new artists that are learning they tend to use three needles because it easier to control your needle. Chair Confer stated he wanted Ms. Sonn to listen to Vice Chair Morrows question and respond with an affirmative or negative yes or no. Vice Chair Morrow asked, do you use three cartridge needles on your clients? Ms. Sonn stated yes.

Board Member Palmer typed a question in the chat due to audio issues. Mr. Adhikari read Board Member Palmers question on the record. I would like to know the difference between the process of permanent makeup and Fine Line tattoos, the ink, the needle, etc. Ms. Sonn showed the board a needle used for regular tattoos and one for permanent makeup. Permanent makeup is also done with three RL needles. There is not really a difference in the way you apply permanent makeup and Fine Line tattoos. The only difference is when you do eyebrows you do not want them to be black you use whatever the color is you are trying to achieve.

Board Member McCarley asked how long a Fine Line tattoo would last if you did not use the saline solution or laser removal? Ms. Sonn stated it would depend on the placement on the body, the age of the person receiving the tattoo or the color of their skin. I have done some that completely go away within two months and some that do not need a touch up for a year. The wrist and hands do not have a lot of tissue so there is not a lot of area to hold onto the ink. Whereas somewhere on the arm or back might hold the ink better.

Appellant Response:

Mr. Bookspan stated that if you follow the language in the section, no shop that does tattoos would meet the definition. As stated by Mr. Walters and Mr. Dowdell both use saline in their shops. The applicant stated that they use three needles, their application speaks to one needle not three or any type of multiples. They were approved because this was a different type of tattooing, and it uses one needle. This information is not accurate.

Mr. Walters showed the board the different types of needles that were shown in the original applicant's video. Dazey is not using permanent makeup needles they are using tattoo needles. Mr. Walter's stated that he does tattoo removals multiple times per week using saline solution with salt or lemon juice to lighten the tattoo. Dazey spoke about the different types of layers of the skin and how far they tattoo. Any tattooer's goal is to get the ink into the dermis. Stating that they can tattoo into the epidermis does not work that way. Each tattoo is different depending on the persons age, skin type and body type.

Mr. Bookspan stated that the applicant applied saying it was different due to using one needle, it is not different. They admitted to using three needles. We ask that you deny the Zoning Administrators opinion letter.

Mr. Water's stated that in Mr. Levesque's approval letter to the applicant's it says that it is a permanent cosmetic machine with one needle putting black in into the skin.

Commission Discussion:

Board Member Foy asked Mr. Walters, you stated that you remove with the lemon juice and saline. When you do the removals, are you lighting the ink or are you removing the tattoo? Is there just a scar left? Mr. Walters stated that he does not do it scar. I use a regular tattoo machine with saline and lemon juice or salt. We do not know what will happen. The ink must come to the surface and scab. The scab will leave you with whatever is left. That removal process is not immediate. It is not like laser.

Board Member Keagy stated that the definition needs some fine tuning to meet the standards of today. The object that we are talking about, Fine Line tattooing has the word tattoo in it, so it is a tattoo. In that respect I will be supporting the appeal request.

Chair Confer stated that at this time we can approve the appeal, we can deny the appeal or continue the appeal if more information is required.

Mr. Matthew Mansfield, Assistant City Attorney stated those options are correct.

Vice Chair Morrow asked if he was incorrect when he suggested that they could deny the appeal with conditions. Mr. Mansfield stated that there are three options. Approve, deny or approve with conditions. Mr. Jasper stated that it was his mistake, and deny with conditions is not an option.

Board Member McCarley stated that part of the 7-121 Zoning and Development Code, I am curious if this is following establishment should be exempt from the definition. Are we considering an esthetician to be a licensed person to perform that service? Chair confer stated this is not part of the decision for tonight. We are looking at the appeal that was filed based on the Zoning Administrators decision.

Motion by Board Member Keagy to approve the appeal and overturn the Zoning Administrator's Opinion regarding the exemption of a business from being defined as a tattoo establishment for Dazey Aesthetic Collective: second by Board Member Gans. Motion passed on **4-3** vote.

Ayes: Chair Confer, Board Members McCarley, Keagy and Gans

Nays: Vice Chair Morrow, Board Members Palmer and Foy

Abstain: None

Absent: None

3) Staff Announcements

Chair Confer has no updates.

Mr. Adhikari stated that there will be a BOA meeting next month on May 22nd.

Also, all board members should have received an invitation to the Board and Commission appreciation event. Please attend if available.

4) Adjourn

Motion by Vice Chair Morrow to adjourn meeting; second by Board Member Keagy. Motion passed on **7-0** vote.

Ayes: Chair Confer, Vice Chair Morrow, Board Members Palmer, Keagy, Foy, Gans and McCarley

Nays: None

Abstain: None

Absent: None

Hearing adjourned at 7:15PM