



CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

November 29, 2018
Agenda Item No. 4

SUBJECT: Harbor Thai Massage (PA2018-188)
▪ Minor Use Permit No. UP2018-017

SITE LOCATION: 2400 West Coast Highway, Suite J

APPLICANT: Harbor Thai (Tom Gunckel)

OWNER: Susan S. Cuse Inc

PLANNER: Liz Westmoreland, Assistant Planner
949- 644-3234, lwestmoreland@newportbeachca.gov

LAND USE AND ZONING

- **Coastal Land Use Category:** MU-H (Mixed Use Horizontal)
- **Coastal Zoning District:** MU-MM (Mixed Use Mariner's Mile)
- **General Plan:** MU-H1 (Mixed-Use – Horizontal)
- **Zoning District:** MU-MM (Mixed-Use – Mariner's Mile)

PROJECT SUMMARY

The applicant requests a minor use permit to allow the operation of a massage establishment. The establishment would comprise two massage rooms, a customer waiting area, and a bathroom. Included is a request to waive location restrictions associated with massage establishments.

No late hours (after 11:00 p.m.) or alcohol sales are proposed as part of this application.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
- 3) Adopt Draft Zoning Administrator Resolution No. _ approving Minor Use Permit No. UP2018-017 (Attachment No. ZA 1).

DISCUSSION

- The property is designated Mixed Use Horizontal (MU-H1) in the Land Use Element of the General Plan. This designation on the inland side of Coast Highway along the highway frontage is intended for marine-related and highway-oriented general commercial uses in accordance with CM and CG designations. The CM and CG designations are intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs as well as coastal dependent and coastal related uses.
- The proposed massage use is consistent with the MU-H1 designation as it will provide services that support the surrounding neighborhood and the region.
- The subject property is located in the Mixed Use Mariner's Mile (MU-MM) Zoning District, which is intended to provide for nonresidential uses along Coast Highway in Mariner's Mile.
- Pursuant to Table 2-8 of Zoning Code Chapter 20.22.020 (Mixed Use Zoning Districts Allowed Uses and Permit Requirements), a massage use is a personal services use that may be permitted in the MU-MM Zoning District subject to the approval of a minor use permit.
- The proposed use is located within the Coastal Zone. However, the proposed massage use does not result in an increase in overall parking demand and therefore is not considered a change or intensification of the existing use that would require a coastal development permit.
- Pursuant to Table 3-10 of 20.40.040 (Off-Street Parking Spaces Required), a massage establishment has a parking rate of one (1) space for every 200 square feet of gross floor area. The proposed massage use would occupy 350 square feet and require a total of two parking spaces. The previous use occupying the tenant space was a personal services use that required a parking rate of one (1) space per 250 square feet of floor area, or 2 parking spaces. Therefore, based on the size of the tenant space the parking demand would not change.
- The proposed hours of operation for the business are between 10:00 a.m. to 7:00 p.m., 6-days a week (closed Tuesdays). To allow for future flexibility, staff is recommending a condition of approval limiting the hours to 9:00 a.m. to 8:00 p.m. The neighboring uses are offices, personal service uses such as salons, and a restaurant. The facility has proposed hours of operation that are compatible with the allowed uses in the vicinity, as there will not be any late hours which would contribute to noise in the area.

- The proposed massage use is located within 500 feet of John Wayne Park. The park serves mainly as a viewing and walking area. There are no playgrounds or areas designated for children. The subject property has adequate lighting and is highly visible from the nearby Coast Highway. The subject use is also separated from the park by a steep slope and public parking lot.
- The Police Department has reviewed the request for a waiver of location restrictions and has no concerns regarding the proposed massage operation.
- A condition of approval is included to ensure the applicant will obtain an Operator's Permit from the Newport Beach Police Department in compliance with Chapter 5.50 (Massage Establishments) of the Newport Beach Municipal Code prior to operation of the business.

ENVIRONMENTAL REVIEW

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

The Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves the allowance of massage services and does not result in an intensification of use, parking, or expansion in floor area.

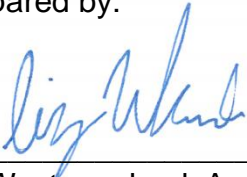
PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways), including the applicant, and posted on the subject property at least 10 days before the scheduled hearing, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

APPEAL PERIOD:

An appeal or call for review may be filed with the Director of Community Development within 14 days following the date of action. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:



Liz Westmoreland, Assistant Planner

JM/law

Attachments:	ZA 1	Draft Resolution
	ZA 2	Vicinity Map
	ZA 3	Applicant's Description
	ZA 4	Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2018-###

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2018-017 FOR A MASSAGE USE LOCATED AT 2400 WEST COAST HIGHWAY (PA2018-188)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Tom Gunckel of Harbor Thai with respect to property located at 2400 West Coast Highway and described as Assessor's Parcel Number 425-471-23 requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow the operation of a massage establishment. The establishment would be comprised of two massage rooms, a customer waiting area, and a bathroom. Included is a request to waive location restrictions associated with massage establishments.
3. The subject property is designated MU-H1 (Mixed Use Horizontal) by the General Plan Land Use Element and is located within the MU-MM (Mixed Use Mariner's Mile) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-H (Mixed Use Horizontal) and it is located within the MU-MM (Mixed Use Mariner's Mile) Coastal Zone District. The proposed massage use does not result in an increase in overall parking demand and therefore is not considered a change or intensification of the existing use that would require a coastal development permit.
5. A public hearing was held on November 29, 2018 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities) of the Guidelines for CEQA.
2. The Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves the allowance of massage services and does not result in an intensification of use, parking, or expansion in floor area.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020F (Conditional Use Permits and Minor Use Permits – Findings and Decisions) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. The property is designated Mixed Use Horizontal (MU-H1) in the Land Use Element of the General Plan. This designation on the inland side of Coast Highway along the highway frontage is intended for marine-related and highway-oriented general commercial uses in accordance with CM and CG designations. The CM and CG designations are intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs as well as coastal dependent and coastal related uses.
2. The proposed massage use is consistent with the MU-H1 designation as it will provide services that support the surrounding neighborhood and the region.
3. The subject property is not part of a specific plan area.

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. The subject property is located in the Mixed Use Mariner's Mile (MU-MM) Zoning District, which is intended to provide for nonresidential uses along Coast Highway in Mariner's Mile.
2. Pursuant to Table 2-8 of Zoning Code Chapter 20.22.020 (Mixed Use Zoning Districts Allowed Uses and Permit Requirements), a massage use is a personal services use that may be permitted in the MU-MM Zoning District subject to the approval of a minor use permit.
3. Pursuant to Table 3-10 of 20.40.040 (Off-Street Parking Spaces Required), a massage establishment has a parking rate of one (1) space for every 200 square feet of gross floor area. The proposed massage use would occupy 350 square feet and require a total of two parking spaces. The previous use occupying the tenant

space was a personal services use that required a parking rate of one (1) space per 250 square feet of floor area, or 2 parking spaces. Therefore, based on the size of the tenant space the parking demand would not change.

Finding:

C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

1. The proposed day spa will occupy a 350-square-foot tenant space in an existing two-story commercial building. The operation will consist of two (2) treatment rooms, a customer waiting area, and a bathroom, all of which are included in the existing commercial space.
2. The proposed hours of operation for the business are 10:00 a.m. to 7:00 p.m., 6-days a week (closed Tuesdays). To provide future flexibility, the conditions of approval limit hours from 9:00 a.m. to 8:00 p.m. The neighboring uses are offices, personal service uses such as salons, and a restaurant. The facility has proposed hours of operation that are compatible with the allowed uses in the vicinity, as there will not be any late hours which would contribute to noise in the area.
3. The project site and surrounding area consist of a mixture of professional offices, as well as retail and service uses, that serve residents and visitors in the surrounding area. There are residential uses located above the property to the rear on Cliff Drive as well as John Wayne Park. The proposed day spa will provide a service that supports residents and visitors, consistent with the existing uses in the area.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. The subject property is located on West Coast Highway, near a public parking lot, commercial uses, and John Wayne Park. The property contains one two-story building with several tenant spaces, and a separate two story building that contains a restaurant. The site is accessible via the driveway on West Coast Highway. The parking lot provides adequate parking and is conveniently located for patrons and employees.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on the property and the proposed massage establishment will not change this.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The use has been conditioned with typical daytime hours of operation that will minimize any potential detriment to the area.
2. The massage use would provide additional services to the residents and visitors in the surrounding area.
3. The proposal has been reviewed by the Building and Code Enforcement Divisions, Public Works, Fire, and Police Departments, and recommended conditions of approval have been included to limit any detriment to the City or general welfare of persons visiting or working in the surrounding neighborhood.

In accordance with Section 20.48.120.B (Massage Establishments and Services – Waiver of Location Restrictions) of the Newport Beach Municipal Code, the following findings and facts in support of such findings for a Minor Use Permit are set forth:

Finding:

F. The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed.

Facts in Supporting of Finding:

1. The intent of the section is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration, which accompany and are brought about by large numbers of massage establishments that may act as fronts for prostitution and other illegal activity.
2. Although the proposed massage use is located within 500 feet of John Wayne Park, the park is separated from the use by a City parking lot and a steep slope.
3. There will be no late hours of operation, as the proposed hours are 10:00 a.m. to 7:00 p.m., 6-days a week (closed Tuesdays). To provide future flexibility, hours have been conditioned to limit operations from 9:00 a.m. to 8:00 p.m., 6-days a week (closed Tuesdays).
4. A condition of approval is included to ensure the applicant will obtain an Operator's Permit from the Newport Beach Police Department in compliance with Chapter 5.50

(Massage Establishments) of the Newport Beach Municipal Code prior to operation of the business.

Finding:

G. The proposed use will not enlarge or encourage the development of an urban blight area.

Facts in Supporting of Finding:

1. The proposed use is located in a single tenant space within a managed, multi-tenant commercial building, which will prevent problems and discourage the development of blight. The subject property is not located within a blighted area, is well maintained, and is intended to provide a service that supports the surrounding residents and visitors to Newport Beach.

Finding:

H. The proposed use will not adversely affect a religious institution, school, park, or playground.

Facts in Supporting of Finding:

1. The proposed use is located adjacent to nonresidential and residential uses. There are no public or private schools, playgrounds, or religious institutions within 500 feet of the subject property.
2. The proposed massage use is located within 500 feet of John Wayne Park. The park serves mainly as a viewing and walking area. There are no playgrounds or areas designated for children. The subject property has adequate lighting and is highly visible from the nearby Coast Highway. The subject use is also separated from the park by a steep slope and public parking lot.
3. The Police Department has reviewed the request for a waiver of location restrictions and has no concerns regarding the proposed massage operation.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2018-017 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 29TH DAY OF NOVEMBER, 2018.

Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

PLANNING

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
5. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Use Permit.
6. If applicable, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
7. Strict adherence to Newport Beach Municipal Code 5.50 "Massage Establishments" must be upheld.
8. The applicant business must apply for and obtain an Operator's Permit from the Chief of Police, and keep said permit in good standing.
9. All employees of the applicant business who conduct massage on or off premises must be certified by the CAMTC (physicians, physical therapists, and chiropractors exempt).
10. As outlined in Newport Beach Municipal Code 5.50.030, the business must maintain requirements of operation, and submit to inspections by officers of the Police Department.
11. The owner, operator, or responsible manager's contact information for the massage establishment shall be provided to the City of Newport Beach Code Enforcement Division.

12. The names of employees shall be posted upon entry and contact information and list of state certifications shall be provided upon request. A current list of employees shall be kept onsite and maintained at all times.
13. All windows (except treatment room windows) shall remain visible and transparent in nature. Window signage shall comply with the City of Newport Beach Municipal Code.
14. The facility shall be maintained in a safe and sanitary condition.
15. No alcohol shall be served or offered onsite.
16. Violations of the Penal Code may invoke revocation of this permit.
17. The hours of operation shall be limited to between 9:00 a.m. to 8:00 p.m., daily (maximum).
18. All employees shall park on-site.
19. A maximum of two rooms shall be used for massage therapy.
20. All signs shall conform to the provisions of Chapter 20.42 of the Municipal Code.
21. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
22. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
23. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
24. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Harbor Thai Massage including, but not limited to, Minor Use Permit No. UP2018-017 (PA2016-188). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such

proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Minor Use Permit No. UP2018-017
PA2018-188

2400 West Coast Highway, Suite J

Attachment No. ZA 3

Applicant's Description

From: Tom Gunckel <tom.gunckel@gmail.com>
Sent: Thursday, October 04, 2018 6:05 PM
To: Westmoreland, Liz
Subject: Re: Update for PA2018-188 Notice of Incomplete Filing
Attachments: image003.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you Liz. Here is a brief summary. Let me know if I should change anything and please keep me updated on the timeline. Thanks. Tom

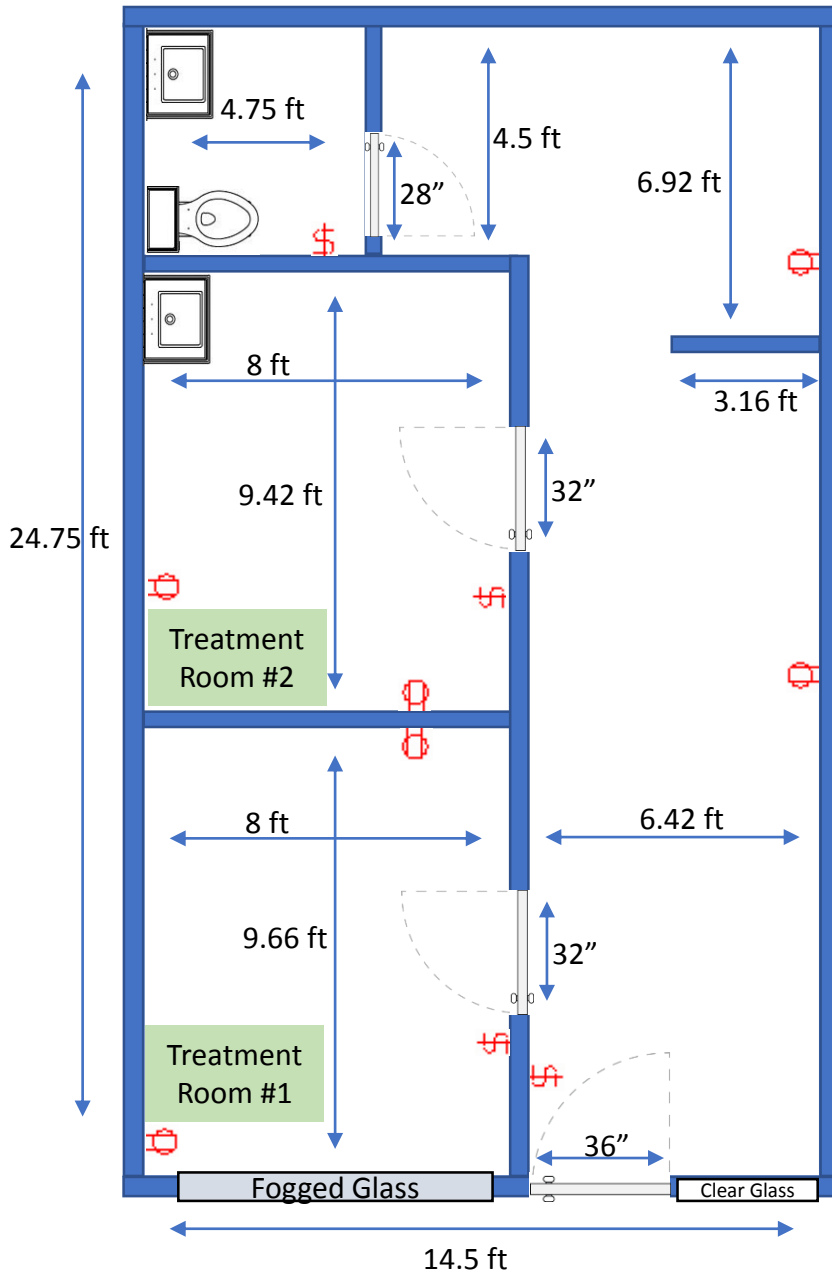
Harbor Thai aims to be a reputable Thai massage spa in the Newport Beach area. The atmosphere will be relaxing and personal while maintaining the standards of large spa. The staff will consist of 1 or 2 individuals trained in authentic Thai therapy and Thai traditions to give customers an experience similar to receiving a massage in Thailand. One of the owners will be the primary employee during the first year. She has a background in Physical Therapy from Thailand. She holds a Masters in Physical Therapy from Thailand and is a licensed massage therapist in the USA. She has over 10 years working in Chiropractic and Massage Spa shops in the USA.

Harbor Thai will offers massage and body work only. There will be no goods sold within the establishment. Business Hours will be 10am-7pm. 6 days a week, closed Tuesday.

Attachment No. ZA 4

Project Plans

FLOOR PLAN



Harbor Thai

2400 West Coast Highway Suite J

Newport Beach, California 92663

Business License #: BT30064049

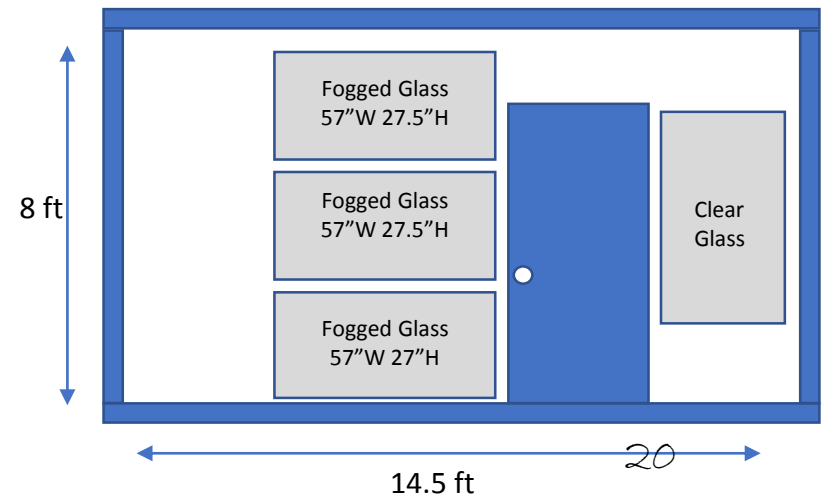
www.HarborThai.com

CURRENT FLOOR PLAN

As of 8/1/2018

(NO NEW CONSTRUCTION)

FRONT OF UNIT





Harbor Thai

2400 West Coast Highway Suite J

Newport Beach, California 92663

Business License #: BT30064049

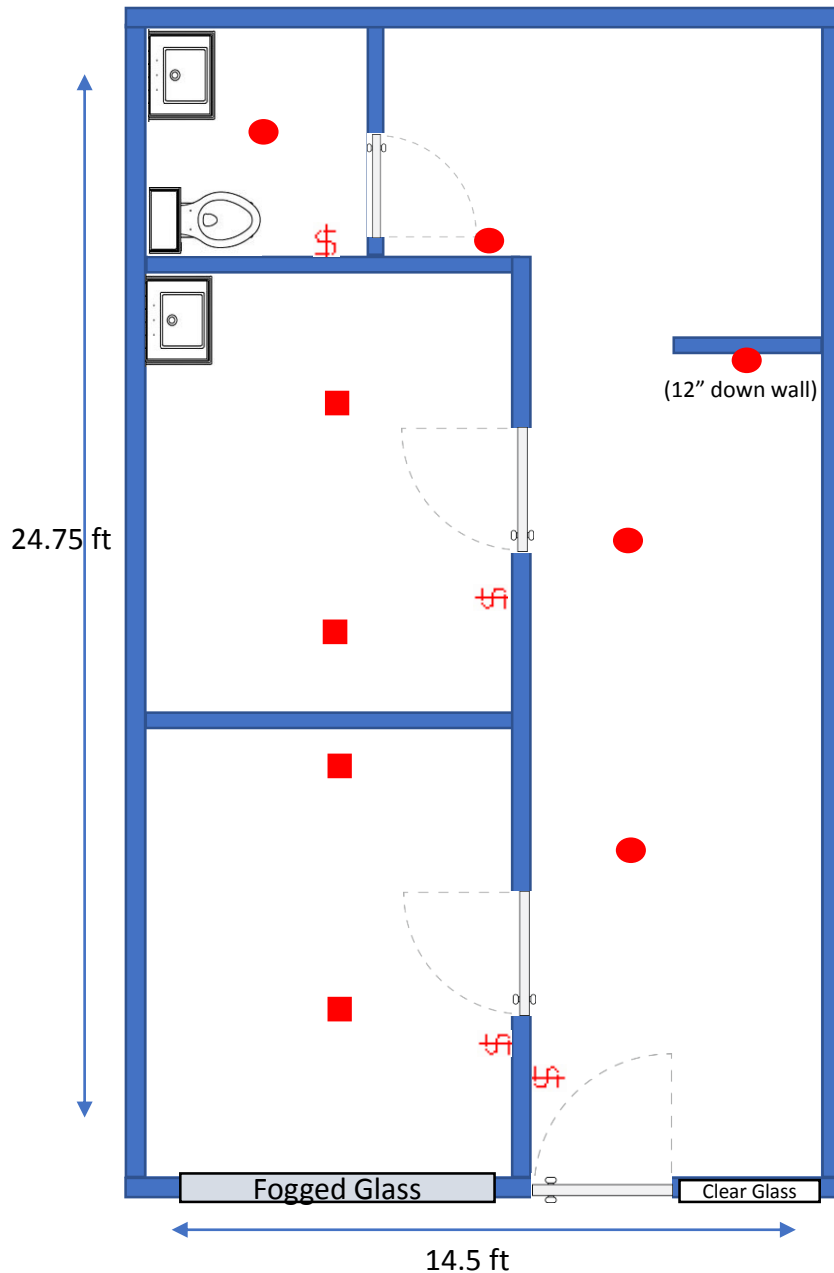
www.HarborThai.com

CEILING ELECTRICAL

CURRENT FLOOR PLAN

As of 8/1/2018

(NO NEW CONSTRUCTION)



● Round Junction Box

■ Square Junction Box