



## COMMUNITY DEVELOPMENT DEPARTMENT

### PLANNING DIVISION

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### CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

January 10, 2013

Agenda Item 3

**SUBJECT:** Ink Yard Tattoo Studio MUP - (PA2012-159)  
2233 W. Balboa Blvd., Suite 106  
▪ Minor Use Permit No. UP2012-028

**APPLICANT:** Emilio Flores

**PLANNER:** Benjamin M. Zdeba, Assistant Planner  
(949) 644-3253, bzdeba@newportbeachca.gov

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### ZONING DISTRICT/GENERAL PLAN

- **Zone:** MU-W2 (Mixed-Use Water Related)
- **General Plan:** MU-W2 (Mixed-Use Water Related)

### PROJECT SUMMARY

A minor use permit to convert 890 square feet of currently vacant retail space to a tattoo studio (Personal Service, Restricted land use).

### RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Draft Zoning Administrator Resolution No. \_\_ approving Minor Use Permit No. UP2012-028 (Attachment No. ZA 1).

### DISCUSSION

The subject property consists of a 13,124-square-foot, mixed-use building and is situated at the corner of West Balboa Boulevard and 23rd Street. The retail/commercial component, 10,400 square feet of the building, is divided into eleven suites, which are currently occupied by five retail stores and a small eating and drinking establishment (Tutti Frutti Frozen Yogurt). Five tenant spaces are currently vacant including the space proposed for the tattoo studio use. The residential component includes two, small apartment units.



- The property is within the MU-W2 (Mixed-Use Water Related) Zoning District which applies to properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. A minor use permit is required to establish a Personal Service, Restricted use in this district.
- The development is considered legal nonconforming (parking) because there are six (6) existing parking spaces, where, based on a retail parking ratio of one space per 250 gross square feet, a total of 42 spaces ( $10,400/250 = 41.5$  spaces) is required. The residential units each have a two-car garage which is consistent with the Zoning Code parking requirement.
- Pursuant to Chapter 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs and the new use requires a parking rate of no more than one space per 250 square feet of gross building area. Pursuant to Chapter 20.40 (Off-Street Parking) the proposed personal restricted land use requires one parking space per 250 square feet and no intensification or enlargement is proposed; therefore, no additional parking is required.
- The proposed tattoo studio use is a service use that will be complementary to the other uses in the commercial building. Its operating characteristics are similar to other service uses that are permitted by right such as barber and beauty shops, and tanning salons.
- There are five open tattoo studios within the City: two in West Newport, one in Balboa Village, one on the Balboa Peninsula, and one on Old Newport Boulevard. The nearest similar use is located approximately 1056 feet north (Newport Tattoo) and the second nearest use (Electric Tattoo) is located approximately 1.8 miles east; therefore, staff believes approval would not create an overconcentration of tattoo studios within the area.
- Tattoo studio operators are required to register with the Orange County Health Department and are regulated by the California Safe Body Art Act which was enacted July 1, 2012 to ensure safe operating procedures are practiced.

## **ENVIRONMENTAL REVIEW**

The project qualifies for Class 1 (Existing Facilities) categorical exemption, Section 15301 of the California Environmental Quality Act because there are no improvements proposed for the existing commercial tenant space and the proposed use has an equal intensity to the previous retail or office use.

**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 prior to the decision date, 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 may be filed with the Director of Community Development within fourteen (14) days following the date of action. For additional information on filing an appeal, contact the Planning Division at (949) 644-3200.

Prepared by:

  
\_\_\_\_\_  
Benjamin M. Zdeba  
Assistant Planner

GR/bmz

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

# **Attachment No. ZA 1**

Draft Resolution



## RESOLUTION NO. ZA2013-DRAFT

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING USE PERMIT NO. UP2012-028 FOR A TATTOO STUDIO (PERSONAL SERVICE, RESTRICTED USE) LOCATED AT 2233 WEST BALBOA BOULEVARD, SUITE 106 (PA2012-159)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Aaron Burrows on behalf of Emilio Flores, with respect to property located at 2233 West Balboa Boulevard, Suite 106, and legally described as Lot 9, 10, 11, 12, 13, 14 and 15, in Block 22 of Newport Beach, as shown on map recorded in Book 3, Page 26, Miscellaneous Maps, Records of said Orange County requesting approval of a Minor Use Permit.
2. The applicant proposes to convert an 890-square-foot, currently vacant retail tenant space to a tattoo studio (personal service, restricted use).
3. The subject property is located within the MU-W2 (Mixed-Use Water Related) Zoning District and the General Plan Land Use Element category is MU-W2 (Mixed-Use Water Related).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-W (Mixed-Use Water Related).
5. A public hearing was held on January 10, 2013 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. The project is a change of use in an existing building whereby no improvements are proposed for the existing commercial tenant space and the proposed use has an equal intensity to the previous retail or office use.

### SECTION 3. REQUIRED FINDINGS.

#### *Minor Use Permit*

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit 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 General Plan land use designation for the site is MU-W2 (Mixed-Use Water-Related), which applies to properties on or near the waterfront in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors.
2. The proposed personal service, restricted use is consistent with the General Plan Mixed-Use Water Related (MU-W2) land use designation as it is intended to provide a service not only to visitors, but also to residents within the immediate area.
3. The proposed project is a tattoo studio (personal service, restricted use) to be located within a vacant tenant space on the ground floor of an existing mixed-use building.
4. 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 this Zoning Code and the Municipal Code.*

#### Facts in Support of Finding

1. The site is located within the Mixed-Use Water Related (MU-W2) Zoning District of the Newport Beach Zoning Code. The intent of this district is to provide for areas appropriate for a limited range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The proposed personal service, restricted use is consistent with the land uses permitted within this zoning district and the conditions of approval will ensure that the use is compatible with the adjacent residential areas.
2. Pursuant to Section 20.22.020 (Table 2-9 Allowed Uses and Permit Requirements), the proposed project requires approval of a minor use permit.

3. Pursuant to Section 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs, and the new use requires a parking rate of no more than one space per 250 square feet of gross building area. Personal Service, Restricted uses have a required parking ratio of one space per 250 square feet of gross floor area.
4. The proposed project complies with the requirements of Section 20.38.060 (Nonconforming Parking) because the square footage of the existing suite will not be increased; the tattoo studio use requires the same number of parking spaces required for the currently vacant retail space ( $890/250 = 4$  spaces).

### 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. Although the proposed project involves no tenant improvements, furniture and equipment will be placed within an existing vacant retail space to operate the service use. The six existing parking spaces on site will be maintained.
2. The proposed operation will consist of a waiting area, an open tattooing area, and a private tattooing room. Four tattoo artists registered and licensed by the Orange County Health Department will provide the body art services. Each individual artist will schedule his or her client appointments and greet walk-in clients. No designated receptionist will be provided. A maximum of four tattoo artists will be present at any one time. The proposed hours of operation will be 11:00 a.m. to 10:00 p.m., 7 days per week.
3. The proposed tattoo studio use is a service use that will be complementary to the other uses in the commercial building, which include retail stores and an eating and drinking establishment (Tutti Frutti Frozen Yogurt). Its operating characteristics are similar to other service uses such as barber and beauty shops, and tanning salons.
4. The proposed tattoo studio will provide a service for residents of the neighborhood and visitors to the area and will not require the provision of additional parking spaces on the site.
5. The proposed tattoo studio use will be located within an existing commercial floor of a mixed-use building on a site located at the corner of West Balboa Boulevard and 23<sup>rd</sup> Street on the Balboa Peninsula. It will serve clients by appointment and walk-in customers. Due to its corner location, opportunities for

on-street parking will be available along West Balboa Boulevard and 23<sup>rd</sup> Street in addition to the parking spaces provided on the site. Furthermore, its close proximity to the boardwalk is anticipated to yield walking and biking customers.

### 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 proposed project will be located in a tenant space within an existing commercial floor of a mixed-use building and will not involve any improvements of the space. The design, size, location, and operating characteristics of the use are compatible with the existing uses on the site and within the surrounding area.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed from 23<sup>rd</sup> Street, West Ocean Front Alley, or the alley at the rear of the site.
3. Although no tenant improvements are proposed to accommodate the change of use, the project is required to comply with all Building, Public Works, and Fire Codes.

### Finding

*E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

### Facts in Support of Finding

1. The project has been reviewed and this approval includes conditions to establish the permitted hours of operation and the maximum number of tattoo artists allowed to operate on site at any one time. These conditions will ensure that the proposed personal service, restricted use will be compatible with the uses on site and within the surrounding neighborhood.
2. The proposed tattoo studio use will help revitalize the project site and provide an economic opportunity for the property owner while providing additional services to the residents and visitors in the surrounding area.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2012-028 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 fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 10<sup>TH</sup> DAY OF JANUARY, 2013.**

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Brenda Wisneski, AICP, Zoning Administrator

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**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

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 hours of operation for the tattoo studio shall be 10:00 a.m. to 11:00 p.m., Monday through Saturday, and 10:00 a.m. to 10:00 p.m. on Sunday.
3. The number of tattoo artists operating at one time shall be limited to four, and each artist shall be registered and licensed with the Orange County Health Department.
4. Use Permit No. UP2012-028 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
5. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
6. 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.
7. This Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed use 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.
8. All proposed signs shall be in conformance with the provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.
9. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
10. 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.
11. 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,

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 the **Ink Yard Tattoo Studio** including, but not limited to **Minor Use Permit No. UP2012-028**. 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.

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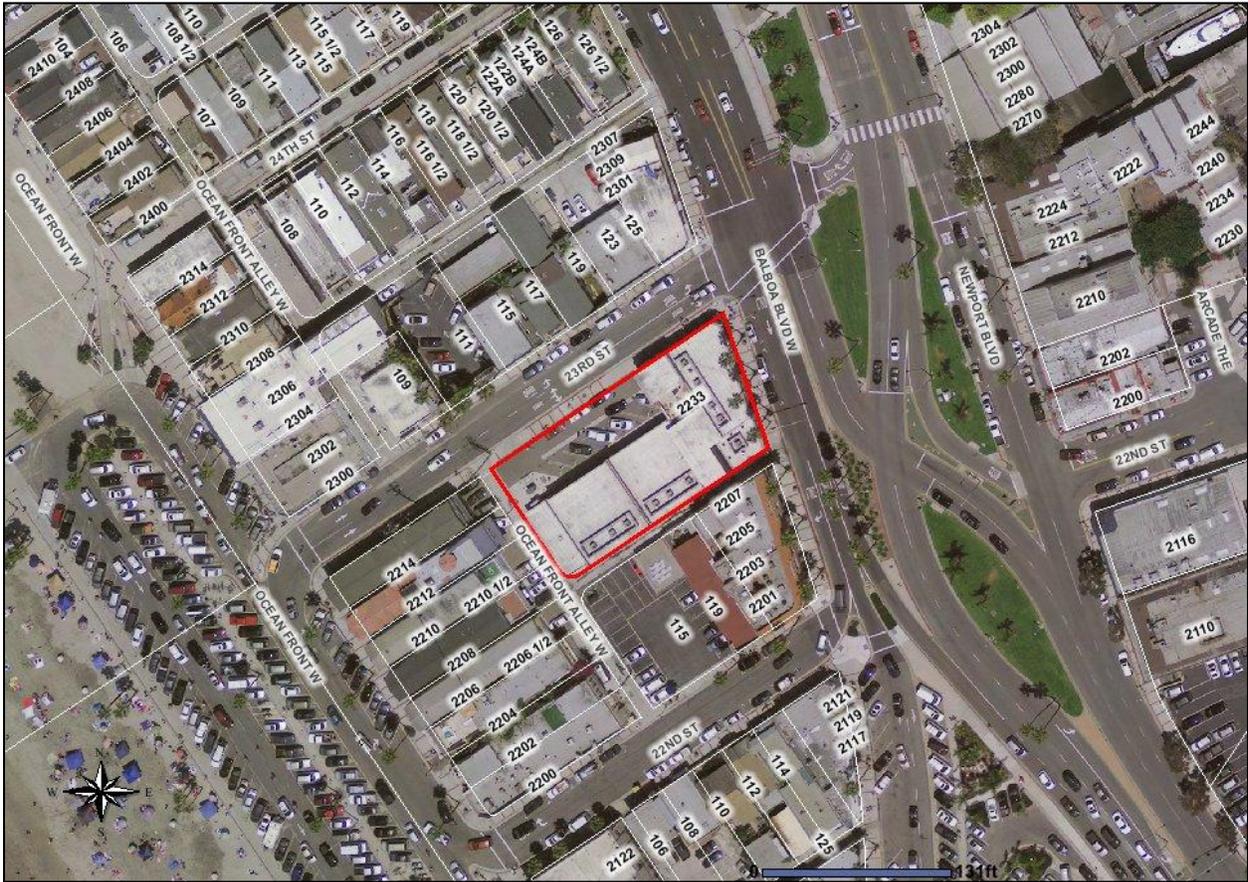


# **Attachment No. ZA 2**

Vicinity Map



# VICINITY MAP



Minor Use Permit No. UP2012-028  
PA2012-159

**2233 W. Balboa Blvd., Suite 106**



# **Attachment No. ZA 3**

Applicant's Project Description



## Business Description

The Ink Yard Tattoo Studio has a state of the art approach to providing body art to the public. We strive to be a pioneer in 100% disposable, single service tattoo procedures in order to completely eliminate any risk of cross contamination and to provide a hospital grade environment. The Ink Yard Tattoo Studio will also be a community based art gallery, showcasing local artists, paintings, illustrations as well as being a family- friendly body art facility.

The Studio will have a comfortable waiting area complete with leather couches and chairs, but a majority of the studio will be dedicated to providing body art with precision and professionalism. The procedure area will be laminate wood flooring. All walls will be painted with washable acrylic paint. The studio is a total of 890 SQFT, with 75% dedicated to work stations and 25% waiting area and art gallery. All artist and client chairs, massage tables, and any other tattoo furniture will be upholstered in black vinyl to be disinfected after every procedure.

The Studio will accommodate up to four artists working side by side and one private tattoo room. The hours of operation will be from 11:00AM to 10:00PM. No appointments will be taken after 9:00PM to insure that the Studio closes promptly at 10:00PM, 7 days a week. All legal holidays will be observed. All customers will be seen by appointment only and no more than one waiting customer per artist will be allowed in the lobby.

All artists will be licensed by Orange County health department and the facility will surpass all city and health codes. We will be an up-scale luxury art studio catering to a wide variety of customers of all ages, young and old. No one under the age of 18 years old will be allowed to enter, browse, or loiter at any time and a government issued identification will be required for any procedure, no exceptions. Special military and law-enforcement discounts will be provided.

The surrounding businesses directly next to the proposed location include a bike shop, surf shop, and tobacco/convenient store. The Ink Yard Tattoo Studio would definitely attract more customers to local merchants and the area in general. The genre of the shopping center would support our business as well. We will provide a safe environment for all to enjoy a quality piece of art by an expert artist.

The Ink Yard Tattoo Studio has an experienced staff with a wide range of diverse artistic styles. With a unique approach to business management and more structure than a traditional tattoo parlor, we would like to exhibit the highest level of professionalism and safety.

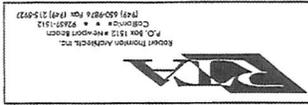
PA2012-159 for UP2012-028  
2233 W. Balboa Blvd., Suite 106  
Emilio Flores



# **Attachment No. ZA 4**

Project Furniture Layout





**PROPOSED FLOOR PLAN**

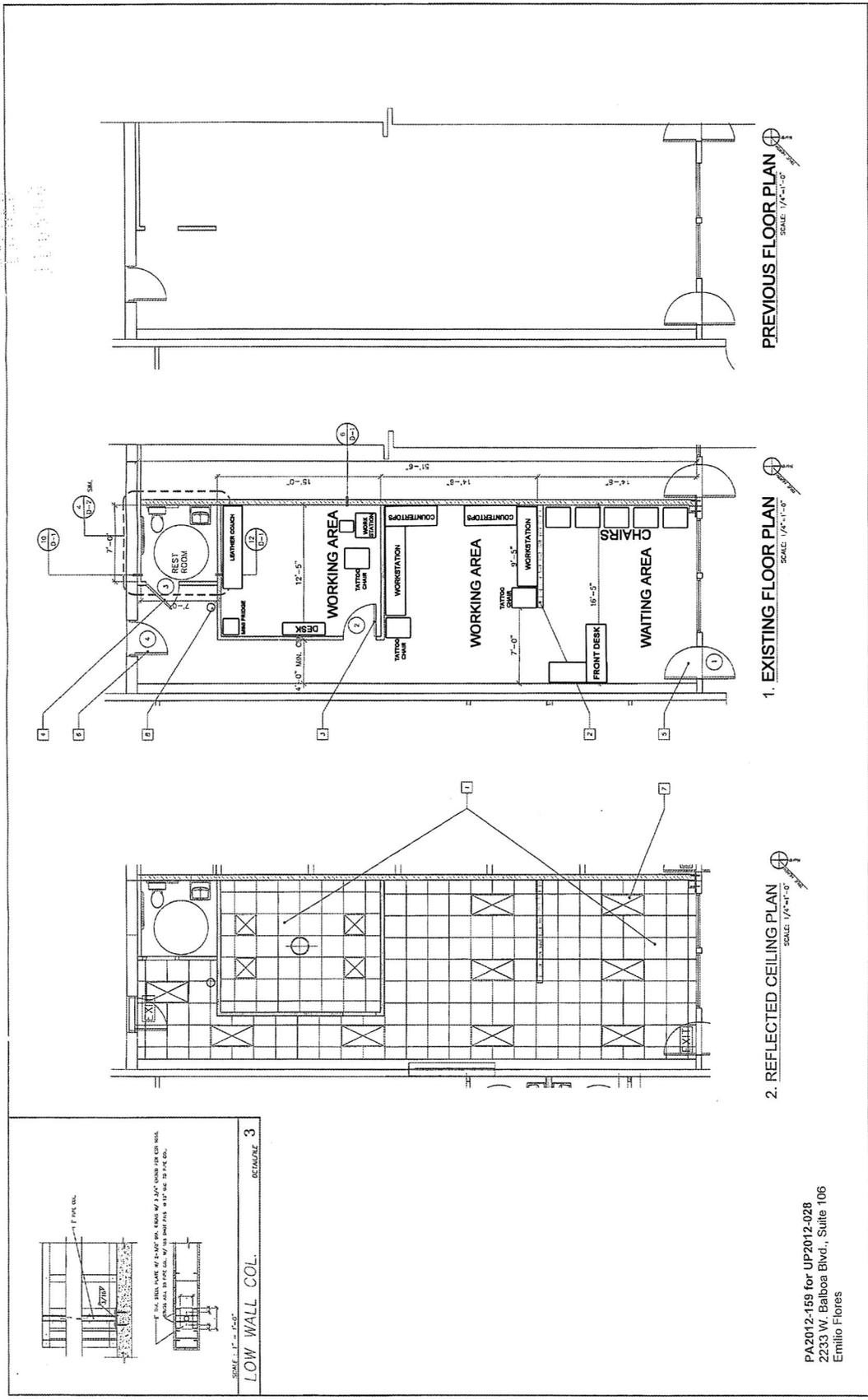
**Tenant Improvement**

DATE	REVISIONS
11/12/13	PLAN CORRECTED, R. SPINALE
03/26/13	ALIGN TO SITE



**A-2**  
SHEET  
OF

PLAN CHECK NO. = 1905-2008



**KEYED NOTES**

1) 16'-0\" T-BAR CEILING, VERIFY MECHANICAL DUCT SIZES PRIOR TO CEILING T-BAR INSTALLATION. (TYP) SEE DETAIL 4/D-1.

2) 5'-0\" H. LOW WALL, PROVIDE METAL PIPE COLUMN AT UNSECURED END. SEE DETAIL 3/A-2.

3) 3'-0\"x7'-0\" DOOR, VERIFY MATERIAL WITH TENANT.

4) 3'-0\"x7'-0\" DOOR, WOOD PAINT GRADE WITH PRIVACY LOCK

5) EXISTING 3'-0\"x7'-0\" STOREFRONT DOOR

6) EXISTING 3'-0\"x7'-0\" MAN DOOR.

7) 2X4 LIGHTS, SEE ELECTRICAL DRAWINGS.

8) FIRE EXTINGUISHER (2-A, 10-B, C) EXTINGUISHERS TO BE 2A FEET MINIMUM ONE EXTINGUISHER PER SUITE.

**WALL LEGEND**

NEW METAL FRAMED WALL, 3625162-33 20 GA. @ 16\" O.C. FULL HEIGHT. SEE DETAIL 16/D-1. MAX. H: 17'-6

NEW METAL FRAMED WALL, 5'-0\" H, 6\" 20 GA. @ 16\" O.C.

EXISTING WALL TO BE REMOVED.

EXISTING WALL TO REMAIN.

**1. EXISTING FLOOR PLAN**  
SCALE: 1/4\"=1'-0\"

**2. REFLECTED CEILING PLAN**  
SCALE: 1/4\"=1'-0\"

**3. LOW WALL COL.**  
SCALE: 1\"=1'-0\"

**PREVIOUS FLOOR PLAN**  
SCALE: 1/4\"=1'-0\"

PA2012-159 for UP2012-028  
2233 W. Balboa Blvd., Suite 106  
Emilio Flores

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ADDITIONAL  
MATERIALS  
RECEIVED

### ***Item 3. Ink Yard Tattoo Studio Minor Use Permit (PA2012-159)***

#### **Comments regarding the draft resolution:**

#### SECTION 1. STATEMENT OF FACTS.

*"1. ... property located at 2233 West Balboa Boulevard, Suite 106, and legally described as Lot 9, 10, 11, 12, 13, 14 and 15, in Block 22 ..."*

It seems improbable to me that a single 890-square-foot suite would span 7 lots.

#### SECTION 3. REQUIRED FINDINGS.

*Fact B.3. "Pursuant to Section 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement..."*

The report fails to identify what the use was at the time the property became legally nonconforming. It is probably had a similar parking requirement, but I believe the intent of the code is to keep the parking needs at that level or less, whatever it was. Otherwise new parking needs to be provided.

*Fact C.2. "The proposed hours of operation will be 11:00 a.m. to 10:00 p.m., 7 days per week."*

This statement, consistent with the applicant's request, is inconsistent with Condition of Approval 2: *"The hours of operation for the tattoo studio shall be 10:00 a.m. to 11:00 p.m., Monday through Saturday, and 10:00 a.m. to 10:00 p.m. on Sunday."*