

- ALL WORK SHALL BE DONE in accordance with the Florida Building Code 2014 and with all applicable regulations. DRAWNOS: Refer to all drawings for coordination of the plumbing words.
- ARDNIES AND PAY for all permits, licenses, inspections and tests. Obtain the required certificates and present to came.

   DARANTES: The completed installation shall be fully guaranteed opinist defective materials and/or improper workmosting for a minimum of one year for moterial and labor.
- ALL HORIZONTAL SANITARY PIPING 3" and larger shall slope at 1/8 inch per foot minimum, unless noted otherwise, per foot minimum, unless noted otherwise. All piping 2" and smaller shall slope at 1/4 inch per foot minimum.
- PLUMBING FIXTURES: Fixtures shall be as specified and shall be furnished by the owner and installed by this contractor. Fixtures shall be complete with drains, traps, supplies and any other accessory provided w/ the unit.
- - NG: Soll, waste and vent, and storm: Sanitary pipe, PVC, DWV, Schedule 40. 50. seek out well, and stem: Sonhary site. PM. DW. Scheale. 60. Copper site. Type. I will seed in world! copper filtips. Type. "I'm concealed spoces is occepiable. Indeed piley from converse in occepiable. Indeed piley from converse in the converse in

- Minimum pipe insulation Circulation hot water system shall be insulated in accordance with the requirements of table 607.2.1 FBCP
- ROTAL FROP MAN PPES with JA' thick armedies, sig-instation over pions without splittine, buttends firmly together, as instation over pions without splittine, buttends firmly together, as of pints with voor seed onlewier recommended by installed manufacture-watere pions is notified exposition of armedies of pints are seed on the pints of the pints of a more significant pints of the standards of the listest states energy conservation code.

TABLE 607.2.1 MINIMUM PIPE INSULATION

| DOMESTIC AND SERVICE HOT WATER SYSTEMS | > 105 | 0.22 - 0.285 | 100

- PIPIOR ISST AND DISNECTIONS:
  A Test: All socilary and domestic weter supply piling shall be expected by the piling shall be expected by the piling shall be expected and plumbing flatures.

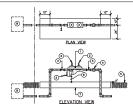
  test drain, went and condensate piping to a pressure of 5 pash physicalistic test domestic water to 100 piling by piporostatic, all tests to be a minimum duration of two hours.
- B. Disinfection: All domestic water piping shall be disinfected by introducing a solution of calcium hypochicitie of 50 parts per million of chloride and as per AWWA Standards.

FLUID DESIGN OPERATING PRODUCTIVITY ORMINAL PIPE DIAMETER OPERATING RANGE,  $(\Upsilon)$  Bu \*N Y MAIN TEMPERATURE RATING.  $(\Upsilon)$  Bu \*N Y RATINGS  $(\Upsilon)$  Bu \*N Y RAT

- 7. VALVES: Domestic water valves shall be of bronze body, sweat ends.
- HOSE BIBBS: Shall be 1/2 inch. rough brass construction with shut off valve and vacuum breaker.
- ALL OUTDOORS FLOOR clean outs shall be terminated up to grade and shall be marked.
- CONTRACTOR SHALL COORDINATE exact location of sonitory, and demestic water piping before storting any work. Notify Architect/Engineer of any deviations from design drawings. (coordinate inflate w/ owner)
- WASTE PIPING: Install all pipe 3" and larger at 1/8"/ft slape. Install pipe smaller than 3" at 1/4"/ft slape.
- CONTRACTOR to fire protect and seel all openings and pipe penetrations thru fire rated walls and celling. Materials and methods of fire rating shall be approved by the local product contral aproval department and shall be U.L. listed.
- be recessed type

  It, PLUMBING CONTRACTOR SHALL review structural drawings prior to
  bidding to fully familiarize himself with project. Refer to di const
  documents for coordination of the plumbing work with other
  disciplines and to define complete scope of work.
- wasqueene una to denine complete scope of work.

  15. SAW OR CUT CORE DRLL slob as required to install new plumbing work.
  Patch slob to match existing and seal all penetrations to maintain fire rating of floor.
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- CONTRACTOR SHALL PROTECT AND FIRE SEAL ALL OPENIODS AND PIPE PENETRATIONS thru fire roted works and collings with adequate firestopping materials to maintain the indicated fire ratings of the assembles being persetuted.
- 19. VERBY DIACT LOCATION OF AREA DRAWS, ROOF DRAWS AND DMERCONY OVERFLOW DRAWS, Against carbifoctural drawings, bring any discrepancies to the attention of the engineer prior to commercial any work.



NOTES:

1 MATTE SORIES 90% REQUESTED PRESSURE

2 THET COOK

3 BALL VALVE (TYP)

4 12" MIN, ABOVE FLOOD LEVEL
AND CRICE, SLAB

4 UNCN

5 MATER VALVE

METER VALVE 7 6" CONC. SLAB WITH \$4 AT 12" E.W. 8 METER VALLET

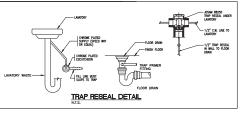
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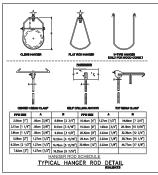
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REDUCED PRESSURE BACKFLOW ASSEMBLY







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ECO SMAR OR EQUAL

MH-L



**30** a

RD Architects



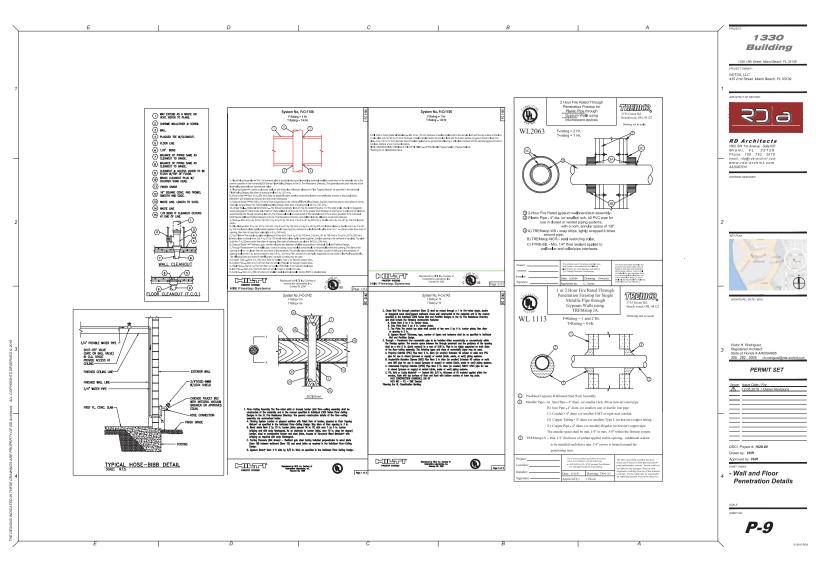
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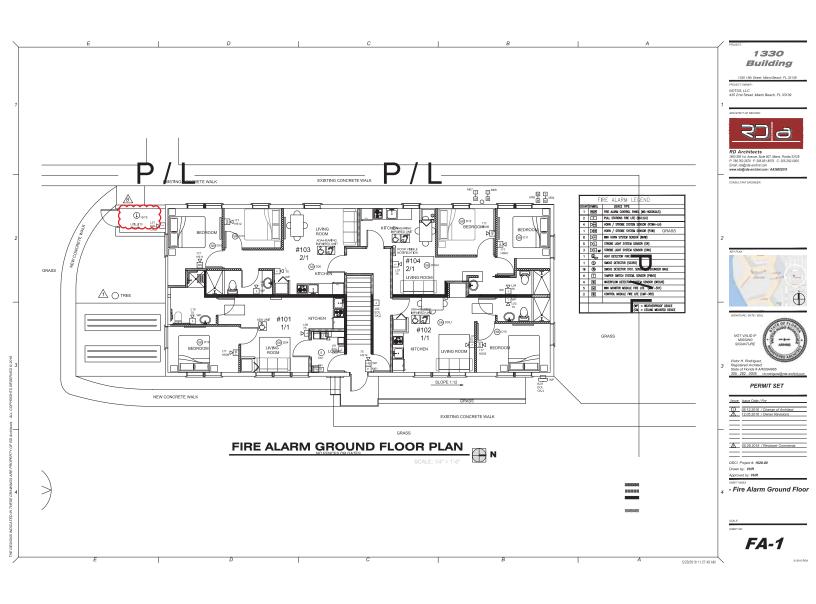
DDCI Project & 1628.00 Drawn by: VHR Approved by: VHR

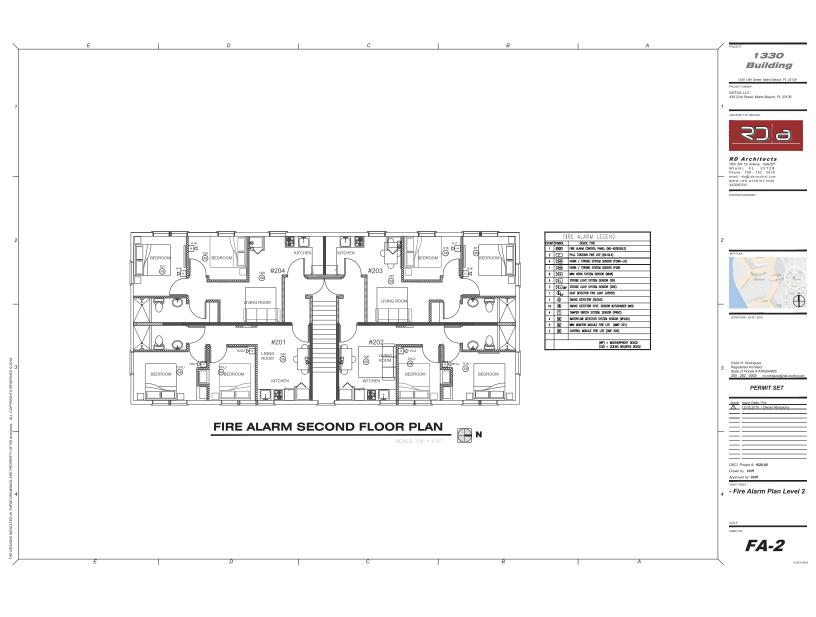
- General Notes - Details

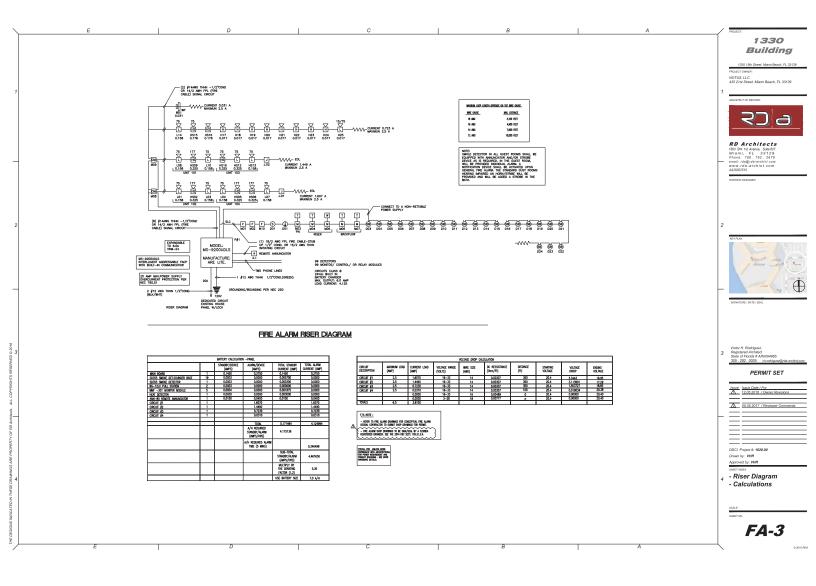
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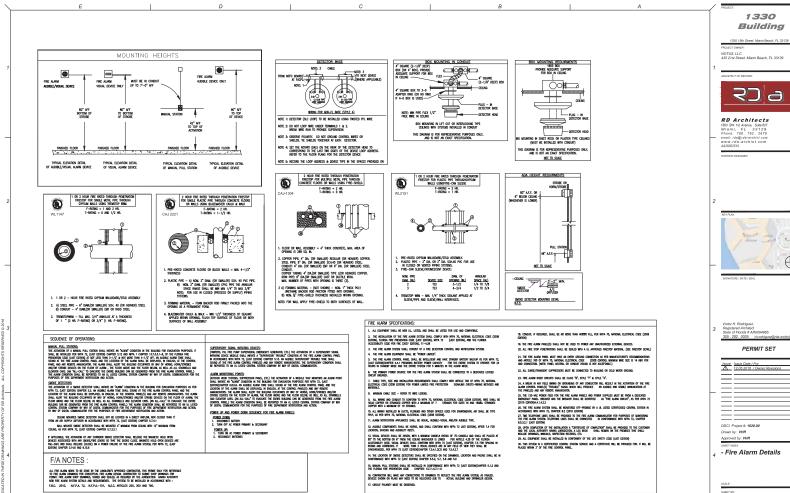
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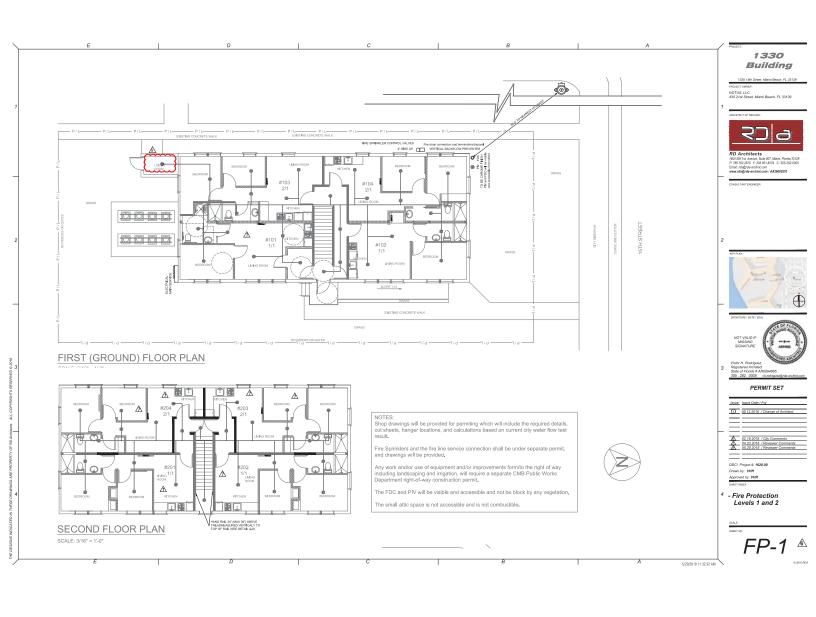


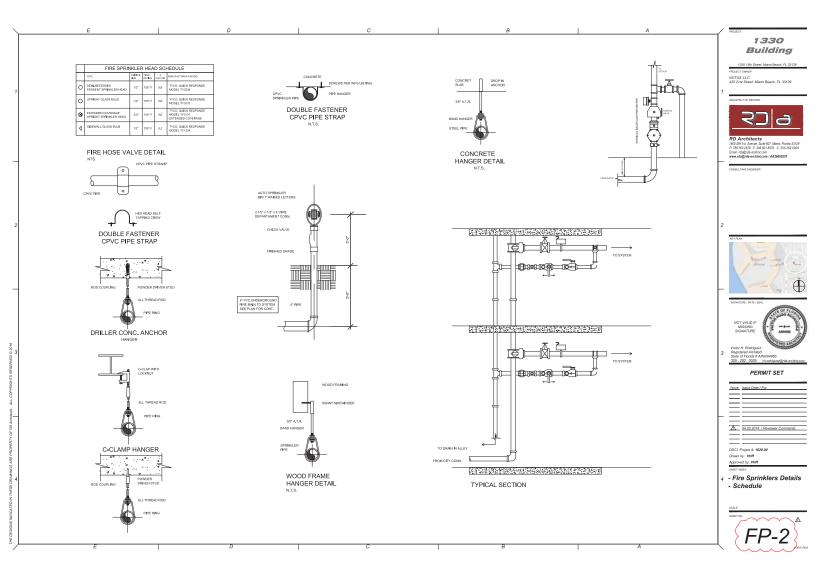






FA-4







# **BOARD OF ADJUSTMENT**

FROM: Thomas R. Mooney, AICP

**Planning Director** 

DATE: May 5, 2023

RE: File No. ZBA23-0146

1330 15<sup>th</sup> Street

Appeal of a Decision Regarding a Non-Conforming Suite Hotel Use

**1330 15**<sup>th</sup> **Street LLC ("Appellant) -** An application has been filed appealing a determination of the Planning Director, in connection with a request to reinstate a non-conforming suite hotel use on a property located in a multifamily residential district. This appeal has been filed pursuant to Sections 118-9 and 118-397 of the City's Land Development Regulations.

# STAFF RECOMMENDATION

Deny the appeal and affirm the determination of the Planning Director.

#### **LEGAL DESCRIPTION**

The east 30 ft of Lot 2 & west 1/2 of Lot 3, Block 79, of Alton Beach Bay Front Re-Subdivision, According to the Plat thereof, as recorded in Platbook 16, Page 1 of the Public Records of Miami-Dade County, Florida.

## **BACKGROUND**

Based on City Building Card records (Exhibit 'CMB-A'), the multifamily residential building at 1330 15<sup>th</sup> Street (the "Property") was originally constructed as an 'apartment house' with 4 units in 1946. The Property is zoned RM-1, Residential Multifamily / Low Intensity.

The Property is also located within the West Avenue Bayfront Overlay District ("Overlay District" or "Overlay"). This Overlay includes properties in the RM-1, residential multifamily low intensity and RM-2, residential multifamily medium intensity, zoning districts. There are no historic districts or individually designated historic sites with the Overlay District.

The City Commission created the Overlay District on June 19<sup>th</sup>, 2002, pursuant to Ordinance No. 2002-3374. The primary reason for the creation of the Overlay was to preserve the character and quality of life of the neighborhoods surrounding West Avenue, which, at the time, was being impacted by infill development that did not reflect the cohesive low-scale character of the area. The Overlay District expanded the list of main permitted uses for existing low-scale buildings in the neighborhood to include offices, suite hotels and bed and breakfast inns. Included in the adopted Ordinance was express criteria to convert and operate a suite hotel in the Overlay area.

The rationale for including these uses was to provide incentives to retain and adaptively reuse existing single family and/or multifamily buildings that are no more than three (3) stories in height. Additionally, the parking regulations were modified to include the allowance for a limited number of parking spaces within required front yards.

Prior to the creation of the Overlay District, hotels, apartment-hotels, and suite hotels were permitted uses in the RM-2 and RM-3 zoning districts in the neighborhood. In the RM-1 zoning district, and within the subject area, only single-family homes, townhomes, apartments and bed and breakfast inns were permitted prior to the Overlay. The creation of the Overlay District expanded the list of main permitted uses within the RM-1 zoning district to include suite hotels and offices consistent with the regulations for the RO, residential office zoning district.

On October 14, 2020, the City Commission adopted Ordinance No. 2020-4364, which removed suite hotels as an allowable use within the Overlay District. Offices, as well as bed & breakfast inns within existing single-family homes, were still permitted as part of the renovation of existing structures in the Overlay. However, on September 17, 2021, the City Commission adopted Ordinance No. 2021-4443, which prohibited any future bed and breakfast inns within the Overlay.

## HISTORY OF THE USE OF THE PROPERTY

The multifamily building that is the subject of this appeal was licensed as a 4-unit residential apartment building until 2018, when building permit #BC1806547 was issued to renovate and convert the existing 4-unit residential building to an 8-unit suite hotel. On March 4, 2019, and May 14, 2019, a Temporary Certificate of Occupancy (TCO) (Exhibit 'CMB-B') and Final Certificate of Occupancy (CO) (Exhibit 'CMB-C') were issued, respectively, for an 8-unit suite hotel.

On February 19, 2019, a new Business Tax Receipt (BTR # 005837-01-2019 / Exhibit 'CMB-D') was issued to NOTUS LLC, as the owner of the Property at the time, for an 8-room suite hotel. The BTR was renewed for the 2019 - 2020 fiscal year. On December 3, 2019, a system entry by the Finance Department BTR Division was completed to upload a notice submitted by the then-owner of the Property (NOTUS LLC), dated November 27, 2019, advising the Finance Department that the Property had been sold on November 14, 2019, and requesting to close both the BTR and Resort Tax accounts (BTR005837-01-2019 and RT #2159811) for the Property (Exhibit 'CMB-E'). At this point the business was deemed closed.

The following is a timeline of the Certificate of Use (CU) and BTR activity for the Property, since November 27, 2019, based on City records:

## December 27, 2019:

A new BTR application was submitted through the Finance Department by an entity named '1330 15<sup>th</sup> Street LLC,' which is the current owner of the Property ("Owner" or "Appellant") **(Exhibit 'CMB-F').** A new BTR number (BTR008501-12-2019) was assigned to the application and the request was entered in the system as follows:

'Apartment Building 8 Units/15 Rooms // 1330 15th Street Previous BTR005837-01-2019 Hotel 8 Units Previous RL-87036062 Apartment Building 4 Units / 15 Rooms'

In order to process the BTR request through the internal multidisciplinary department review,

a BLPL record (BLPL2019-08005) was also created and linked to the new BTR. The BLPL record was created with the following description:

'APT BUILDING 8 UNITS - LOCATED 1330 15TH STREET. PREVIOUS BTR - BTR005837-01-2018' (Exhibit 'CMB-G')

This BLPL was internally circulated and approved by the Code Compliance Department, Building Department, Planning Department and Finance Department on December 30, 2019 (Exhibit 'CMB-G').

## May 19, 2020:

Finance Department records show that a new CU and BTR (BTR008501-12-2019) was issued for 8 residential apartment units and that all applicable fees were paid (Exhibit 'CMB-H'). The BTR categories for "apartment rooms" and "apartment buildings (rental), not including kitchens and bathrooms" are used for non-transient, residential apartments. Also, a new Resort Tax (RTX) account was created by the Finance Department. According to the Finance Department, both the BTR and RTX accounts were created based on Florida Department of Business and Professional Regulation License No. TAP2330379, for Transient Apartment. The Finance Department further confirmed that "all of the resort taxes paid, from late 2019 to the present, have been for residential-apartment use" (Exhibit 'CMB-I').

### September 30, 2020:

The BTR for 8 residential apartments (BTR008501-12-2019) expired.

# October 14, 2020:

Ordinance 2020-4364, which prohibited suite hotels in the West Avenue Overlay, was adopted by the City Commission. **NOTE**: The Planning Board transmitted this ordinance to the City Commission with a favorable recommendation on August 25, 2020, thus initiating zoning in progress and establishing August 25, 2020 as the effective date of the legislation.

## December 22, 2020:

The previously issued BTR for 8 residential apartments which, again, is the BTR category utilized by the City for non-transient apartments (BTR008501-12-2019), was renewed for Fiscal Year 2020-2021. Finance Department records show that all fees were paid (Exhibit 'CMB-J').

# September 24, 2021:

Pursuant to the bifurcated CU – BTR review process, which was implemented in August 2020, CU applications for the short-term rental of the apartment units at 1330 15<sup>th</sup> Street were submitted for each unit.

# September 30, 2021:

Finance Department records show that the BTR for 8 residential apartments (BTR008501-12-2019) expired. As there was an outstanding late fee balance of \$14.90, the renewal BTR for the fiscal year 2021-2022 is still in 'pending' status.

# October 7, 2021:

All of the CU applications for the short-term rental of apartment units at 1330 15<sup>th</sup> Street were denied by the Planning Department, as the short-term rental of apartment units is prohibited in the underlying RM-1 zoning district.

# STANDARD OF REVIEW AND VOTING REQUIREMENT

Pursuant to City Code Section 118-9(b)(2)(E), the standard of review for administrative appeals to the Board of Adjustment is "de novo, meaning that the party appealing the administrative decision bears the burden of going forward with evidence and of persuasion[,] . . . and to that end, the board shall have all the powers of the officer from whom the appeal Is taken."

In order to reverse a determination of the Planning Director, a five-sevenths vote of the Board of Adjustment (the "Board") is required. See City Code Section 118-9(b)(4).

## **DETERMINATIONS AS TO LEGAL NON-CONFORMING USES**

Chapter 118 of the City Code, at Article IX, entitled "Nonconformances," establishes regulations governing "non-conforming uses," which are defined as "a use which exists lawfully prior to the effective date of these land development regulations and is maintained at the time of and after the effective date of these land development regulations, although it does not conform to the use restrictions of these land development regulations."

City Code Section 118-390 refers to "nonconformity" as "a use, building, or lot that does not comply with the regulations of this article," and provides that "only legally established nonconformities shall have rights under this section." The term "legally established" is defined, in pertinent part, to apply to "an existing use which conformed to the code at the time it was established."

City Code Section 118-394 governs the discontinuance, including abandonment, of nonconforming uses. Section 118-394(b) specifically provides that "if there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 183 consecutive days, or if a nonconforming use is changed to a conforming use, said use shall lose its nonconforming status."

## Sec. 118-394. Discontinuance of nonconforming uses.

- (a) A nonconforming use may not be enlarged, extended, intensified, or changed, except for a change to a use permitted in the district in which the property is located.
- (b) If there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 183 consecutive days, or if a nonconforming use is changed to a conforming use, said use shall lose its nonconforming status. Thereafter, subsequent occupancy and use of the land, building, and/or structure shall conform to the regulations of the districts in which the property is

<sup>&</sup>lt;sup>1</sup> The City's regulations on nonconformances provide that "[t]he intent of this section is to encourage nonconformities to ultimately be brought into compliance with current regulations."

located and any structural alterations necessary to make the structure or building conform to the regulations of the district in which the property is located shall be required. An intentional and voluntary abandonment of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use.

- (c) The planning director or designee shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:
  - (1) Continual operation of the use;
  - (2) Continual possession of any necessary and valid state and local permits, building permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.
- (d) Evidence of an intentional and voluntary abandonment of a nonconforming use may include, but shall not be limited to:
  - (1) Public records, including those available through applicable City of Miami Beach, Miami-Dade County, and State of Florida agencies;
  - (2) Utility records, including water/sewer accounts, solid waste accounts, and electrical service accounts;
  - (3) Property records, including executed lease or sales contracts.

Section 118-397 sets forth the procedures and appellate process regarding determinations of a nonconforming use, as noted herein:

## Sec. 118-397. - Existence of a nonconforming building or use.

- (a) The planning and zoning director shall make a determination as to the existence of a nonconforming use or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
- (b) The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment pursuant to the requirements of section 118-9. In making the determination the board may require certain improvements that are necessary to ensure that the nonconforming use or building will not have a negative impact on the neighborhood.

In accordance with the above noted section of the City Code, the Planning Director is authorized to determine whether a use is legal nonconforming. As part of that analysis, the Planning Director is required, under Section 118-394, to determine whether a nonconforming use was intentionally abandoned, or whether it was changed to a conforming use, either of which would result in a discontinuance of the nonconforming use. The Board of Adjustment has jurisdiction to hear an appeal from a determination of the Planning Director as to whether a use is legal nonconforming.

# RESPONSE TO PETITION (First Letter Dated February 22, 2023)

# **Summary of the Appeal**

In the initial letter submitted with the appeal application, dated February 22, 2023, 1330 15th Street LLC (the "Owner" or "Appellant") indicates that on October 1, 2019, the City renewed the BTR for an 8-unit suite hotel on the Property, and that on or around November 12, 2019, the Property was sold to the Appellant. The letter also states that the Appellant never intended to forgo or abandon the Suite Hotel use that existed at the time, and that the Appellant never requested, permitted or authorized changes or revisions to the Certificate of Use or BTR.

Finally, the Appellant has requested that the Board grant the appeal, and reverse the Planning Director, and take the following actions:

- 1. Issue a Business Tax Receipt (BTR) and Certificate of Use (CU) for the previous use of Suite Hotel; or
- 2. In the alternative, authorize the use of the property as a transient apartment (short term rental).

## **Planning Director's Response**

First, the role of the Board with regard to this appeal is to determine whether the previously authorized use of suite hotel, which is now non-conforming at the subject site, was, in fact, abandoned or changed to a conforming use. If the Board determines that the suite hotel use was abandoned or changed to a conforming use (i.e. non-transient residential apartment), then the Board must affirm the decision of the Planning Director. Alternatively, if the Board determines that the previous use of Suite Hotel was *not* abandoned, the Board may grant the appeal and reverse the decision of the Planning Director, which would allow for the property owner to re-apply for a new CU and BTR for a suite hotel use.

Importantly, the Board, as part of these proceedings, does not have the authority to permit transient apartment units, or the short-term rental of apartment units, on the Property. Such use has been prohibited in the district since at least 2010, and there is no record of transient apartment units or short-term rentals ever being authorized on the Property. To reiterate, the only question before the Board is whether the **Suite Hotel** use is legal nonconforming and therefore may be reinstituted.

As noted in the background section of this Staff Report, on December 27, 2019, a new BTR application was submitted by the current property owner (1330 15<sup>th</sup> Street LLC) to the Finance Department (**Exhibit 'CMB-F').** A new BTR number (BTR008501-12-2019) was assigned to the application and the request was entered in the system as follows:

'Apartment Building 8 Units/15 Rooms // 1330 15th Street Previous BTR005837-01-2019 Hotel 8 Units Previous RL-87036062 Apartment Building 4 Units / 15 Rooms'

The application was completed by hand, dated 11/18/2019, and signed by Ananthan Thangavel, the manager of 1330 15th Street LLC (Owner). The type of business is noted as "Apt Bldg.", which was written below the crossed-out phrase "short term rental." This application form indicated that the use applied for was an apartment building, and **not** a hotel, suite hotel, or short term rental (of apartment units). For purposes of the Planning Department's analysis under Section 118-394 as to whether a use is legal non-conforming, the change of use to "apartment building," which is a conforming use, evidences both (i) an abandonment of the nonconforming suite hotel use, and (ii) a change from a nonconforming use to a conforming use. When a nonconforming use is abandoned for more than 183 days or changed to a conforming use, the nonconforming use cannot be reinstated. See Section 118-394(b) of the City Code.

The application was reviewed exactly in the form it was submitted, in accordance with the City's standard review procedure, without any modification by City staff. No evidence submitted to the Planning Department at the time of the 2019 application supports the Appellant's contention that the Appellant never intended to abandon the previous suite hotel use. Additionally, the application – which expressly requested approval for an apartment building – refutes the Owner's claim that the Owner never requested, permitted or authorized changes or revisions to the Certificate of Use or BTR. In fact, no dispute was raised by the Owner until approximately 2 years after the change of use (to residential apartment) was processed.

The Planning Department must rely on the accuracy of the submissions of a property owner. And, based on the application submitted, the Owner affirmatively applied to change the use of the Property to a residential apartment building. A residential apartment building, which was the stated use on the application form submitted by the Owner, not the City, is a permitted use in the underlying zoning district. Accordingly, City staff performed its review based upon this description, and the BTR was approved for 8 residential apartments (BTR008501-12-2019). Additionally, as further noted in the background section, this BTR was renewed for the following fiscal year (2020-2021) on December 22, 2020, and Finance Department records show all fees were paid (Exhibit 'CMB-J').

# RESPONSE TO PETITION (Second Letter Dated April 17, 2023)

## **Summary of Appellant's Second Letter**

In the second letter submitted by the Appellant, dated April 17, 2023, the Appellant notes the following:

- On December 18, 2019, a State License for Transient Apartment License was obtained.
- When the BTR was approved on December 30, 2019, the review by the Building Review was passed with a comment "ok per CO1901320". CO19-1320 is the Certificate of Occupancy for the 8-unit suite hotel.

• When the Resort Tax application was submitted, the registration form noted that the "Kind of Business" was identified as "Hotel/Motel". Additionally, when setting up the resort tax account, an Annual Smoke Detectors Inspection/Test Report was required to be submitted, and the Appellant submitted this report with "short-term rental" listed as the type of occupancy.

In summary, the Appellant relies on the following: Transient Apartment License, the Certificate of Occupancy for an 8 unit suite hotel and the fact that the Owner indicated Hotel/Motel/Short-Term Rental on the resort tax application forms.

# **Planning Director's Response**

A Certificate of Occupancy (CO) for a building is issued by the Building Official pursuant to the requirements of the Florida Building Code. The change in use for the Property approved by the City in December 2019 was considered a change from a more intense use (hotel) to a less intense use (apartment), and no modifications to the building were required as all of the units met the applicable standards and requirements for a residential apartment use. As such, the Building Department reviewer in December 2019 may have concluded that a non-transient residential apartment use was less intense than the previous use of hotel and approved the CU on that basis. Regardless, the property owner can, and at this point should, modify the CO for the property by submitting a permit application to change the CO to residential apartment. This would be an easy, straightforward application, as all the units in the building contain full kitchens and meet all applicable requirements for a residential use.

Regarding the Transient Apartment License obtained from the Florida Department of Business and Professional Regulation ("DBPR") on December 18, 2019, such license does not supersede or preempt applicable City Land Development Regulations pertaining to the use of the Property. A business operator's compliance with State regulatory requirements is a separate matter from whether the use is consistent with the City's Land Development Regulations. Since transient apartments are, and have been since 2010, prohibited at the subject property, and since suite hotels have been prohibited since 2020, the State license has no bearing on the CU application submitted in 2021 for short-term rentals.

As it pertains to the Resort Tax Registration Form, dated April 12, 2020, the Owner checked "Hotel/Motel" under the "Kind of Business." However, Staff has confirmed with the Finance Department, that from late 2019 to the present, all resort taxes paid have been for residential apartment use.

Finally, information submitted by the Owner as part of a smoke detector test form, even if inconsistent with the approved CU, could not on its own evidence that, as a zoning matter, the prior use of suite hotel was not abandoned. Smoke detector tests are required as part of the CU and BTR process for various types of occupancies including, but not limited to, hotels and residential apartment uses. The purpose of this form is to substantiate whether required smoke detectors have been installed—**not** to keep active a nonconforming use which, according to the 2019 BTR/CU application, was abandoned.

# **SUMMARY**

The Appellant has noted some inconsistencies in certain application forms that were previously filed in connection with the CU and BTR. These include the State license, the resort tax application form, as well as the smoke detector form. Although these forms refer to a transient hotel use, they are incidental to the actual CU and BTR application which, as a zoning matter, is controlling. Moreover, the appellant has not articulated a tangible reason as to why an application for a CU and BTR for a non-transient, residential apartment was filed, approved, and remained active for almost 2 years.

The BTR for 8 residential apartment units was active for four months during fiscal year 2019-2020, and it was renewed again for the fiscal year 2020-2021, with all fees paid, and remained active for the entire ensuing twelve-month period.

Suite hotels have been a non-conforming use at the subject property since August 25, 2020. It is important to note that the Owner did not request to change the use from residential apartment back to suite hotel – not after the initial BTR was issued on May 19, 2020, and not before the effective date (August 25, 2020) of Ordinance No. 2020-4364, which prohibited Suite Hotels in the West Avenue Overlay.

Pursuant to Section 118-394(b) of the City Code, if there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 183 consecutive days, or if a nonconforming use is changed to a conforming use, said use shall lose its nonconforming status. As of the writing of this report, the Planning Department has not received any substantive evidence that: i. establishes the nonconforming use of suite hotel was not changed to a conforming use of residential apartment; or ii. demonstrates the nonconforming use of suite hotel has been abandoned for less than 183 consecutive days.

As it relates to transient apartment use (short term rental), as noted herein, the underlying zoning district of the subject property (RM-1) has expressly prohibited such use since 2010. Notwithstanding, the Owner made an application for short term rentals in September of 2021. It was not until the CU applications for short term rental use were denied on October 7, 2021, that the Appellant raised questions about the previously approved suite hotel use. This was almost 2 years after the original application for a CU and BTR for 8 residential apartment units was filed.

In conclusion, the Appellant has failed to establish that the previous use of suite hotel was (i) legally established and lawfully continued on the Property to the present, or (ii) never abandoned. In fact, the 2019 CU and BTR application states exactly the opposite – that the Property was changed to a residential apartment building. As such, the appeal should be denied and the decision of the Planning Director should be affirmed. However, should the Board decide to grant the appeal, the Board may, pursuant to Section 118-397(b), require certain improvements that are necessary to ensure that the nonconforming use or building will not have a negative impact on the neighborhood.

# **RECOMMENDATION**

In view of the foregoing, staff recommends that the decision of the Planning Director be **AFFIRMED**, and that the subject appeal be **DENIED**.

# Exhibit 'CMB-A' (limited to front page)

Architect Manfred M. U	onstruction co. Resub. of Blks. 67 & 79 ngaro R. E. Area 16	Engineer 3233 Lot Size 50 x 112	,-/6-02
Building Size: Front	30 <b>Depth</b> 69	Height 2 <sup>1</sup> 4 Stor	ies 2
Certificate of Occupancy No.		Use APARTMENT HOUSE - 4	units
Type of Construction #3	Foundation Spres	nd Footing Roof Tile	Date July 24
Plumbing Contractor# 19997	Alex. Orr, jr. Inc.	Sewer Connection 1,	Date July 24
		Temporary Closet	
Plumbing Contractor # 20061	Alex. Orr, jr. Inc.	Water Meter 1,	Date Aug. 16,1
Water Closets 4	Bath Tubs 4	Floor Drains	
Lavatories 4	Showers	Grease Traps 4 Elec.	water heaters
Urinals	Sínks <sup>‡</sup>	Drinking Fountains	
Gas Stoves 4	Gas Heaters	Rough Approved	Date
Gas Radiators	Gas Turn On Approved O'Ne	ill Dec. 17, 1946	
Septic Tank Contractor		Tank Size	Date
Oil Burner Contractor		Tank Size	Date
Sprinkler System		· · · · · · · · · · · · · · · · · · ·	
Electrical Contractor # 23004	Unity Electric Co:	Address	Date Sept.9,
Switch 20	Range Motors	Fans Temporary Service	# 22842 3/5/
OUTLETS Light 20 Receptacles	HEATERS Water Space <sup>8</sup> Refrigerators 4	Centers of Distribution 9 Service equipment 1	ecoric oc.
	Irons 4	Sign Outlets	
No. FIXTURES 20	Electrical Contractor		Date
FINAL APPROVED BY Wood	mansee Date of Service	12/12/46	

#### Exhibit 'CMB-B'

# MIAMIBEACH

#### Building Department City of Miami Beach

1700 Convention Center Drive, 2nd floor, Miami Beach, Florida 33139, (305) 673-7610, www.miamibeachfl.gov

# TEMPORARY CERTIFICATE OF OCCUPANCY

Certificate Number: TCO1900421 Status: Issued

Applied Date: 02/08/2019 Issued Date: 03/04/2019 Expiration Date: 06/03/2019

Site Address: 1330 15 ST Unit Number: Parcel Number: 0232330160200

Tenant: NOTUS LLC Property Owner: NOTUS LLC NOTUS LLC

Occupancy Classification Code: R1

Number of Building Floor: Total Number of Units of the Building: 8

Residential/Commercial/Mixed Use: Commercial

New or Substantial Improvement (Y/N): No Base Flood Elevation:

Florida Building Code Edition: Occupant Load:

#### Certificate description and specific conditions:

TCO – BC1806547 – Units 101, 102, 103, 104, 201,202, 203,204. Interior remodeling of existing building. Conversion to suite hotel. existing 4 units to new 8 units. PRIVATE PROVIDER REV. & INSP/(MTCI).

#### General terms and conditions of this certificate:

- This is to certify that the above noted structure or portion of the structure has been inspected for compliance of Florida Building Code and the provision of the zoning ordinance 89-2665 of City of Miami Beach for the proposed occupancy and use.
- 2. As-built elevation certificate shall be provided by the applicant for new construction, addition or substantial improvement, and is retained in the records of the Building Department. If the structure is designed for dry-flood proofing, the tenant shall comply with procedures and guidelines of the Flood Emergency Operation Plan and install watertight shields over openings prior to a flood warning.
- Any unauthorized additions, alterations or change in use of this property will void Certificate of Occupancy.
- 4. The tenant shall obtain a final Certificate of Occupancy prior to expiration date of this certificate.

A Certificate of Occupancy is hereby granted to use said building for the purpose described above, subject to any condition(s) detailed in this document.

Fre Bilguiro 3/6/2019

Ana M. Salgueiro Building Official Date

This Certificate of Completion is valid only if there is an ISSUED status and a Building Official Signature.

## Exhibit 'CMB-C'

# MIAMIBEACH

# **Building Department**

City of Miami Beach

1700 Convention Center Drive, 2nd floor, Miami Beach, Florida 33139, (305) 673-7610, www.miamibeachfl.gov

# CERTIFICATE OF OCCUPANCY

Status: Issued Certificate Number: CO19-1320

Applied Date: 05/14/2019 Issued Date: 05/14/2019

Site Address: 1330 15 ST Parcel Number: 0232330160200 Unit Number:

Property Owner: NOTUS LLC NOTUS LLC Tenant:

Occupancy Classification Code: R1

Number of Building Floor: Total Number of Units of the Building: 8

Residential/Commercial/Mixed Use: Commercial

New or Substantial Improvement (Y/N): No Base Flood Elevation:

Occupant Load: Florida Building Code Edition:

#### Certificate description and specific conditions:

CO -- BC1806547 -- Units 101-103, 201-204/ Interior remodeling of existing building, units 101-103 and 201-204, conversion to suite hotel, existing 4 units to new 8 units.

#### General terms and conditions of this certificate:

- 1. This is to certify that the above noted structure or portion of the structure has been inspected for compliance of Florida Building Code and the provision of the zoning ordinance 89-2665 of City of Miami Beach for the proposed occupancy and use.
- 2. As-built elevation certificate shall be provided by the applicant for new construction, addition or substantial improvement, and is retained in the records of the Building Department. If the structure is designed for dry-flood proofing, the tenant shall comply with procedures and guidelines of the Flood Emergency Operation Plan and install watertight shields over openings prior to a flood warning.
- 3. Any unauthorized additions, alterations or change in use of this property will void Certificate of Occupancy.

A Certificate of Occupancy is hereby granted to use said building for the purpose described above, subject to any condition(s) detailed in this document.

5/14/2019

Ana M. Salgueiro **Building Official** 

This Certificate of Completion is valid only if there is an ISSUED status and a Building Official Signature.

# Exhibit 'CMB-D'

#### CITY OF MIAMI BEACH CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT 1700 Convention Center Drive Miami Beach, Florida 33139-1819 TRADE NAME: NOTUS LLC LICENSE NUMBER: BTR005837-01-2019 02/19/2019 DBA: 09/30/2019 IN CARE OF: Expires: Parcel No: 0232330160200 ADDRESS: 1330 15 St MIAMI BEACH, FL -331392249 TRADE ADDRESS: 1330 15 St A penalty is imposed for failure to keep this Business Tax Receipt **Business Type** Code exhibited conspicuously at your place of business. HOTELS (SMOKE DETECTOR) 95009500 A Business Tax Receipt issued under this article does not waive or Hotel: #Rooms supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business. This Receipt may be transferred: A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due. B. To another location within the City if proper approvals and the Additional Information Storage Locations

# Exhibit 'CMB-E'

Miami 11/27/2019

I Matteo Soldatini declare that the property Notus IIc 1330 15th street on 11/14/2019 was sold.

I would need to have the BTR and the Resort Taxes cancelled.

-BTR 005837-01-2019 -RESORT TAXES 2159811

Thank you in advance for your help.

Best,

SIGNATURE\_\_\_

MATTEO SOLDATINI

# Exhibit 'CMB-F' (1 of 2)

ew Plan Number:	Amount of Fee Due: \$45.00 Application Fee  Make Check Payable to: CITY OF MIAMI BEACH		
ast City License # for This Address:			
City of Miami Bea Certificate of Use (CU), Annual Fire Inspect Application			
This application is <u>NOT</u> your business tax receipt. Do not operate the busine are issued. The place of business must b			
Type of Application: _New Butiness	ditional Occupation Change of Location		
toplication Checklist Federal ID No. Articles of Inc (ifapplicable) Bill of Sale	Lease/Deed/Closing Statement CU and Annual Fire Fee (non-refundable)		
Oces the Application Involve: Change of Use Renovation (I I Change of Use .may generate additional building and fire code requirement I valid Certificate of Occupancy is required before an occupational license ca			
the Business one or more of the following types:  Apartment Building Condominium Hotel Lee Cream Parlor Delicatessen Nightidub Hair Salon Home Based Business Health club Escort Service Janitorial Service Mail Order Rotalii Moolo Sales Beach Front Concession Machine Distributor	Pre-Package Food Motor Scooter		
sthe Business one of the following types; Adult Congr Liv Facility _ Day Care	tertainmentPawnshopWarehouse		
ocation 1330 15th Street Conceilion 1330 15th Street Conceilion 1330 15th St Miani I	Application Date. 11/13/2019  Bosich FL 33/39 Lease Own  **Exact Hours of Operation		
iame of Owner i President frant dan Thing averbase of Birl ETN 84-337 8063 SSN 564-85-41.  John Address 1541 Bery 1d apt 720 City Come Phone 818) 667-1978  Business Phone athan gavel 6 lake home:	n 9/29/1984 DUTS21-000-84349-00 07 Miami Back State FL Zip 53/89  - Cell Phone - Capital . com		
iend Business Mail to Attention of: Same as about	Business Priorie 1		

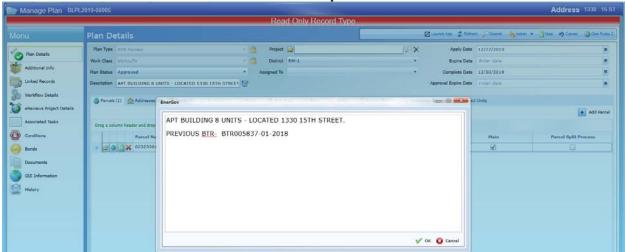
FORM: OCC-1 Rev. 09/13/16

# Exhibit 'CMB-F' (2 of 2)

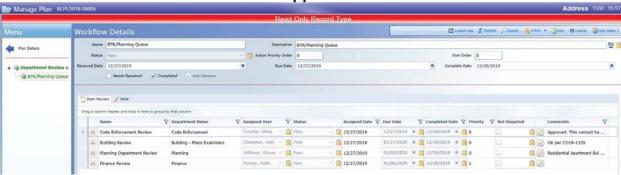
is the Business a						
Hotel or Apar	tment? If yes, how many u	nits?# # #	of washers/dryers (if	owned)		
Restaurant?	How many seats inside? If there will be seats outside Hours of Alcohol Sales	de on public property (sidew	eats outside? (privat valk), then a Sidewal (Zoning Revi	k Café Permit is require	ed.	
Office or Ret	all Establishment? If yes, a If Retail, what is the inven		Fo	od \$	Liquor\$	
Hair or Nail S	alon? If yes, number of sec	ats				
Motor Scoots	ar Rentals? If yes, number	of scoolers				
A Miami-Dade Co	unty Business Tax Receip	ot is also required. See "Mia	mi Dade County Bus	iness Tax for more info	ormation."	
		ermit which is required for				
Any person who, in misrepresent the in	Any person who, in applying for a business license in the City of Miami Beach, who shall make a false statement and/or fail to disclose and/or misrepresent the information requested shall be subject to penalties authorized by City Code Section 102-375.					
I HAVE READ THIS CONTAINED THER	ASE CALL 305-673-7420 F	BILITY TO FOLLOW-UP ON OR FURTHER INSTRUCTION FREELY AND VOLUNTAR RECT.  Signature	ONS AND/OR STAT	US. T THE STATEMENTS.		
	_	epartments may be required	1:			
	Required?yesno	Ву	Date	Comments		
Concurrency	Required?yesno	Ву		Comments		
Building	Required?yesno	Ву	Date	Comments		
Fire	Required?yesno	Ву	4.,	Comments		
Parking	Required?yesno	Ву	Date	Comments		
Risk Management	Required?yesno	Ву	Date	Comments		
Public Works	Required?yesno	By	Date	Comments		
Finance	Required?yesno	Ву	Date	Comments		
Code	Required?yesno	Ву	Date	Comments		
Notes/Comments _						

FORM: OCC-1 Rev. 10/12/04

# Exhibit 'CMB-G' 'BLPL Description'



'BLPL Approvals'



## Exhibit 'CMB-H'

# CITY OF MIAMI BEACH CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive Miami Beach, Florida 33139-1819

TRADE NAME: 1330 15TH STREET LLC

DBA:

IN CARE OF:

ADDRESS: 1330 15 St

MIAMI BEACH, FL -331392249

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to opening of the new location. Additional Information

Storage Locations

LICENSE NUMBER: Beginning:

BTR008501-12-2019

Expires:

05/19/2020 09/30/2020

Parcel No:

0232330160200

TRADE ADDRESS: 1330 15 St

95000900

Business Type
APARTMENT ROOMS

95700000 Apa

Apartment Bldgs Rental: # Units

Apartment buildings (rental), not including kitchens

and bathrooms

1

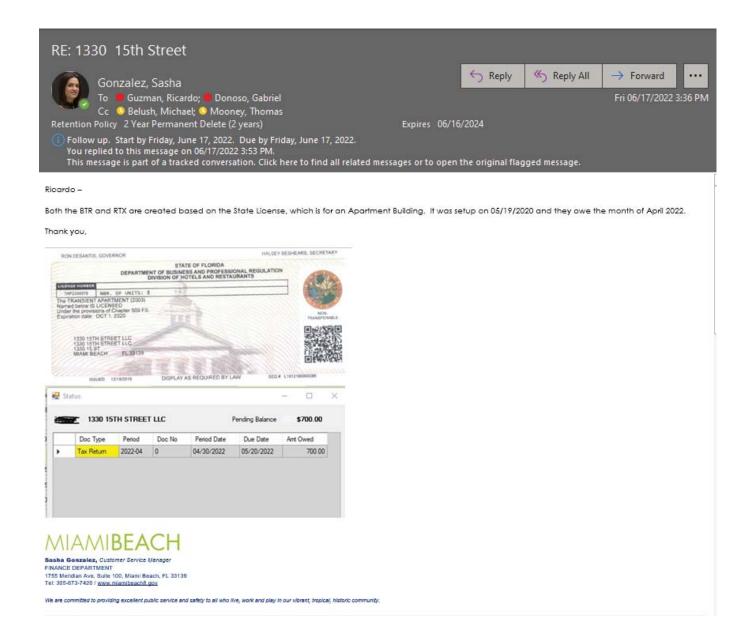
FROM: CITY OF MIAMI BEACH

1700 CONVENTION CENTER DRIVE MIAMI BEACH, FL 33139-1819

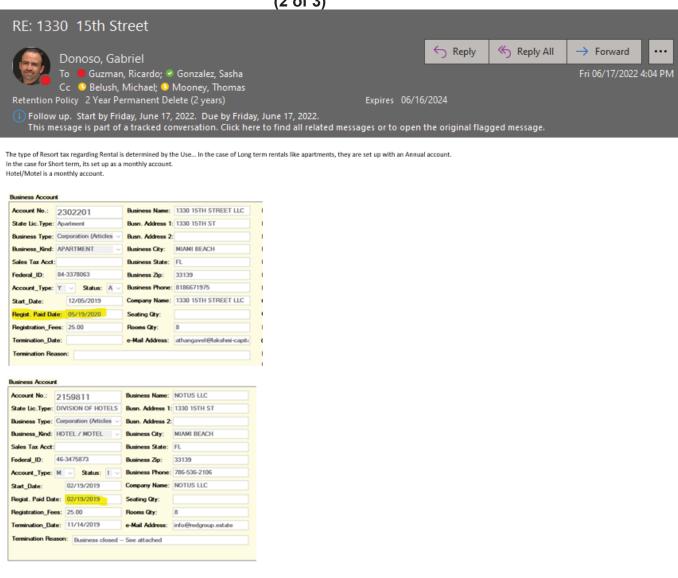
PRESORTED FIRST CLASS U.S. POSTAGE PAID MIAMI BEACH, FL PERMIT No 1525

1330 15TH STREET LLC 1504 Bay Rd #720 MIAMI BEACH, FL 33139

# Exhibit 'CMB-I' (1 of 3)



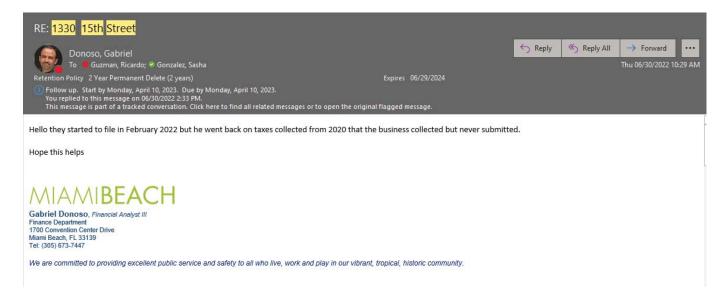
# Exhibit 'CMB-I' (2 of 3)



MIAMIBEACH

Gabriel Donoso, Financial Analyzi III Finance Department 1700 Convention Center Drine Mismi Beach, FL 33139 Tet-(305)-673-7447

# Exhibit 'CMB-I' (3 of 3)



# Exhibit 'CMB-J' (1 of 2)

# CITY OF MIAMI BEACH CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive Miami Beach, Florida 33139-1819

TRADE NAME: 1330 15TH STREET LLC

DBA:

IN CARE OF:

ADDRESS: 1330 15 St

MIAMI BEACH, FL -331392249

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A Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Additional Information

Storage Locations

LICENSE NUMBER: BTR008501-12-2019

Beginning: 12/22/2020 Expires: 09/30/2021 Parcel No: 0232330160200

TRADE ADDRESS: 1330 15 St

Code 95000900 APARTMENT ROOMS Apartment buildings (rental), not including kitchens and bathrooms

Apartment Bidgs Rental: # Units	8
	11

FROM: CITY OF MIAMI BEACH

1700 CONVENTION CENTER DRIVE MIAMI BEACH, FL 33139-1819

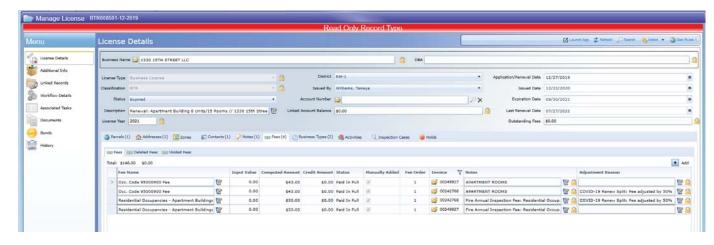
PRESORTED FIRST CLASS U.S. POSTAGE PAID MIAMI BEACH, FL PERMIT No 1525

1330 15TH STREET LLC

1330 15 St

MIAMI BEACH, FL -331392249

# Exhibit 'CMB-J' (2 of 2)



CITY OF MIAMI BEACH BOARD OF ADJUSTMENT HEARING MAY 5<sup>TH</sup>, 2023

## 1330 15<sup>th</sup> St Miami Beach, FL 33139

#### Case Specifics

Property was purchased on November 15, 2019 by 1330 15<sup>th</sup> Street LLC

 I am the manager of this LLC, which is 100% owned by Thangavel Family 2006 Irrevocable Trust, which has myself and my brother as sole trustees and beneficiaries

The property was properly licensed as a Hotel by the State of Florida, Miami-Dade County and City of Miami Beach at the time of purchase

In August 2020, an ordinance was passed to make short-term rentals and hotels not allowed by zoning in the West Avenue Overlay

The Hotel use of the property became nonconforming after this time

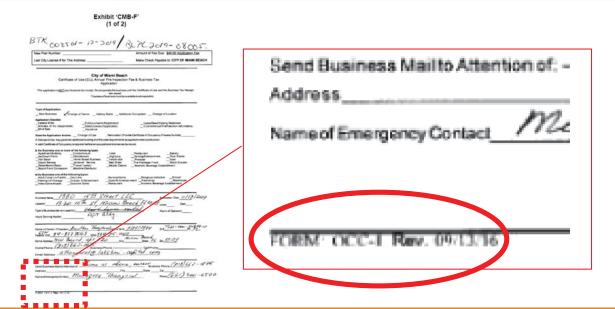
#### Planning Director's Determination

The Planning Director has determined that 1330 15<sup>th</sup> St. abandoned its nonconforming use, Hotel, by adopting a conforming use of Apartments

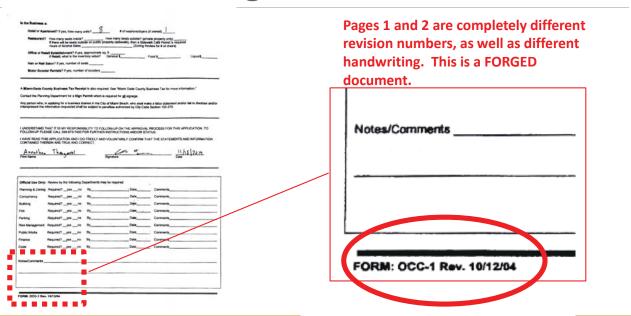
Unfortunately, the Planning Director has based his entire determination on a **forged document** 

- I submitted the Correct BTR Application to Damian Gallo, The Permit Doctor on November 18, 2019 (Exhibit A of my Response to the Planning Director)
- Somehow, a Forged BTR Application was submitted to the City of Miami Beach some time between November 18, 2019 and December 27, 2019

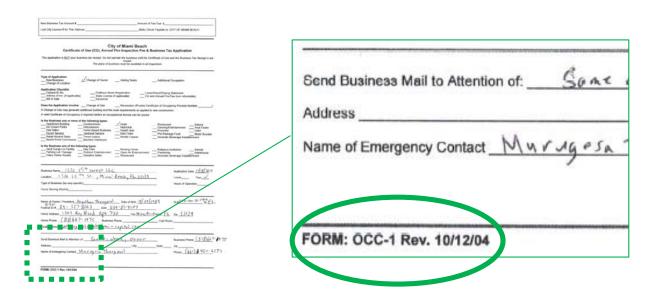
# Forged BTR Application, Staff Report Exhibit CMB-F: Page 1



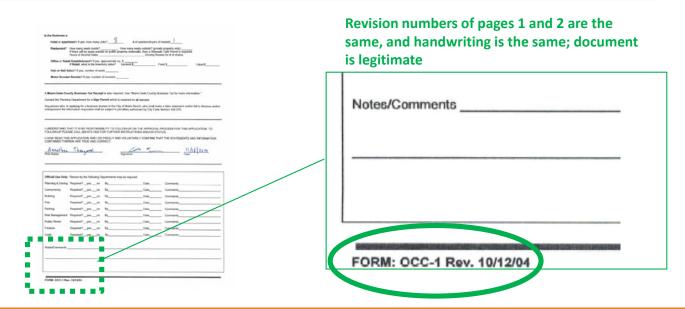
# Forged BTR Application, Staff Report Exhibit CMB-F: Page 2



Actual BTR Application, Submitted by Ananthan Thangavel on 11/18/19 to Damian Gallo: Page 1



### Actual BTR Application: Page 2





#### Forged BTR Application

Whoever forged this document took my legitimate signature page, hand wrote a new page 1, and slipped my signature page as page 2 to create a new, false document

I believe this person to be Damian Gallo

I reported this crime to the Miami Beach Police Department on December 5, 2022

• I am continuing to work with the Police to bring this man to justice

It is not possible for this document to suffice as my voluntary intention to abandon the Hotel use of my property

• Intent cannot be proven by the result of a crime

The Planning Director was made aware of the illegitimacy of this document by both his attorney Nick Kallergis and the City Attorney Office at least three months ago, yet decided to completely ignore it

Exhibit I of Aaron Resnick Letter Dated 4/17/23: Email Communications with City of Miami Beach Employees Clearly Show Intent to Retain Hotel Use On May 19, 2020, Taneya Williams and Jeannie Castor of the City of Miami Beach emailed me back and forth multiple times, requesting signed versions of a Resort Tax Application (Exhibit J of Aaron Resnick Letter) and Smoke Detector Form (Exhibit L of same letter) as final items to issue my BTR

Both documents were provided to them nearly instantly, clearly marking either Hotel or Short-Term Rental as Use

Direct email communication with the City shows I always intended to retain a Hotel use of the property

The Planning Director openly admits that the City received this Resort Tax Application that showed Hotel as Use dated April 12, 2020

Somehow, despite multiple documents showing that I requested Hotel as Use, the City incorrectly issued me a BTR as Apartment

This was an obvious mistake by the City

1330 15<sup>th</sup> St was Properly Licensed by State of Florida and Miami-Dade County as Hotel since December 18, 2019 1330 15<sup>th</sup> Street maintained a Transient Apartment license from the State of Florida from 12/18/19 to the present (Exhibit H in my Response to Planning Director)

- State definition: A transient apartment is any apartment building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy
- In fact, the Transient Apartment license is issued by the Division of Hotels and Restaurants by the State of Florida

The Planning Director and Ricardo Guzman initially tried to argue that the Resort Tax Account for 1330 15<sup>th</sup> St had been created in accordance with the state license (Exhibits F and G of my Response to Planning Director) before the Planning Director changed his argument in the Staff Report, and claimed that the state license has no relevance

 The Planning Director has changed his explanation of the Resort Tax Account at least 3 separate times 1330 15<sup>th</sup> St was Properly Licensed by State of Florida and Miami-Dade County as Hotel since December 18, 2019

The Planning Department claimed that the BTR and Resort Tax accounts were created based on my Florida State License

- From Ricardo Guzman's email (Exhibit G of my Response to Planning Director): "Also, on May 19, 2020: A new Resort Tax (RTX) account was setup by the Finance Department. Both BTR and RTX accounts were created based on the Florida State License (#TAP2330379), which is for an Apartment Building"
- As we know, this license is NOT for an Apartment Building, it is for Transient Apartment
- The city issued the wrong BTR based on an obvious error

1330 15<sup>th</sup> St's Use Was Changed Without Building Official Approval The Planning Director has asserted that "the change in use for the Property approved by the City in December 2019 was considered a change from a more intense use (hotel) to a less intense use (apartment)".

Unfortunately, this argument has no legal validity

Florida Building Code § 111.1 Use and Occupancy:

A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made, until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

There are no caveats made for "less intense" or "more intense" uses. Any change in use whatsoever requires Building Official approval.

The Building Official never approved a Change of Use for 1330 15<sup>th</sup> St.

Building Official Approval is Necessary for Change of Use for Good Reason If the Planning Director's fabrication of law were to actually be true, it would mean that all an applicant would need to do in order to change the use of a property without inspection or code review would be to argue that his intended use is "less intense"

This would mean that an Office could turn into a Nightclub with no input or review from the Building Official, so long as they could prove it is a "less intense" use

Obviously, this is an absurd outcome, and is completely contrary to the public good, much less explicit Florida state law

# Exhibit CMG-G of Staff Report

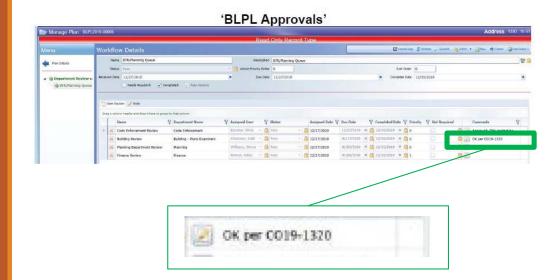


Exhibit CMB-C of Staff Report: CO19-1320

# Exhibit 'CMB-C' WIAMIBEACH Bulding Department Cry of Name Beach 1702 Convention Center Drine, 2nd floor, Mani Beach, Florisa 33138, (305) 673-7810, www.miamibeachti.gov CERTIFICATE OF OCCUPANCY Certificate Number: C018-1920 Stuthe: Issued Applied Date; (0614-0819) Issued Cate; (0614-0819) Size Address: 130 16 ST Unit Number: Parcel Number: 2023/301600000 Tranat: Property Owner: NOTUS LLC NOTUS LLC Occupancy Classification Code: R1 Number of Building Floor: Total Number of Units of the Building: B Residential CommercialMixed Use: Commercial New or Substantial Improvement (YN): No Base Flood Elevation: Concupanty Code Sistem: Occupant Lead: Certificate description and specific conditions: CO — BUILDING Code and the provision of the confirm planting units 161-189 and 261-204, tested to the specific operation of the provision of the structure has been inspected for compliance of Pions Building Code and the provision of the soring plantanes (B-2065 of City of Name Busic for compliance of Pions Building Code and the provision of the Significance (B-2065 of City of Name Busic for compliance of Pions Building Code and the provision of the Significance (B-2065 of City of Name Busic for Compliance of Pions Building Code and the provision of the Significance (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic for All Significance) (B-2065 of City of Name Busic fo

#### Certificate description and specific conditions:

CO -- BC1808547 -- Units 101-103, 201-204/ Interior remodeling of existing building, units 101-103 and 201-204, conversion to suite hotel, existing 4 units to new 8 units

The City Made a Series of Errors on BTR Application Processing While the BTR Application was for Apartment, the Building Review was passed only on the basis of it being an 8 unit suite hotel, specifically referenced by the Certificate of Occupancy CO19-1320 in the notes

An application for Change of Use to Apartment should have been automatically Failed, at which point someone would have realized the disconnect, and that the property had not been reviewed or inspected for its new use to ensure its compliance with fire code and other safety regulations

In fact, even on the Forged BTR Application for Apartments, a Change of Use is not ticked, meaning the application was purporting to be processed as its existing use (which was Hotel); this also should have produced a Fail from the very beginning

The net result of this series of errors cannot be the permanent loss of use of my property, through no fault of my own

Precedent: 865 Collins In a February 2018 case that came before this Board, a package liquor retailer had not paid his BTR renewal fees despite doing so properly for its prior years in existence

While the BTR fees had been unpaid, an ordinance was passed that made it illegal for a package liquor retailer to exist in the location in which it existed

The Planning Director held that the retailer was not acting lawfully at the time that the zoning had changed because the BTR fees had not been paid, and therefore it was not considered a legal nonconforming use at the time of the change in law

The BOA held that the nominal BTR fees not being paid did not constitute a basis for permanently stripping a business owner of their livelihood Comparison of 865 Collins Case to 1330 15<sup>th</sup> St In the matter of 1330 15<sup>th</sup> St, the Planning Director is basing his entire argument of voluntary abandonment of use of a property based on a single fraudulent document

The Planning Director has also deemed it unimportant that Florida law was violated in the Change of Use that occurred with no Building Official approval

The permanent loss of use of 1330 15<sup>th</sup> St based on the fraud of a 3<sup>rd</sup> party would be an unconscionable outcome

# Thank You For Your Consideration



#### Joseph M. Centorino, Inspector General

To: Honorable Mayor and Members of the City Commission

From: Joseph M. Centorino, Inspector General

Re: Investigation of Complaint and Review of Process Regarding Issuance of Certificate of

Use and Business Tax Receipt for 1330 15th Street

OIG No. 23-16 Date: August 18, 2023

#### **EXECUTIVE SUMMARY**

The Miami Beach Office of the Inspector General (OIG) has concluded an investigation and process review arising from a complaint made by Ananthan Thangavel, owner of the property located at 1330 15<sup>th</sup> Street, Miami Beach, which alleged that (1) City of Miami Beach employees may have engaged in malfeasance and/or negligence with respect to the issuance of a Certificate of Use (CU) /Business Tax Receipt (BTR) for the property; (2) an employee of permit expediter, Permit Doctor, forged the CU/BTR application that was submitted to the City and; (3) a City of Miami Beach Planning and Zoning employee instructed the Miami Beach Police Detective looking into the forgery allegation not to investigate the matter.

Allegations two and three were unsubstantiated. The allegation of forgery was reported by Mr. Thangavel to the Miami Beach Police Department (MBPD). After reviewing the information provided, MBPD determined that the matter was civil in nature, and did not proceed with a criminal investigation, a decision with which the OIG agrees based on its investigation. Regarding the allegation that an employee improperly instructed the MBPD Detective assigned to the complaint not to investigate the matter, both the Detective and the employee involved denied any such instruction, and the OIG found no evidence of any such misconduct.

The first allegation, the issuance of the CU/BTR to Mr. Thangavel, was thoroughly reviewed by the OIG, which concluded that there was no malfeasance or neglect by City employees; however, it did determine that a series of events occurred that led to Mr. Thangavel's obtaining a CU/BTR for a use of the property for which he did not intend to apply. The OIG found that miscommunication, misunderstanding, and/or a misinterpretation of the various meanings of accommodation establishment terminologies throughout the process by Mr. Thangavel and the Permit Doctor employees, the delay in time caused by the pandemic, and a lack of sufficient quality controls on the part of the City resulted in Mr. Thangavel's obtaining a CU/BTR for "APARTMENT ROOMS" (non-transient) instead of one for "HOTELS (SMOKE DETECTOR)" which was the type of CU/BTR that the previous owner was issued to operate a suite hotel at that location.

The OIG reviewed voluminous documentation, including, but not limited to, City records from Planning and Zoning, Finance, Building, Code Compliance, emails, and open-source records and interviews and communications with Mr. Thangavel, City staff, Permit Doctor staff, and the State

of Florida Department of Business and Professional Regulations Licensing staff. The investigation and review of the decision to issue Mr. Thangavel the CU/BTR for apartment rooms focused on the CU/BTR application that was changed by an employee of the Permit Doctor from the original application prepared by Mr. Thangavel and submitted to the City by the Permit Doctor employee on behalf of Mr. Thangavel.

At all times during Mr. Thangavel's pursuit to obtain a CU/BTR to operate a business in Miami Beach, the operation of short-term rentals has been prohibited in the area of the City in which Mr. Thangavel's property is located. However, the operation of suite hotels (a short-term rental method) which is what the previous owner was licensed to operate, was permitted until an ordinance prohibiting its use became effective on August 25, 2020.

The OIG learned that the CU/BTR process that was in place in 2019 during the time of this review has changed, and the current process for customers to apply is predominately completed online through a software system called Citizen Self-Service (CSS) accessed on the City's website. The current process requires that a Certificate of Use be issued prior to applying for a Business Tax receipt which were both requested on a single application. The OIG also learned that the City has engaged consultant Berry Dunn, which is currently conducting a review of the City's regulations and processes relating to development review. They will be evaluating the City's current business practices, which include the CSS, and will be providing recommendations for service improvement.

This OIG report presents its observations of the processes that led to miscommunication, misunderstanding, and/or misinterpretation among those involved, as well as some quality control issues within the City that may still exist in the current process and will provide recommendations that may contribute to Berry Dunn's efforts toward service improvements.

The report concerns issues that are also the subject of an administrative appeal currently pending before the City of Miami Beach Board of Adjustment. Pursuant to Article I, Section 2 of the Related Special Acts, and Sections 118-9 and 118-397 of the Land Development Regulations, the Board of Adjustment has the exclusive jurisdiction to decide appeals from formal determinations of the Planning Director.

On February 22, 2023, the owner of the property at 1330 15th Street appealed the denial of a Business Tax Receipt on the basis that, pursuant to the Land Development Regulations, short-term rentals are not permitted on the subject property. On May 5, 2023, following argument and testimony from the property owner, Planning Director, and nearby residents, the Board of Adjustment denied the appeal and affirmed the decision of the Planning Director.

On June 2, 2023, the Board of Adjustment adopted a motion to reconsider its May 5th decision. Pursuant to that motion, the appeal will be re-noticed for the September 8, 2023, Board of Adjustment meeting. At that time, the Board will take additional testimony, and decide on any further action.

The relevant governing authorities referred to in this report are included in Appendix A.

#### **OIG Authority**

Section 2-256 of the Code of Miami Beach codifies that the City of Miami Beach Office of Inspector General is created as an independent body to perform investigations, audits, reviews, and oversight of municipal matters, including city contracts, programs, projects, and expenditures, in order to identify efficiencies and to detect and prevent fraud, waste, mismanagement, misconduct, and abuse of power. The organization and administration of the office must be sufficiently independent to assure that no interference or influence external to the office adversely affects the independence and objectivity of the inspector general.

The OIG has the power to require reports from the city manager, city departments, city agencies, boards, and committees, and city officers and employees, regarding any matter within the jurisdiction of the inspector general. The OIG has the power to subpoena witnesses, administer oaths, and require the production of records regarding any matter within the jurisdiction of the office.

#### Background

This matter originated from a complaint received by the OIG in April 2023 from the current owner, 1330 15<sup>th</sup> Street, LLC (Ananthan Thangavel), of the property located at 1330 15<sup>th</sup> Street, Miami Beach, which included the allegations presented in the summary. In November 2019, Mr. Thangavel purchased the property, which was converted by the previous owner from a four-unit residential apartment to an eight-unit suite hotel. In January 2019 the previous owner submitted an application for a CU/BTR (Exhibit 1) and, in February 2019, was issued a CU/BTR (Exhibit 2) and in May 2019, a Certificate of Occupancy (CO) (Exhibit 3) by the City to operate a suite hotel. The previous owner also applied for and inadvertently received a hotel license from the State of Florida Department of Business and Professional Regulation (DBPR), which will be discussed in detail below.

Within six months of obtaining the CO, the previous owner sold the property to Mr. Thangavel. After purchasing the property, Mr. Thangavel engaged a local permit expediting company, Permit Doctor, to assist him in transferring and obtaining the proper license to operate the business in the City of Miami Beach. Between November 2019 and October 2021, Mr. Thangavel personally and/or through the Permit Doctor initiated and navigated the process to obtain a CU /BTR to operate a business at the property.

On September 4, 2019, prior to Mr. Thangavel's engagement with the Permit Doctor, the City's Planning Director, Thomas Mooney, responded to a request by Pathman Lewis, LLP, on behalf of Mr. Thangavel, for a zoning verification for the property that is the subject of this review. The property is located at 1330 15<sup>th</sup> Street, Miami Beach, Florida. In his response, Mr. Mooney stated:

Please be advised that the subject property is currently zoned RM-1, Residential - Multi Family, Low Intensity and has a future land use designation of RM-1, Residential - Multi Family, Low Intensity. This district is designed for low intensity, low rise, single and multi-family residences.

In accordance with Section 142-152 of the Land Use Regulations of the Code of the City of Miami Beach, the main permitted uses in the RM-1 District include: single-family detached dwelling; townhomes: apartments; and bed and breakfast inn (pursuant to article V, division 7 of this chapter).

The subject property is also located within the West Avenue Bay Front Overlay District. I have attached a copy of Chapter 142, Article III, Division 5 of the City's Land Development Regulations, which pertain to the West Avenue Bay Front Overlay District.

The West Avenue Bay Front Overlay District permits the adaptive reuse of existing single-family and multi-family residential structures for suites hotels, in accordance with Section 142-845 of the City's Land Development Regulations (attached). The City's Land Development Regulations defines a suite hotel unit and suite hotel as a room, or group of rooms, each containing separate bathroom and full cooking facilities, with ingress and egress which may or may not be through a common lobby, intended for rental to transients on a day-to-day, week-to-week, or month-to-month basis, and not intended for use or used as a permanent dwelling.

The subject property is not located within a local historic district. However, any proposed development shall require the review and approval of the Design Review Board.

Mr. Mooney's letter, written on September 4, 2019, indicates in bold lettering that suite hotels, as defined, were permitted at the location of the property. Although Mr. Mooney's letter does not specifically state it, short-term rentals were not and are not a permitted use at the address where Mr. Thangavel's building is located.

The OIG's review revealed no evidence that Mr. Mooney's letter was considered by Mr. Thangavel and/or shared with the Permit Doctor employees during the pursuit of the CU/BTR to operate in the City. Had this letter been considered and utilized to inform them about the permitted uses at the location of Mr. Thangavel's building, the events that followed and ultimately resulted in Mr. Thangavel's obtaining a CU/BTR for which he did not intend to apply could have been avoided.

#### Certificate of Use and Business Tax Receipt Process 2019

In order to operate a business in the City of Miami Beach, a business owner must obtain a Certificate of Use (CU), which allows for the specific use of a building and certifies that the use is in compliance with all applicable city codes, regulations, and ordinances. The owner must also obtain a Business Tax Receipt (BTR), which is the method by which the City grants the privilege of engaging in or managing any business, profession, or occupation within the City.

To understand the process that the City used in 2019 to intake, process, and issue a CU and BTR, the OIG met with various Miami Beach staff members, including Thomas Mooney, Planning Director, Ricardo Guzman, Principal Planner, and Sasha Gonzalez, Finance Department Customer Service Manager. Through these meetings, the staff members related that in 2019 the

application for a CU and BTR was completed on one form titled "City of Miami Beach Certificate of Use (CU), Annual Fire Inspection Fee & Business Tax Application." The form was submitted to the Finance Department Customer Service Section. The intake of the application would occur with no initial action by the Finance Department.

The received application would be uploaded into the City's software application (EnerGov) which is used by the Finance, Planning, Building, and Code Compliance Departments to process and review the CU/BTR submittals. Once the application is uploaded, a BTR number is generated for that process, and the system automatically creates a "plan case" known as a BLPL. The BLPL is routed to the regulatory disciplines, which require review and/or inspections for the approval of the CU part of the process. Once the review and inspections have been completed and have passed for the issuance of a CU, the Finance Department ensures that all documentation required for the BTR is received and reviewed, and then the CU/BTR is issued to the owner.

#### Certificate of Use and Business Tax Receipt 1330 15th Street - Mr. Thangavel

#### Permit Doctor

In November 2019, Mr. Thangavel engaged the Permit Doctor, a permit expediting company located at 775 17<sup>th</sup> Street, Miami Beach, to assist him in transferring and obtaining the proper permits and/or licenses to operate a business in the City of Miami Beach. Between November 2019 and October 2021, Mr. Thangavel, through the Permit Doctor and sometimes personally, initiated and navigated the process to obtain a CU/BTR from the City. Throughout the engagement with the Permit Doctor, Mr. Thangavel interacted with Mr. Damien Gallo Jr., who is the son of the owner of the Permit Doctor, and Ms. Eugenia (Jenny) Suraeva, permit runner.

During an interview with the OIG, Mr. Gallo Jr. stated that he met with Mr. Thangavel in person on only one occasion and that all other communications were conducted by telephone or email. Mr. Gallo Jr. related that his services were secured based on a referral from the law firm Pathman Lewis to assist Mr. Thangavel in getting the property at 1332 15<sup>th</sup> Street licensed for short-term rentals. He recalls that he and Ms. Suraeva submitted applications for a license with the State of Florida and that they started the process with the City of Miami Beach. However, the process was interrupted due to the pandemic, and his communication with Mr. Thangavel ended over a year ago.

According to the emails reviewed by the OIG, Mr. Gallo Jr. was involved in the process from December 2019 through October 2021. Mr. Gallo Jr. recalled that he participated in the inspection process for both the state and city at the property. He did not recall specifically which documents he submitted and in which parts of the process he or Ms. Suraeva participated. During the interview, Mr. Gallo Jr. informed the OIG that it was his belief that Mr. Thangavel wished to pursue the licensing of short-term rentals.

Mr. Gallo Jr. did not recall having any conversations with Mr. Thangavel about suite hotels, and none of the emails or documents reviewed by the OIG mention suite hotels. Mr. Gallo Jr. advised that he did not recall ever being involved with licensing a suite hotel. He said he was unfamiliar with the term suite hotel and did not know the difference between a suite hotel and a short-term rental. While discussing suite hotels during the interview, Mr. Gallo Jr. stated, "Maybe our terminology, we also call it as a short-term, and that could be an error." He indicated that the

process to obtain a CU/BTR was never completed, yet Mr. Thangavel was issued a CU/BTR for apartment rooms on May 19, 2020 (Exhibit 4). Mr. Gallo did not recall the details and could not explain how that CU/BTR was ultimately issued.

Mr. Gallo Jr. was shown a copy of the CU/BTR application that was completed by Mr. Thangavel, dated November 18, 2019 (Exhibit 5). He does not recall the specific application but acknowledged that he is familiar with the application and would have had to receive it from Mr. Thangavel in order to pursue the licensing.

On the first page of the application, the type of application was indicated as "Change of Owner," the application checklist is blank, and the section that asks if the application involves a "Change of Use" was not checked, the type of business was indicated as "Hotel," and the specific description of the business was blank, as depicted in the image below. The second page of the application was additional information and Mr. Thangavel's signature and date.

Certificate		ly of Miami Be Fire Inspection	Pee & Business Tax Application	en .	
This application is NOT your but	siness tax receipt. Do not o	perate the outiness or	the Certificate of Use and I'm Busines	us Tax Receipt e ar	
	The place of bus	thess must be availab	e to at inspectors.		
Type of Application: New business Change of Location	Change of Owner	Assing Sees	Additional Occupation		
			Lease/Dead/Closing Statement CU and Annual Fire Fox (non refund		
Does the Application Involve:	Change of Use	Renovation (Pro	rvide Certificate of Occupancy Process N	lumber	
A Charge of Use may generate	edditional building and fire	code requirements as	applied to new construction		
is the dusiness one or more of Apartment Building for Cream Parlor Hair Salon Escott Service Petal Alcohol Sales Beach Front Concession is the Business one of the follo	Condominium Delicatessen Home Based Business Jantorial Service Travel (sales) Machine Distributor	Violate     Nghược     Nghược     Heath dub     Mail Order     Mohin Caterer	Restaurant Clancing/Entertalhment Promoter Pre-Parkage Food Alcoholic Reverage Sistate	Sakery Real Estate Valet Motor S costs	
Adult Congr Liv Facility Persong Let / Gerege	Day Care Outdoor Entertainment Obsoline Cales	— Nursing Home — Open Ar Entert — Restaurant	Fichigiaus Institution Physiology Acoholic Beverage Estati	School Warehouse listement	
Rusinoss Name 1370   Location 1320 15	th street LL	Geath, FL 3	Application (	Own_V	
			Hours of Op		

Mr. Gallo Jr. was then shown a copy of the CU/BTR application that was ultimately submitted to the City to be processed and acted upon (Exhibit 6). The handwriting on the first page of this application is different from the original, the type of application was indicated as "Change of Owner," the application checklist was blank, the section that asks if the application involves a "Change of Use" was not checked, the type of business was not indicated, and the specific description of the business was "Short-term rental," which is lined through, and "Apt Bldg" is written in below it, in what appears to be yet a different handwriting as depicted in the image below.

Type of Application:  _New Business Change of Owner	_Adding SeatsAddition	al Occupation _ Change of	/Losation	
Application Checklist _Federal ID NoFictio	us Name Registration Icense (ifappicable)	_ Lesso/Decd/Cos		
Does the Application hyolve: Change of I	Renovation (Prov	de Certificate of Occupancy Pr	ocess Number	
A Chango of Use may generate additional building	and tire code requirements as	appred to new construction		
A valid Certificate of Occupancy is required before	en occupational (censecen be	issued		
the Bushess one or mere of the fellowing Apartment Buliding Condominium (or Cream Parlor Descatessen Hair Sation Home Based B Escort Service Lianstonal Service Restal Action Sees Beach Front Concession Machine Distrib	Hotel Nightclub Jisiness Jealth dub ce Mail Order Mobile Caterer	Restaurant DenchgEntedaument Promoter Pre-Package Food Alcoholic Beverage Esta	BakeryReal EstateValetMotor Scooter abidment	
bathe Business one of the following types: Adult Congr. tv Facility Day Care Parking Lot /Garage Outdoor Entertain Video Game Arcade Gasoline Sales	Nursing Home Open Air Entertu Restaurant	Religious instituti anment _Pavinshop Acoholic Beverag	Warehouse	
Business Name 1330 15		LC Jeach Fl 33/39	polloation Date. ////3/	

The second page of the application is a duplicate of the original application completed by Mr. Thangavel. Mr. Gallo Jr. stated that he did not complete the document and does not know who did. He acknowledged that one of his employees, possibly permit runner Jenny Suraeva, may have made the change.

During a separate interview with Ms. Suraeva, she was shown the same two CU/BTR applications, and she also did not recall the details of everything she did regarding the process for Mr. Thangavel but stated that she did participate in the process to obtain a CU/BTR. She stated that she was the one who changed the first page of Mr. Thangavel's application, combined it with the original second page signed by Mr. Thangavel, and submitted it to the Finance Department of the City on December 27, 2019. She did not recall the specific circumstance in which the change was made but stated that she would not have changed the document without the approval of Mr. Thangavel. She did not recall how she obtained the approval. She stated that the addition of "Apt Bldg" was not her handwriting and did not recall the circumstances in which that was done.

Mr. Thangavel denied providing such approval, or adding "Apt Bldg" to the document, or seeing the document at the time it was submitted. Both Mr. Gallo Jr. and Ms. Suraeva stated that all of the documents and email transactions regarding the process with Mr. Thangavel have been deleted or destroyed, as they only maintain the documents for two years.

The OIG has been unable to determine who wrote "Apt Bldg" on the application. No one from the City acknowledges making the change, however, the change was made prior to the application being uploaded into the system by the Finance Department.

During their respective interviews, Mr. Gallo Jr. and Ms. Suraeva were both shown copies of CU/BTR applications for each of the eight units in Mr. Thangavel's building that he completed and signed and are dated November 18, 2019 (Exhibit 7 Unit 1). On the first page of this application, the type of application was indicated as "Change of Owner," and the application checklist is blank.

The section that asks if the application involves a "Change of Use" is not checked. The type of business is indicated as "Hotel," and the specific description of the business is "Short-term Rental," as depicted in the image below.

Certificate of		of Miami Beac Fire Inspection Fed	h & Business Tax Application
fhis application is <u>NOT</u> your bush		erate the business until t issued. ness mud be available to	he Certificate of Use and the Birtiness Tax Receipt e are all inspectors.
Type of Application: New Business Change of Location	Change of Owner	Adding Seats	Additional Occupation
Application Checklist Federal ID No. Articles of Inc. (if applicable) Bill of Sale	Fictitious Name State License (	Registration	Lease/Deed/Closing Statement CU and Annual Fire Fee (non-refundable)
Does the Application Involve:	Change of Use	Renovation (Provid	e Certificate of Occupancy Process Number
A valid Certificate of Occupancy a is the Business one or more of	the following types:	ational license can be is	sved.
Apartment Building Los Cream Parlor Hair Salom Excort Service Retail Alcohol Salon Beach Front Concession	Condominium Delicatessen Home Based Business Janilorial Service Travel (saltes) Machine Distributor	Mightshib Health club Mail Order Mobile Catever	Restaururt Bakory Dondrig/Entertainment Rea Estate Promoter He-Prackege Food Motor Scooter Alcoholic Bevorago Establishment
los Cream Parlor  Hair Salon  Escort Service  Retail Alcohol Salon	Delicatessen Home Based Business Janillorial Service Travel (sales) Mactine Distributor	Nightdub Health dub Mail Order	Danding/Entertainment Real Estate Promoter Valet Pre-Package Food Motor Scooter Alcoholic Bevorago Establishment  Raigious Institution School
los Cream Parlor Hair Salon Escort Service Service Beach Front Concession Is the Business one of the follo Adult Congruiv Facility Parking Lot / Garage Video Game Arcade	Delicatessen Home Based Business Janitorial Service Travel (isales) Machine Distributor owing types Day Care Outdoor Entertainment Gasoline Sales	Nightchub Freath dub Mail Order Mubile Caterer  Mursing Home Open Air Entertain Restaurant	Dondrig/Entertainment Real Estate Promoter Velot Pre-Package Food Motor Scooter Alcoholic Bevorage Establishment  Religious Institution School Pavanshop Warehouse Alcoholic Beverage Establishment  Application Oster 11/18/321

The second page of the application contains additional information and Mr. Thangavel's signature and date. Each of the applications indicates a unit number one through eight. Both Mr. Gallo Jr. and Ms. Suraeva recognized the applications but did not recall when they were received or what happened with them. They related that the City's process required separate CU/BTRs for each unit to be used for a short-term rental; however, these applications were never submitted to the City.

During his interview, Mr. Gallo Jr. was shown eight copies of applications for Certificates of Use (CU) that were submitted electronically through the City's Citizen Self-Service (CSS)¹portal on September 24, 2021. The applications were for Mr. Thangavel's eight-unit property. The applicant was Damian Gallo, and the business description was "Short-term rental". Mr. Gallo Jr. again recognized and acknowledged that he submitted the applications but did not recall the specifics. After being shown a series of emails in which he and Mr. Thangavel were discussing the process and that it had not been completed, he recalls moving forward with these particular applications. However, by that time, Mr. Thangavel had already been issued a CU/BTR from the City for "apartment rooms" on May 19, 2020, based on the CU/BTR application that was submitted by Ms. Sureava on December 27, 2019, which was renewed by Mr. Thangavel effective December 20, 2020.

<sup>&</sup>lt;sup>1</sup> The City's process for applying for Certificates of Use and Business Tax Receipts was bifurcated and the application process began to be executed through an online system on the City's website called "Citizen Self-Service."

On October 7, 2021, all of the electronically submitted CU applications for short-term rentals that were submitted by Mr. Gallo Jr. were denied because short-term rentals were not then and are not now permitted at the location of Mr. Thangavel's building.

One of the documents uploaded with the electronic application submitted by Damien Gallo Jr. was a copy of a letter dated June 15, 2020, signed by Mr. Thangavel that stated the following:

I, owner of 1330 15th Street, LLC would like to apply and operate short term vacation rentals in each of the units on property. The unit numbers are as follows; 1, 2, 3, 4, 5, 6, 7, 8. Should you have any questions please don't hesitate to contact me directly.

Short-term rentals have not been authorized in the location of Mr. Thangavel's building since 2010. Had the City been in possession of such a letter when the application that was relied upon to issue the CU/BTR to Mr. Thangavel was received in 2019, he might have been informed by the City that short-term rentals were not permitted, and could then have inquired and proceeded with obtaining a license to operate a suite hotel which was still permitted at the time.

At no time during the process to obtain his CU/BTR did Mr. Thangavel or any Permit Doctor employee obtain or review a copy of the CU/BTR application that was submitted by the previous owner that resulted in a CU/BTR for "HOTELS (SMOKE DETECTOR)" being issued for the operation of a suite hotel.

That application indicates that it is for a "Hotel," and the specific use is identified as "SUITE HOTEL," as depicted in the image below.

Type of Application: New Business Change of Lecaton	Change of Owner	Adding Sexts	Additional Occupation	
Application Checklist Federal ID No. Articles of Inc. (if applicable) 6/1 of Sale		ne Registration (if applicable)	Lessa/Deed/Closing Statement CU and Annual Fire Fee (non refur	dable)
Does the Application Involve:	Change of Use	Renovation (Pri	ovide Certificate of Occupancy Process	Number)
A Change of Use may generate a	dditional building and fire	code requirements so	applied to new construction.	
A valid Certificate of Occupancy is	s required before an occu	pational license can b	e (saued)	
Is the Business one or more of Apartment Busicing los Gream Partor Hair Salion Escort Service Retail Alchid Sales Beach Front Concession	the following types: Condominium Descatessen Home Based Business Jaritorial Service Travel (sales) Machine Distributor	Health club Mail Crider Mobile Caterer	Restrurant Cancing/Entertainment Promoter Pre-Package Food Alcoholic Beverage Esta	Battery Real Estate Valet Motor Scooter
Is the Business are of the folio Adult Congr LV Facility Parking Lot / Garage Video Game Arcade	wing typesDay Care _Outdoor Entertainment _Gasoline Salas	Nursing Home Open Air Enten Restaurant		School Warehouse olishment
Business Name NOTO	is LLC	T	Application	Date: 01/16/19
Type of Business (be very specific	SUITE	HOTEL	Hours of O	peration
tithe or president for the Ambarra				

#### State of Florida License

Florida Statute 509.241(2) requires that each person who plans to open a public lodging establishment or a public food service establishment a

pply for and receive a license from the Department of Business and Professional Regulation (DBPR) Division of Hotels and Restaurants prior to the commencement of operation. The previous owner submitted an application for a hotel license with DBPR and was issued hotel license number HOT2329406 on November 29, 2018. That license was submitted to and considered by the City when it issued the CU/BTR to the previous owner for "HOTELS."

Mr. Gallo Jr. submitted an application that Mr. Thangavel signed and dated November 18, 2019, to DBPR for a hotel license. The application indicated that it was for a "Hotel" and that it was for a "Change of Ownership." The previous owner's license number and information were provided on the application.

On December 17, 2019, a DBPR inspector sent the following email to the Deputy District Manager of the DBPR's Miami Office:

As per our conversation, could you please re-profile this account to a TAPT, this is a 8 units building, 1 mop sink, no office, no Public bathroom, and it will (sic) used as a Short (sic) Rental Apts.

The Deputy District Manager then sent the following email to the licensing team:

Please re-profile this account from a Hotel to a transient apartment. There are no signs advertising establishment as a hotel and no front desk for guest to check in. The establishment was licensed as a hotel under previous owner, but is actually an eight unit transient apartment. Inspector spoke with new owner and he is o.k. with license being reclassified correctly.

Mr. Thangavel was issued "TRANSIENT APARTMENT" license number TAP2330379 by DBPR on December 18, 2019, and has renewed the license each year. The current license expires on October 1, 2023.

Florida Statute 509.242 (1) (a) classifies a "Hotel" as follows:

any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

Florida Statute 509.242 (1) (e) classifies a "Transient apartment" as follows:

a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy,

"Transient Occupancy" is defined in Florida Statute 509.013 (4)(a)(1) as follows:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

The previous owner was improperly issued a hotel license by the State of Florida, which was considered by the City when it issued the CU/BTR for "HOTELS." The "TRANSIENT APARTMENT" license that Mr. Thangavel was issued and currently holds allows for transient rental, however, he was issued a CU/BTR for residential apartments, non-transient use.

#### Application Intake

The application that was submitted to the City was the application that was altered from the original by Permit Doctor employee Ms. Suraeva. The application was further altered by an unknown person. A review of the information regarding the intake of the application provided by Finance Customer Service Manager Sasha Gonzalez and of information available in the City's EnerGov system revealed that the application workflow process was started, a BTR completeness check was completed, and the application with attachments was scanned into the system on December 27, 2019.

The attachments to the application included copies of a warranty deed, corporate filing, federal tax identification information, and a State of Florida license issued on December 18, 2019, by the Florida Department of Business and Professional Regulation (DBPR) Division of Hotels and Restaurants for a "TRANSIENT APARTMENT." Also uploaded on the same date was a copy of the previous CU/BTR, which was issued to the previous owner on September 27, 2019, and expired on September 30, 2020. The previous CU/BTR was for the specific use of "HOTELS (SMOKE DETECTOR)." There is no mention of a suite hotel in the document.

The application was accepted and uploaded into the system, although it had been altered; pages one and two had different handwriting, and the page one form version was "FORM OCC-1 Rev. 09/13/16, while page two was "FORM OCC-1 Rev. 10/12/04. Sasha Gonzalez, Finance Department Customer Service Manager, informed the OIG that the alteration of the specific type of business from "short term" rental to "Apt Bldg" on the submitted application would not have been made by anyone in the Finance Department as it is the Planning Department that determines the use. The application with the alteration in question was uploaded into the system by the Finance Department. The Chief Financial Officer informed the OIG as follows:

the initial intake of an application is processed by one employee, and the final issuance of the BTR is not released until a supervisor has reviewed the application for thoroughness. A review of the EnerGov system demonstrates that this particular BTR application was processed by a Financial Analyst I and subsequently reviewed by a Financial Analyst II, and ultimately reviewed by a Financial Analyst III before being issued.

The altered application, as described above, was initially accepted and made its way through two additional reviews within the Finance Department without being questioned.

#### Finance Review

The application that the Finance Department received was a single application for both a Certificate of Use and a Business Tax Receipt. The application was reviewed at intake for its thoroughness. It was then uploaded into the EnerGov system by a Finance staff member, and the system generated a BTR number, BTR008501-12-2019, and a BLPL case number, BLPL2019-08005. This began the process for the Planning, Code Enforcement, Building, and Fire

Departments to conduct their reviews and/or inspections in order for the CU/BTR to be issued. The Finance Department would ultimately review the application again at the end of the process for the issuance of the BTR.

#### Planning Review

Although each of the above reviews and inspections is important, the foremost review is for the Certificate of Use (CU), which the Planning Department conducts. It is here that the specific use for a specific location is reviewed and determined, and where the Planning Department certifies that the use is in compliance with all applicable city codes, regulations, and ordinances. The Business Tax Receipt (BTR), which is the license to do business in Miami Beach, is issued based on the CU and the State license (if applicable).

In this instance, the information contained in the EnerGov system history shows that the planning review was conducted on December 30, 2019, and was completed on the same day. There are no internal notes or evidence of communication with Mr. Thangavel or anyone from the Permit Doctor. The only contact information listed is for Mr. Thangavel. There is one file attached which is the previous BTR that lists the use as "HOTELS."

The records relating to BTR008501 for Mr. Thangavel's application were available to review through the "Linked Records" icon. The attachments that were available for review included the application with attachments and the previous BTR. The only comments regarding this review appear in the "History" section. The comment reads, "Residential Apartment Building – 8 units." There is no explanation of how that determination was made, however, the only place the word apartment appears is on the modified application as "Apt Bldg" and the license issued by the State which states, "TRANSIENT APARTMENT."

The individual who conducted the review is no longer with the City. An email sent to an attorney representing Mr. Thangavel on June 22, 2022, by Ricardo Guzman, Principal Planner for the City, in the summary of events, states as follows:

"On December 30, 2019: BLPL2019-08005 was approved for 8 residential apartment units (non-transient). This is the precursor for the new CU and BTR. (no supporting documentation provided or requested by the City to support the change of use)."

Mr. Guzman does not have independent knowledge of the details of how this planning review was conducted. The application itself indicates that it is for a "Change of Ownership." The section that states, "Does this Application involve: \_\_\_\_ Change of Use" is not checked to indicate that it is not a change of use but simply a change of ownership. In fact, none of the applications that were completed by either Mr. Thangavel or Ms. Suraeva, whether they were submitted or not, indicate that the application is for a change of use. The previous BTR identifies the use as "HOTELS." There was no documentation requested or provided supporting the change of use and no evidence that a clarification was sought by anyone in the Planning Department prior to changing the use to "APARTMENT ROOMS."

#### **Building Review**

The information contained in the EnerGov system history shows that the building review was conducted on December 30, 2019, and was completed on the same day. There are no internal notes. There is one file attached which is the previous BTR that lists the use as "HOTELS." The records relating to BTR008501 for Mr. Thangavel's application were available to review through the "Linked Records" icon. The attachments that were available for review included the application with attachments and the previous BTR. The only comments regarding this review appear in the "History" section. The comment reads, "OK per CO19-1320" which refers to the Certificate of Occupancy that was issued to the previous owner on May 14, 2019, which states in the certificate description and specific conditions section the following:

CO – BC1806547 – Units 101-103, 201-204/ interior remodeling of existing building. units 101-103 and 201-204 conversion to suite hotel. Existing 4 units to new 8 units.

The reviewer, Senior Building Inspector Gabi Chamoun, was interviewed by the OIG and informed the OIG that there was no need to change the Certificate of Occupancy (CO) as the requirements for a suite hotel or hotel occupancy are stricter than the requirements for apartment occupancy. Under the existing CO, the owner in the future could apply to change the use from apartment to hotel if it is authorized.

#### Fire Inspection

The information contained in the EnerGov system history shows that the initial fire inspection of Mr. Thangavel's building was conducted on December 31, 2019. The inspection failed and the building was reinspected on January 7, 2020, and failed again. On April 10, 2020, the building was reinspected and passed. As part of the process, Mr. Thangavel was required to submit to the Miami Beach Fire Prevention Division a completed Annual Single Station Smoke Detectors Inspection/Test Report. That report was completed and dated April 2, 2020. In the section of the form, "TYPE OF OCCUPANCY (SPECIFIC USE)", it states, "Short-term rental" (Exhibit 8).

#### CU/BTR Issuance

The final step in the process ends where it began--with the Finance Department--for the issuance of the CU/BTR. The information contained in the EnerGov system history shows that this took place on May 19, 2020. An email was uploaded in the system that was sent to Mr. Thangavel on May 19, 2020, from an employee who is no longer with the City, which informed Mr. Thangavel that the only thing left to complete for the issuance of the BTR was payment and the resort tax application. The system shows that all required fees were paid, and the attachments included the email message referenced above and the completed smoke detector form (Exhibit 8) referenced above. It also included a copy of the issued CU/BTR license number BTR008501-12-2019 issued to 1330 15<sup>th</sup> Street LLC on May 19, 2020, for code 95000900 "APARTMENT ROOMS" and code 95700000 "Apartment buildings (rental), not including kitchens and bathrooms" (Exhibit 4).

The process began on December 27, 2019, and the CU/BTR was issued on May 19, 2020. As previously referenced, the BTR process was ultimately reviewed by a Financial Analyst III, who also did not question the aforementioned issues with the application. Some of the delay in the process was due to the pandemic. However, the major delay was due to failed fire inspections that were resolved and passed in April 2020.

The codes that appear on the BTR are occupational codes from the schedule of taxes found in City Code Section 102-379. The codes relate to a business tax category and the amount of tax. The resort tax application that Mr. Thangavel completed and submitted by email to the Finance Department on May 19, 2020, has "HOTEL/MOTEL" marked as the type of business. However, on the resort tax business account established for 1330 15<sup>th</sup> Street, the State license type is listed as "Apartment" when in fact, the license issued by DBPR is "TRANSIENT APARTMENT." The business type is listed as "APARTMENT" despite Mr. Thangavel's application identifying the kind of business as "HOTEL/MOTEL."

There is no explanation why the business type was listed as "Apartment" even though the application that was received listed it as "HOTEL/MOTEL" or evidence of communication with Mr. Thangavel or the Permit Doctor employees to clarify the discrepancies. The summary of events by Mr. Guzman previously referenced in this report states as follows:

Also, on May 19, 2020: A new Resort Tax (RTX) account was setup by the Finance Department. Both the BTR and RTX accounts were created based on the Florida State License (#TAP2330379), which is for an Apartment building.

The State of Florida issues transient apartment licenses and non-transient apartment licenses. The difference is the minimum period of time the apartment is rented to guests. Transient apartments are rented more than three times in a calendar year for periods less than 30 days or 1 calendar month, whichever is less. Non-transient apartments are rented for periods of at least 30 days or 1 calendar month, whichever is less. Listing the State license type on the resort tax account as "Apartment" does not capture the actual type of license that the State issued to Mr. Thangavel.

#### Current Certificate of Use and Business Tax Receipt Process

The method that was used to process and review Mr. Thangavel's combined Certificate of Use (CU) and Business Tax Receipt (BTR) application was changed between June and August 2020. The City moved to a predominately online application process which is accessed from the City's website, called Citizen Self Service (CSS). The City continues to use the existing EnerGov system for the review process. The application for a CU and BTR is no longer a single application. The CU and BTR application processes are independent of each other.

As noted above, the first step in obtaining a license to do business is to obtain a Certificate of Use. The issuance of a CU is under the authority of the Planning and Zoning Department. The CU designation provides confirmation that the intended use at a specified location is consistent with the City's Land Development Regulations.

The City's Information Technology Department provided the OIG assistance in replicating the current application and review process for a CU and BTR. The application for a CU in the CSS portal is a six-step process that includes (1) Locations, (2) Type, (3) Contacts, (4) More Info, (5) Attachments, and (6) Review and Submittal. Throughout the process, there are required fields that, if not completed, will not allow the applicant to move to the next step.

There are only two places in the process that allow the applicant to provide information about the specific use of the business; the first is step two, which has a free text box that says "Description." This text box **is not** (emphasis added) required, which means if one does not complete it, the applicant can move to the next step. The second is step four which allows the applicant to select a type of business from a mandatory checkbox list of eighteen types of businesses, and the last check box is "None of the above." If the "none of the above box" is checked, it does not provide

a free text box or any other information regarding other specific types of businesses. There is no check box for lodging establishments. This step also includes instructive information about Certificates of Use, Business Tax Receipts, and Conditional Uses.

Step five is for attachments, and it only requires a floor plan to be attached. Other documents may be attached but are not required. The final step is where the applicant reviews the inputted information and submits it for review. Once the application is submitted, a CU number is created, and the screen shows in green that states the following:

Your license application was submitted successfully, No fees are due at this time; we will review your application, and we will be in touch with you shortly.

The review process for the CU includes a Planning Department zoning approval and a Fire inspection for each application. Once the Fire inspection approval is entered into the system, the CU is automatically issued. The review of the process with the IT department showed a drop-down list of available uses for the reviewer to select from, and there is a free-form text box for notes. Ricardo Guzman of the Planning Department also provided the OIG with the list of specific uses. It consists of a comprehensive list in alphabetical order, which includes multiple lodging uses, including hotel, hostel, micro apartment units, transient non-residential, transient residential (short-term rental), and bed and breakfast inn. Mr. Guzman advised the OIG that the selected use, along with the notes, would appear on the issued Certificate of Use; for example, for a suite hotel, the approved use would be "Hotel," and the note would identify "Suite Hotel." However, such a list is unavailable for the applicant to choose from when applying for the CU.

A Certificate of Use is required to obtain a Business Tax Receipt, which is the license to operate a business in the City. The BTR occupation code and business tax category are based on the CU designation and the State license (if applicable). Therefore, it is of the utmost importance that the party seeking to obtain a CU has access to a process that provides all the information needed to apply for the **specific use** (emphasis added) that is being sought.

The application for a BTR in the CSS portal uses the same six-step process as the CU. It also has required fields to be completed. In step two, "Type," there is a free text box for the business description, which is not required, and a free text box for the BTR description, which is not required. However, there is a link, "Select Industry Classification," that takes the applicant to a comprehensive list of categories which includes "Accommodation & Food Services" along with other broad industry categories. Once a category is selected, it opens a subcategory list that replicates the occupational codes and business tax categories in the City Code. Step four, "More Info," requires the Certificate of Use number to be entered. The only attachment that is required is an executed lease or recorded warranty deed. Other attachments may be added. Once the application is submitted, a BTR number is created, and the screen shows in green stating the following:

Your license application was submitted successfully, No fees are due at this time; we will review your application, and we will be in touch with you shortly.

The review process for the BTR follows the same process through the EnerGov system. The disciplines that are assigned for the review are dependent on the type of BTR that is going to be issued.