

**DESIGN REVIEW BOARD**  
**City of Miami Beach, Florida**

MEETING DATE: September 05, 2017

FILE NO: DRB17-0147

PROPERTY: **1664 Lenox Avenue**

APPLICANT: NZR, LLC dba Chotto Matte

LEGAL: See attached 'Exhibit A'

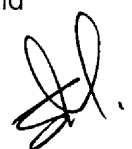
IN RE: The Application for Design Review Approval for the approval of a variance to exceed the allowable hours of operation for an accessory outdoor bar counter associated with a new restaurant located within the interior courtyard of the property.

**ORDER**

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

**I. Design Review**

- A. The Board has jurisdiction pursuant to Section 118-252(a) of the Miami Beach Code. The property is not located within a designated local historic district and is not a individually designated historic site.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Design Review Criteria 2, 3, 5, 9, 11, and 15 in Section 118-251 of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-251 if the following conditions are met:
  1. Revised elevation, site plan and floor plan drawings for the proposed addition at 1664 Lenox Avenue shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
    - a. Sound attenuating materials shall be installed within the open air courtyard of the restaurant space structure, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
    - b. The final design and details, including materials and exterior finishes of the "pivot-able" entrance wall shall be provided in a manner to be reviewed and



approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

- c. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
- d. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.

**In accordance with Section 118-262, the applicant, or the city manager on behalf of the city administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by the City Commission, except that orders granting or denying a request for rehearing shall not be reviewed by the Commission.**

## II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s):
  - 1. A variance to exceed the allowable hours of operation for an accessory outdoor bar counter associated with a new restaurant located within the interior courtyard of the property. Specifically, the applicant is seeking to extend the closing hours from 12:00 a.m. (midnight) to 2:00 a.m.
- A. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the

terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

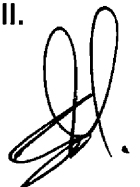
- B. The Board hereby grants the requested variance(s) and imposes the following condition based on its authority in Section 118-354 of the Miami Beach City Code:
1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
  2. The outdoor bar area immediately under the open courtyard shall cease operations at 2:00 am and may not open for business until 8:00 am daily.
  3. The Design Review Board shall retain jurisdiction of this file. The applicant must present a progress report to the Board three (3) months after obtaining a City business tax receipt; including a final sound transmission report which includes the performance of sound systems and sound attenuation devices shall be submitted to staff for review and approval. The Board shall then determine the necessity and timing of subsequent reports, in a non-substantive manner, including modifications to the hours of operation, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports.
  4. The patron occupant load shall be a maximum of 247 persons, or as determined by the Fire Marshall, whichever is lower.
  5. Music shall be limited to ambient background music only and no dance hall or entertainment license shall be approved, without Planning Board approval.
  6. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study.
  7. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
  8. Except as may be required by the Fire, Building, or Life Safety Codes, no loudspeakers shall be affixed to or otherwise located on the exterior of the premises, including the interior open courtyard.



9. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk/public area immediately adjacent on North Lincoln lane and the rear, in a clean condition, free of all refuse, at all times.
10. This approval is granted to NZR, LLC dba Chotto Matte only. Any change of operator, or ownership by fifty (50) percent or more of stock ownership, partnership interest, or the equivalent, shall require review and approval by the Design Review Board as a modification to this Order. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the Variance approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address problems and to determine the timing and need for future progress reports.
11. Applicant agrees that in the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, in a manner to be reviewed and approved by staff.
12. The Design Review Board shall retain the right to call the operators back before them and modify the hours of operation should there be issuance of written warnings and/or notices of violation about loud, excessive, unnecessary, or unusual night noise.
13. If the outdoor bar use should cease for any reason (except for temporary closure during a season or remodeling, both for a period up to six (6) months, excluding periods during which an active building permit is in effect or there is evidence of non-intent to abandon the premises), the variance shall be subject to Section 118-356, City Code, for revocation or modification of the variance.
14. The property owner shall be responsible for compliance with all of the conditions of this variance. The current operator and any subsequent operators of the business shall be specially apprised of all conditions. Subsequent operators shall be required to appear before the Design Review Board to affirm their understanding of the conditions listed, herein.
15. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, shall be deemed a violation of this Order and subject to the remedies as described in the City of Miami Beach Code.

**The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.**

**III. General Terms and Conditions applying to both 'I. Design Review Approval and 'II. Variances' noted above.**



- A. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
- B. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- C. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
- D. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
- E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- F. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the **application** is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "New Restaurant for CHOTTO MATTE LTD", as prepared by **Charles H. Benson** dated May 15, 2017, and as approved by the Design Review Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and



void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

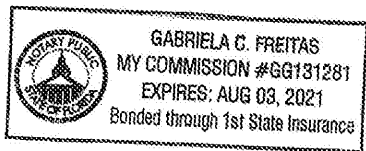
Dated this 14<sup>th</sup> day of September, 2017.

DESIGN REVIEW BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]  
JAMES G. MURPHY  
CHIEF OF URBAN DESIGN  
FOR THE CHAIR

STATE OF FLORIDA            )  
                                          )SS  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of September 2017 by James G. Murphy, Chief of Urban Design, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.



[Signature]  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: 08-03-2021

Approved As To Form: \_\_\_\_\_  
City Attorney's Office: [Signature] ( 9/14/17 )  
Filed with the Clerk of the Design Review Board on [Signature] ( 9-18-17 )

[Handwritten Signature]

## 'Exhibit A'

## Legal Description

LOTS 7 AND 8, BLOCK 39, "PALM VIEW SUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 29 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, LESS THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF LOT 7, BLOCK 39, "PALM VIEW SUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 29 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 7;

THENCE SOUTH 00°48'26" EAST ALONG THE WEST LINE OF SAID LOT 7, A DISTANCE OF 22.02 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHEAST;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 8.00 FEET, A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 12.57 FEET;

THENCE NORTH 89°08'55" EAST ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 22.02 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHEAST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 30.00 FEET, A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 47.15 FEET TO THE POINT OF BEGINNING.

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI/DADE COUNTY, FLORIDA; CONTAINING 180 SQUARE FEET, MORE OR LESS.

