

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: September 05, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: DRB17-0147
1664 Lenox Avenue

The applicant, NZR, LLC d/b/a Chotto Matte, is requesting 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.

RECOMMENDATION:

Continue to a future meeting date.

HISTORY:

February 07, 2006—The Design Review Board approved the renovation and alteration of the existing building at 1111 Lincoln Road, pursuant to DRB File No. 19018. The project included the addition of a roof-top restaurant and additional office space and ground level retail, as well as the construction of a new two-story mixed-use building and a new seven-story mixed-use parking structure at the southwest corner of the site.

January 06, 2015—The Design Review Board approved a new two-story mixed-use structure (subject property) to replace an existing surface parking lot and the partial demolition of one floor of office space in an existing eight-story office building to accommodate additional parking and restaurant space.

October 06, 2015—The Design Review Board approved façade and site plan modifications to the subject structure. The front façade of the subject building was approved as four pivoting panels capable of raising and lowering to each tenants' preference. Additionally, a variance was approved for a proposed vehicular ramp in the 1111 garage that was not previously identified.

December 01, 2015—The Design Review Board approved plan modifications to the 1111 parking garage structure that included an exterior open-air staircase along the existing eight-story office building.

April 05, 2016—The Design Review Board approved plan modifications to the new two-story mixed-use structure. Specifically, the applicant is requesting site plan modifications and a new variance to reduce the pedestal rear setback for a trash room structure.

The application was originally scheduled for the July 07, 2017 but was continued to the September 05, 2017 DRB meeting due to change in ownership of the subject property. This item has been re-noticed.

LEGAL DESCRIPTION:

See attached 'Exhibit A'

SITE DATA

Zoning:	CD-3 (Commercial, High Intensity)
Future Land Use:	CD-3 (Commercial, High Intensity)
Existing Use/Condition:	Mixed-use- Commercial/Residential
Proposed Use:	Same

The overall site consists of three specific areas: the 1111 Lincoln Road parking garage with retail and residential, the eight-story SunTrust office building, and the two-story mixed use building that replaced a former surface parking lot (1666 Lenox Avenue). The restaurant as part of this application is occupying the rear portion of the nearly completed two-story mixed use building.

THE PROJECT:

The applicant has submitted plans entitled "New Restaurant for CHOTTO MATTE LTD", as prepared by **Charles H. Benson** dated May15, 2017.

The applicant is requesting the following variance:

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.
 - Variance requested from:

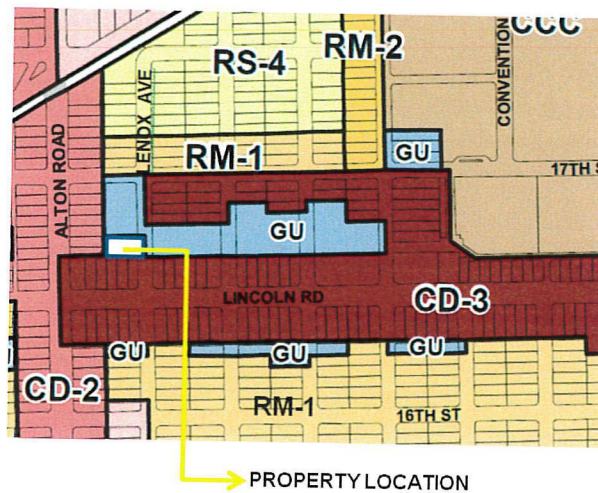
Sec. 142-334 - Accessory uses.

The accessory uses in the CD-3 commercial, high intensity district are as follows:
(2) Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.

Chotto Matte is a new restaurant concept located on the west side of the ground floor of the two-story mixed-use property. The building includes an open courtyard directly above the bar located in the restaurant. Since the space is not fully enclosed, for zoning purposes, the bar is considered as an outdoor bar and it is restricted to be operated no later than 12:00 a.m. (midnight). The applicant is seeking a variance to extend the operation of the bar from 12:00 a.m. (midnight) to 2:00 a.m.

According to the submitted plan, the total occupant load of the space is 247. Patrons will gain access to the restaurant through the main entrance which will be secluded along the southern property line, adjacent to Lincoln Lane North. A sound study has been provided that assesses the potential impact of noise from the double height ceiling opening, or the courtyard, on the surrounding area. The study, dated April 18, 2017, prepared by Edward Dugger + Associates (ED+A), focuses on the potential impact to the north and south RM-1 zoned properties as noted on page 2 of such report. See location of the properties zoned

RM-1 in reference to the property in the zoning map below. The report is based on the impact on the residential uses located in those districts, specifically at 360' from the property. A peer review prepared for the City by Arpeggio, LLC, reviewed the applicant's sound study report and agreed with the findings, but noted that the sound study neglected to assess the potential impacts of the nearest residential units, specifically those in the same building on the second floor.



In addition, there are some inconsistencies and lack of information on the documents and plans provided in reference to an operable window/door that seems to pivot open and shut, as well as the lack of speaker locations being identified on the plans. Further, the report suggests the use of acoustically absorptive materials specifically within the interior of the cylindrical cone of the courtyard to mitigate the noise spread. Details of these elements have not been identified on plans for the peer review or for staff evaluation. Based on the lack of information provided and the conclusions of the peer review, staff is unable to make a conclusive determination regarding the impact on the immediately adjacent residential uses at the second floor of the subject building and on the residential uses across the street on the west and south sides of the building.

The existence of the open courtyard is deemed as practical difficulty by the applicant to operate the restaurant and bar, as noted in the letter of intent. However, the restaurant is not limited to the hours of operations, only the bar area is limited up to 12 am. Staff believes that the applicant needs to provide additional information on the sound attenuation measures as noted above, as well as provide a more substantiated reason as to why the closing of the bar at 12:00 am qualifies as a practical difficulty.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents with the application **DO NOT** comply with the following hardship criteria, 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.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the following sections of the City Code, aside from the requested variance. The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

COMPLIANCE WITH DESIGN REVIEW CRITERIA:

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria are found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
Not Applicable
2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
Not satisfied; a variance is required.
3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably

necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.

Not satisfied; a variance is required.

4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Satisfied
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Not satisfied; a variance is required.
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Satisfied
7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.
Not Applicable
8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.
Not Applicable
9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.
Not Satisfied; a lighting plan has not been provided.
10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.
Not Applicable
11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

Not Satisfied; sound buffering elements have not been provided.

12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).
Not Applicable
13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.
Not Applicable
14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.
Not Applicable
15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).
Not Satisfied; a variance is required due to the restaurant's proximity to residential uses.
16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.
Satisfied
17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.
Not Applicable
18. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the City Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.
Not Applicable
19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.
Not Applicable

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
Not Applicable
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Not Applicable
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Not Applicable
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Not Applicable
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.
Not Applicable
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.
Not Applicable
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
Not Applicable
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.
Not Applicable
- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.
Not Applicable
- (10) Where feasible and appropriate, water retention systems shall be provided.
Not Applicable

STAFF ANALYSIS:
DESIGN REVIEW

On January 06, 2015, the Design Review Board approved the design for the construction of a new two-story mixed-use building located on the corner of Lincoln Lane and Lenox Avenue. The configuration of the program identifies smaller ground floor retail spaces that front Lenox Avenue and a larger commercial space for a restaurant with an open courtyard facing Lincoln Lane and abutting the alley. The shell of the proposed design is nearing completion and the restaurant build-out is underway. The applicant is requesting a variance from the Design Review Board to extend the closing hours of the courtyard bar from 12:00 a.m. (midnight) to 2:00 a.m.

Within the subject restaurant space is a nearly 17'-0" high open ceiling with a retractable roof. The applicant, Chotto Matte, is proposing a 247-seat restaurant that is comprised of a reception area, two lounges, a large dining area, a sushi bar, a cocktail bar, a robata bar overlooking an open kitchen, a prep area with corresponding back-of-house spaces, and restrooms. The sushi bar and adjacent cocktail bar are proposed below the opening that is clad in burnt wood. The opening's walls taper inward towards the roof, where landscape planters are proposed along the perimeter.

The applicant has provided a Sound Study Report to assess the potential impact of noise and sound since the restaurant's cocktail bar is open to the outside. Prepared by Edward Dugger + Associates (ED+A) and dated April 18, 2017, the report finds that the proposed restaurant will have negligible impact on neighboring properties. The Sound Study Peer Review prepared for the City by Arpeggio, LLC, reviewed the sound study report and agreed. However, the peer reviewer did note that the report did not assess the potential impacts of the nearest residential units, specifically those in the same building on the second floor.

ED+A's report makes recommendations to lessen the impact of noise that includes that music be limited to ambient music, that all speakers be directed inward toward the property and that their output be digitally limited with a permanently-installed signal processing device, and that the ceiling opening be clad with acoustically absorptive material. Staff is supportive of these recommendations. Revised plans and documents have been submitted to include these. Staff recommends that the proposed wood cladding for the ceiling opening be changed to a sound absorptive material.

VARIANCE REVIEW

As noted in the project section of the report, the sound study submitted by the applicant does not address the impact on the immediately adjacent residential uses. Staff believes that this information is needed to demonstrate that the extension of hours of operations of the outdoor bar will not have a negative impact on the adjacent residential uses. Additionally, staff believes that the applicant needs to better substantiate how the 12:00 a.m. closing of the bar addresses the practical difficulties standards.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be **continued** to the December 05, 2017 Design Review Board meeting in order to address the concerns delineated herein. However, should the Board find that the variance requested satisfies 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, staff recommends that the project be subject to the conditions enumerated in the attached Draft Order which address the inconsistencies with the aforementioned Practical Difficulty and Hardship criteria, as applicable.

TRM/JGM/IV

'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.

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 on the underside of the retractable roof area and 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.
6. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study.
7. Special events pursuant to the Miami Beach City Code, associated with the proposed establishment, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
8. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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,

Filed with the Clerk of the Design Review Board on _____ ()

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'Exhibit A'

Legal Description

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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;

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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.