GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16601-A of NJA Development Partners, L.P./Daniel and Mary Loughran Foundation, Inc., pursuant to 11 DCMR §§3104.1 and 3103.2, for a special exception, under §411.11 of the Zoning Regulations, to allow multiple roof structures not meting the normal setback requirements , for a variance from the requirement of §1709 to use Transferable Development Rights (TDRs), and for a variance from the residential recreation space requirements of §773.3. The requested relief is necessary to permit the construction of a 14-story apartment house and hotel in the C-3-C District in Square 741, located at the intersections of New Jersey Avenue, K Street, L Street and 2nd Street, S.E. (Square 741, lot 37, formerly known as Lots 7, 8, 13, 14, 16-18, 20-36, 801, 803, 804, 807-809, and a public alley to be closed)

HEARING DATE:	September 19, 2000
DECISION DATE:	September 26, 2000
FINAL DATE OF ORDER:	December 13, 2000
MODIFICATION ORDER DECISION DATE:	April 5, 2005

ORDER ON MOTION TO MODIFY APPLICATION AND DELETE CONDITION NO. 5

By Order dated December 13, 2000, this Board approved Application No. 16601 to allow the construction of a fourteen story apartment house and hotel in the C-3-C District which is in the Capitol South Receiving Zone. The property that is the subject of the Application is in Square 741, bounded by New Jersey Avenue and 2nd, K and L Streets, S.E. At the time of the approval, the property was known as Lots 7, 8, 13, 14, 16-18, 20-36, 801, 803, 804, 807-809, and a public alley to be closed. The property is now a single record lot, Lot 37. The relief approved by the Board was a special exception under §411.11 to allow multiple roof structures not meeting the normal setback requirements, a variance from the requirements of §1709 to use transferable development rights (TDRs) and a variance from the residential recreation space requirements of §773.3.

The Board's approval included ten conditions. The conditions were based on the recommendations of the Office of Planning (OP) and the Advisory Neighborhood Commission. Condition No. 5, derived from the OP recommendation, requires the Applicant to "reserve at least 20% for the total number of apartment units for affordable housing for a minimum of 20 years subject to the terms and conditions of an agreement with DCHFA and its bond financing."

BZA
Case No. 16601
Exhibit No. 46

Board of Zoning Adjustment
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CASE NO.16601
EXHIBIT NO.46

The current owners of the subject property, NJA Development Housing LLC and NJA Hotel LLC, the successors in interest to the original applicants, filed a Motion on March 22, 2005, requesting the Board to modify the relief granted in the application and to eliminate Condition No. 5. The relief would be modified to eliminate the request for a variance from §1709 and to delete the requirement that twenty percent of the residential units be for affordable housing. The Motion argued that Condition No. 5 was a quid pro quo for the TDR variance and since the TDR variance was not pursued, the condition is no longer relevant.

The current owners requested that, if necessary, the Board waive the requirements of §3129 of the rules, which requires that a motion for modification of plans be filed within six months of the date of the Board's order. In this case, the developer sought clarification from the Zoning Administrator that, since the development had not availed itself of the relief granted from §1709 and the wording of Condition No. 5 was keyed to the financing obtained from the DCHFA, Condition No. 5 no longer applied. The Zoning Administrator determined that the developer should seek an Order from the Board addressing the situation and the subject Motion was filed thereafter. The Board finds that the facts set forth above constitute good cause for waiving the rules to allow consideration of the Motion.

The Board received no comment on the Motion from Advisory Neighborhood Commission 6D, the ANC within which the property is presently located.

Based upon the Motion and the facts recited therein, the Board concludes that the Applicant has met its burden for modifying the Application and requesting deletion of Condition No. 5. Conditions imposed by the Board must be reasonably related to the relief sought. Given that the application as amended no longer requires a variance from §1709, the condition related to the approval of that relief is no longer relevant or appropriate. It is therefore **ORDERED** that the application be **AMENDED** to delete the variance granted from §1709 and that Condition No. 5 of BZA Order No. 16601, dated December 13, 2000, be **DELETED**. All the other conditions of BZA Order No. 16601 shall remain in effect.

VOTE: **4-0-1** (Geoffrey H. Griffis, John A. Mann, II, Ruthanne G. Miller and Curtis L. Etherly, Jr., having read the record and in favor of the motion; the Zoning Commission member not participating, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 07 2005

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16601-A

As Director of the Office of Zoning, I hereby certify and attest that on APR 07 2005 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning