

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18915 for Aminta, LLC, pursuant to 11 DCMR § 3103.2, for variances from the floor area requirements under § 771.2¹, the lot occupancy requirements under § 772.1, and the off-street parking requirements under § 2101.1, to allow the construction of a mixed-use residential structure with ground floor retail in the C-2-A District at premises 1330-1336 Pennsylvania Avenue, S.E. (Square 1044, Lots 29 and 802).

HEARING DATES: February 10, 2015, April 7 and April 28, 2015
DECISION DATE: April 28, 2015

DECISION AND ORDER

On November 3, 2014, Aminta, LLC (the "Applicant"), the owner of 1330-1336 Pennsylvania Avenue, S.E. (Square 1044, Lots 29 and 802) (the "Property"), filed a self-certified application with the Board of Zoning Adjustment (the "Board" or "BZA") for area variance relief under 11 DCMR § 3103.2 to allow the development of a mixed-use residential structure with ground floor retail where the structure does not conform to the residential lot occupancy, floor are ratio ("FAR") or parking requirements of the Zoning Regulations. The Board held a public hearing on the application on April 7, 2015 and continued the hearing to April 28, 2015. For the reasons discussed below, the Board voted to approve the requested relief for residential lot occupancy and parking, and deny the requested FAR relief on April 28, 2015.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2. In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was decided by the Board of Zoning Adjustment ("the 1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text. Also all zone districts described in this order were renamed as of that date. The repeal and replacement of the 1958 Regulations and the renaming of the zone districts has no effect on the validity of the Board's decision or the validity of this order.

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filed for this project and to deny any application for which additional or different zoning relief is needed.

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.1, notice of the hearing was sent to the Applicant, all individuals and entities owning property within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 6B, the District Department of Transportation ("DDOT"), the Office of Planning ("OP") and the Councilmember for Ward Six. The Applicant posted placards at the Property regarding the application and public hearing, and timely submitted an affidavit to the Board to this effect.

Applicant's Case. The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP. Jeff Goins, the project's architect, was present on the Applicant's behalf along with Samuel Fuentes, an authorized agent of the Applicant.

OP Report. OP reviewed the area variance application and by a report dated March 31, 2015, recommended disapproval of the FAR variance, and stated that it was not opposed to the lot occupancy and parking variance. (Exhibit 38.) OP's Representative Stephen Cochran, was present on both hearing dates and affirmed the recommendations found in OP's report. OP found that the Applicant failed to establish the nexus between the high core factor of the property due to its pentagonal shape and the requested FAR relief. OP also found that the Applicant failed to consider alternative layouts, unit types, fewer floors, or a smaller building. Consequently, OP concluded that approval of the requested FAR relief would be substantially detrimental to the intent of the Zoning Regulations.

With respect to residential lot occupancy, OP found that the remarkably narrow western end of the Property creates a practical difficulty. OP stated that "at the permitted 75% residential occupancy, there would be a practical difficulty in achieving reasonable configurations for residential units on such an irregularly shaped site." OP also found that the shape and size of the Property constituted an exceptional condition that precluded the construction of below-ground parking. Finally, OP concluded the approval of the lot occupancy and parking variance would not be detrimental to the public good and would not cause harm to the Zoning Regulations.

DDOT Report. By memorandum dated March 31, 2015 DDOT indicated that "DDOT does not object to the Applicant's request for variance." (Exhibit 39.)

ANC Report. The Property is located within the area served by ANC 6B, which is automatically a party to this application. ANC 6B filed a letter and resolution, dated February 2, 2015, indicating that ANC 6B, at a scheduled and public meeting on January 13, 2015, which was properly advertised and where a quorum was present, voted 8-0, with two abstentions, recommending approval of the application. (Exhibit 33.)

Party Status. There were no requests for party status. Accordingly, the parties to the case were the Applicant and ANC 6B.

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Persons in Opposition. No persons testified in opposition at the hearing, and the Board received no letters in opposition to the Application.

Persons in Support. The Applicant submitted a petition with over 145 signatures in support of the Application. (Exhibit 37D.) The Capital Hill Restoration Society Zoning Committee filed a letter dated February 9, 2015, indicating that at a meeting on January 7, 2015, the committee considered the Applicant's application and voted unanimously to support the Application. (Exhibit 34.)

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The Property is located at 1330-1336 Pennsylvania Avenue, S.E. (Square 1044, Lots 29 and 802).
2. The Property contains approximately 3,979 square feet of land area.
3. The Property is a through lot, with approximately 94 feet of frontage along Pennsylvania Avenue, S.E. and approximately 106 feet of frontage along G Street, S.E.
4. The Property is currently improved with a multistory commercial structure.
5. The Applicant currently owns and operates La Lomita, a restaurant, at the Property.
6. The Property is located less than 500 feet from the Potomac Avenue Metro station.
7. The Property is not located in an historic district.
8. Square 1044 is bounded by G Street, S.E. to the north; 14th Street, S.E. to the east; and Pennsylvania Avenue to the south and west.
9. Square 1044 is occupied by commercial uses and attached rowhouses.
10. The Property is located within the C-2-A District.
11. The C-2-A District "is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core." (11 DCMR §720.2.)
12. Across the street, at 1350 Pennsylvania Avenue, S.E., there is large mixed-use building with a Harris Teeter.

The Applicant's Project

13. The Applicant requests relief to convert a two-story commercial structure into a mixed-use residential building with a restaurant on the first floor.

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14. The first floor restaurant will continue to be La Lomita.
15. The Applicant proposes to have 10 residential units on the remaining floors; one of which would be an inclusionary zoning (“IZ”) unit.
16. The Applicant has provided a Transportation Demand Management (“TDM”) Plan. (Exhibit 37B.)

The Zoning Relief Requested

Residential Lot Occupancy (§ 772.1)

17. Under § 772.1 and § 2604, the maximum permitted lot occupancy for a residential use in the C-2-A is 75%, while the maximum permitted lot occupancy for a commercial use is 100%.
18. The proposed structure has a lot occupancy of 89% throughout.
19. Therefore, relief is required for lot occupancy, based on the proposed residential use of the Property.

FAR (§ 771.2)

20. Pursuant to § 771.2 and § 2604, the total maximum FAR permitted is 3.0, with up to 1.5 being devoted to nonresidential use.
21. The proposed project has an FAR of 3.5 and requires relief from § 771.2.

Parking (§ 2101.1)

22. Apartment use in the C-2-A District requires one parking space for every two dwelling units.
23. The project, at 10 units, requires five parking spaces.
24. The project does not provide any parking spaces; therefore, parking relief is needed.

Exceptional Circumstance

25. The Property is a flat, irregularly-shaped, triangular lot.
26. The Property is the only irregularly-shaped, triangular lot in the Square.

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27. The Property is a narrow through lot with 106 feet of frontage on G Street, S.E. and 93.6 feet of frontage on Pennsylvania Avenue, S.E.
28. The lot narrows from 65 feet at its eastern end to 16 feet at its western end.
29. The Property is currently nonconforming with respect to lot occupancy. The permitted lot occupancy in the C-2-A District is 60%. The existing structure occupies 89% of the lot.
30. The Property is currently nonconforming with respect to commercial FAR. The maximum permitted non-residential FAR in the C-2-A District is 1.5.

Practical Difficulty

31. Due to the exceptional circumstances at the Property, including the irregular triangular shape and the narrowness of the lot on the western end, strict application of the zoning regulations with respect to lot occupancy and parking would result in a practical difficulty. However; the Applicant has failed to demonstrate how a development complying with the FAR requirements would be unduly burdensome or that all the additional FAR requested is needed.
32. The Applicant has provided testimony that it would be structurally efficient to continue the proposed lot occupancy throughout the entire structure.
33. The Applicant submitted evidence into the record demonstrating that the lot is able to visually accommodate higher residential lot occupancy.
34. The Applicant has provided testimony regarding the higher than average core factor the proposed structure has due to its shape. The Applicant noted that the maximum industry standard for a residential building is 20%; this project has a core factor of 26%.
35. The Applicant submitted evidence demonstrating that reducing the footprint of the structure would exacerbate the problems associated with the high core factor and would result in an inefficient partial fourth floor.
36. Due to the small irregular lot size and high core factor, reducing the FAR would also result in the elimination of the IZ unit; however, that would not be unduly burdensome to the owner.
37. The Applicant submitted unpersuasive testimony attempting to establish the financial burden providing fewer units would have on the marketability of the units.
38. The Applicant demonstrated that providing parking was not feasible at grade due to the Property's irregular triangular lot shape and size.

39. The Applicant submitted evidence noting the extreme burden providing underground parking would present. The narrowness and triangular shape of the lot makes providing the required parking spaces, drive aisles, and access ramps infeasible.
40. The Applicant noted that there are Metro facilities beneath the Property; consequently, excavation of the Property would be severely controlled and limited by WMATA.
41. Additionally, as demonstrated in the site plan submitted by the Applicant, there are no curb cuts on the lot to allow vehicular access onto the Property.

CONCLUSIONS OF LAW

Standard of Review

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code §6-631.07(g)(3), to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (11 DCMR §3103.2.)

The District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." *See Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship" must be made for a use variance. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Applicant in this case is requesting area variances and therefore is required to show that the strict application of the zoning regulations would result in "practical difficulties." *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). The Court of Appeals has repeatedly held that "economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases." *Tyler, et. al. v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992) (internal citations removed) (*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)).

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(Reiterating in the context of an area variance that “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.”).

The Applicant is seeking a variance from the Zoning Regulations regarding (i) residential lot occupancy (§ 772.1); (ii) FAR (§ 771.2); and (iii) parking (§ 2101.1). As discussed below, the Board concludes that the Applicant has met its burden of proof for the requested lot occupancy variance and the parking variance. The Board concludes that the Applicant has failed to meet its burden of proof for the requested FAR variance.

Exceptional Circumstance

The Board concludes that, based on a confluence of factors, an exceptional circumstance exists at the Property. The Property is an irregularly-shaped, triangular lot. The Property is 65 feet wide at its widest point and narrows to only 16 feet at the western end. The Property is a narrow through lot that has considerable frontage along Pennsylvania Avenue, S.E., a major artery in the District, and G Street, S.E. The existing structure is nonconforming with respect to commercial lot occupancy and nonresidential FAR. Additionally, the Property is above Metro facilities controlled by WMATA.

Practical Difficulty

The Board concludes that the confluence of these exceptional and extraordinary conditions creates practical difficulties for the Applicant in complying with the requirements regarding lot occupancy and parking. The Board concludes that the exceptional and extraordinary conditions of the Property do not create a practical difficulty with respect to the Applicant’s compliance with the FAR requirement.

Lot Occupancy (§ 772.1)

The Applicant has demonstrated, and the Board concurs, that constructing a mixed-use structure on the Property would be practically difficult without lot occupancy relief due to the irregular lot shape and the narrowing of the lot on the western side. The triangular shape of the lot constitutes an exceptional condition that with only 75% lot occupancy would create a practical difficulty in designing reasonable configurations for residential units. Furthermore, the Board concludes that the increased lot occupancy is needed to address the inefficiency associated with high core factor having a triangular lot shape presents. Requiring the Applicant to comply with the residential lot occupancy requirements would simply serve to increase the already high core factor of the building and would result in inefficiently designed units. In light of the evidence presented by the Applicant, the Board concludes that the Applicant has demonstrated the need for variance relief for residential lot occupancy to allow mixed-use development at the Property.

Parking (§ 2101.1)

The Board concludes that compliance with the parking requirement would result in a practical

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difficulty. The parking requirement cannot be met as a result of the exceptional circumstances at the Property, particularly the narrowness of the lot. The creation of above-grade onsite parking is impractical. The lot shape and narrowness substantially limits the buildable area at the Property and requiring the Applicant to provide above-grade parking would severely diminish the limited buildable area.

Providing underground parking at the Property would be extremely burdensome as well. An underground parking facility at the Property would be difficult to achieve, expensive to construct, and highly inefficient. Further, the Property is located on top of Metro facilities; therefore, excavation of the Property would also be severely limited. Due to the lot's shape and narrowness, each parking space would be very expensive to construct. Moreover, the narrowness of the Property makes a multilevel underground parking structure that could accommodate the required spaces, drive aisles, and access ramps infeasible. Furthermore, there is no curb cut on Pennsylvania Avenue, S.E. or G Street, S.E. to access the Property.

FAR (§ 771.2)

The Board finds that the Applicant has failed to establish a nexus between the unique conditions of the Property and the requested FAR relief. The Board notes that the Property is irregularly shaped, exceptionally narrow at the west end and a through lot with very long frontage on Pennsylvania Avenue, S.E. and G Street, S.E. The Board also recognizes that the core factor of 26% is higher than the average 17-20% core factor residential structures typically have; however, the Board finds that the Applicant failed to demonstrate that alternative plans for the Property would be unnecessarily burdensome. The Applicant failed to fully explore alternative design options with fewer units, fewer floors, or a smaller building all together. The Applicant also failed to demonstrate that without 10 units the project would not be financially feasible. Therefore, the Board concludes that unique conditions of the Property do not result in a practical difficulty with respect to FAR.

No Detriment to the Public Good or Zone Plan

The Board concludes that there will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the requested lot occupancy and parking relief. The Board also concludes that granting FAR relief would have caused no substantial detriment to the public good, but granting such relief would impair the intent and integrity of the current Zoning Regulations.

The increased residential lot occupancy will not have a substantial impact on the public good or the zone plan. The Property is an end of row corner lot that is bordered by a District park on the western end. The Property's shape and considerable frontage along Pennsylvania Avenue, S.E. and G Street, S.E. give the Property an open feel. Further, since the Property is an end of row lot, the increased lot occupancy will not interfere with the light or privacy available to neighboring lots.

The Board also concludes that parking relief can be granted without detriment to the public good or zone plan. Due to the Property's proximity to public transportation, including the Potomac Avenue Metro station which is less than 500 feet away, several bus routes, carsharing and bikesharing options, variance relief for five spaces will not have a substantial impact on the community. In addition, the Applicant will implement the Transportation Demand Management Plan to promote the use of non-automotive transportation. The Board concludes that the availability of a variety of transportation options, particularly carsharing and proximity to the Metro, reduces the need for residents to own a vehicle. Thus, granting the parking variance will not be detrimental to the public good or zone plan.

Finally, the Board concludes that there will be no substantial detriment to the public good if the FAR variance were granted. The Applicant has established that the Property can accommodate a larger structure; however, the Board concludes that granting the FAR variance would have a substantial detriment to the intent of the Zoning Regulations. The Applicant has requested an additional 0.5 FAR above the permitted FAR but the Applicant has failed to demonstrate that an increased FAR is necessary for the project to move forward. The Board concludes that granting such a significant deviation from the permitted FAR provided for in the C-2-A Zoning District would impair the intent and integrity of the current Zoning Regulations.

Great Weight to ANC and OP

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. (D.C. Official Code §§1-309.10(d) and 6-623.04 (2001).) Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. ANC 6B unanimously supported the granting of the requested variances. The ANC found that the "project's impact on light, air, and privacy will be negligible, and the applicant's arguments in support of the requested variances are valid." The ANC did not discuss each variance request individually in their submission; therefore, while the Board agrees with the ANC position with respect to the lot occupancy and parking variance, the Board disagrees with the ANC concerning the Applicant's arguments regarding the FAR variance, for the reasons discussed in detail above. OP opposed the granting of the FAR variance and stated it "would not be opposed" to the residential lot occupancy and the parking variance. The Board agrees with OP's position.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the FAR requirements of § 771.2 but has met the burden of proof for variance relief pursuant to 11 DCMR § 3103.2 from the requirements for lot occupancy (§ 772.1) and parking (§ 2101.1) to allow the Applicant to develop a mixed-use residential structure with ground floor retail in the C-2-A District at premises 1330-1336 Pennsylvania Avenue, S.E. (Square 1044, Lots 802 and 29).

Accordingly, it is therefore **ORDERED** that the application is hereby **DENIED IN PART and GRANTED IN PART AND WITH THE FOLLOWING CONDITIONS:**

Transportation Demand Management Plan

1. The Applicant shall include in its condominium declaration and bylaws a provision that prohibits unit owners or their tenants from obtaining a Residential Parking Permit ("RPP") at the building from the D.C. Department of Motor Vehicles ("DMV") for the life of the project. The bylaws shall include consent and authorization to the Condominium Board to police and enforce this prohibition including authority to fine violators;
2. The Applicant shall record a covenant against the Property among the Land Records of the District of Columbia prohibiting any lessee or owner of the Property from obtaining an RPP at the building approved by this BZA Order for the life of the project.
3. The Applicant shall include a disclaimer in all unit purchase contract agreements informing the potential buyer of the RPP restriction and requiring the potential buyer to initial that they have read and understand the restriction.
4. The Applicant shall elect a representative each year who will be the contact person between the Property and the neighborhood, the representative's name and email shall be provided to the Office of Zoning and ANC Single Member District Representative.
5. The Applicant shall provide more than the required number of bicycle parking spaces in a covered and secure location within the building.
6. The Applicant shall provide each residential unit with a \$200 Smart Trip card, a Capital Bikeshare membership, or a car sharing membership for a period of five (5) years.
7. A TDM marketing program shall be established that provides detailed transportation information and promotes walking, cycling, and transit. An effective marketing strategy should consist of a multi-modal access guide that provides comprehensive transportation information. This information can be compiled in a brochure for distribution. The marketing program should also utilize and provide website links to CommuterConnections.com and goDCgo.com, which provide transportation information and options for getting around the District.
8. A TransitScreen shall be installed in the residential lobby to keep residents and visitors informed on all available transportation choices and provide real-time transportation updates. In addition, printed materials related to local transportation alternatives shall be made available to residents and retail employees upon request and at move-in for new tenants. Instructions shall also be made available to residents and retail employees describing the numerous available sources of real-time transportation updates and how to access transportation updates via multiple mediums.

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9. Residents who wish to carpool shall be provided detailed carpooling information as part of the marketing effort, and shall be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments.

VOTE: 4-0-1 (Lloyd J. Jordan, Jeffrey L. Hinkle, Marnique Y. Heath, and Michael G. Turnbull to DENY IN PART and APPROVE IN PART; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 21, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY

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BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.