

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**



**Application No. 20631-A of 723 Morton, LLC**, pursuant to 11 DCMR Subtitle Y § 704 for a modification of significance of the order in Application No. 20631 (issued April 7, 2022) to add, pursuant to Subtitle X § 1002, an area variance from the lot dimension requirements of Subtitle E § 202.1 and, pursuant to Subtitle Y § 705, for a time extension of the validity of the original order to allow a subdivision to create two new record lots and two new three-story attached buildings (flats), with one Inclusionary Zoning unit, in a Voluntary Inclusionary Development in the RF-1 zone at 723 Morton Street, N.W. (Square 2894, Lot 917).

**HEARING DATES:** May 8 and June 5, 2024  
**DECISION DATE:** June 5, 2024

**DECISION AND ORDER**

This self-certified request was filed on February 22, 2024 on behalf of 723 Morton, LLC (the “Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to grant the requests for modification and time extension.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by memoranda dated March 4, 2024 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Department of Buildings, Advisory Neighborhood Commission (“ANC”) 1E, the ANC in which the property is located, Single Member District ANC 1E03, the Councilmember for Ward 1 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on March 22, 2024 (71 DCR 3219).

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 1E were automatically parties in this proceeding. The Board received no requests for party status.

Applicant’s Case. The Applicant requested a modification of significance of an order issued in 2022 so as to add a request for an area variance from lot width requirements of Subtitle E § 202.1,

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District of Columbia  
CASE NO.20631A  
EXHIBIT NO.39

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as well as a time extension pursuant to Subtitle Y § 705 to extend the validity of the prior order for two years.

OP Report. By memorandum dated April 26, 2024, the Office of Planning recommended denial of the area variance requested by the Applicant but indicated no objection to the request for a time extension. (Exhibit 25.) OP reiterated its recommendation in a supplemental report dated May 29, 2024. (Exhibit 36.)

ANC Report. ANC 1E submitted a report indicating that, at a public meeting on April 24, 2024, the ANC voted to recommend approval of the requested relief with respect to both the area variance and the time extension. (Exhibit 24.)

**FINDINGS OF FACT**

1. The property that is the subject of these requests is located on the north side of Morton Street between Georgia and Sherman Avenues, with the address 723 Morton Street, N.W. (Square 2894, Lot 917).
2. The subject property is rectangular, approximately 31.4 feet wide and 142.5 feet deep. The lot area is 4,475 square feet.
3. The subject property is currently unimproved.
4. The subject property was previously configured as two tax lots. Each tax lot was approximately 15.7 feet wide and was improved with a row building.
5. In 2002, the two lots were combined into one lot. In 2013, a prior owner undertook construction of an apartment house (eight units in an attached building) at the subject property, without having obtained a building permit. The project was not completed and was eventually razed.
6. On February 28, 2022, the Applicant and the owner of the adjoining lot to the west of the subject property signed a contract for the sale of portion of the adjoining lot. The additional land would have allowed the Applicant to enlarge the subject property so as to achieve two lots, each 16 feet wide.
7. The building on the abutting lot to the east of the subject property is built to the side lot line that the two lots have in common.
8. By order issued April 7, 2022, the Board granted zoning relief requested by the Applicant to allow the subdivision of the subject property into two record lots and a new three-story attached building (two-unit flat) on each new lot. For each lot, the Board approved a special exception under Subtitle E § 201.4 to allow a lot width of 16 feet in a Voluntary Inclusionary Development and a special exception under Subtitle E § 205.5 to allow a rear

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wall of a row building to extend farther than 10 feet beyond the rear wall of a principal residential building on an adjacent property. The application was amended twice – to add and then to withdraw a request for an area variance from the lot width requirements – after the Applicant entered into the agreement to buy a portion of an adjoining lot. (See, Application No. 20631 (723 Morton, LLC; April 7, 2022).)

9. As shown on the architectural plans submitted in the original application (Exhibit 37 in Application No. 20631), the Applicant planned to provide one Inclusionary Zoning (“IZ”) unit in the flat built on the western lot.<sup>1</sup> The Applicant’s revised plans also depict one IZ unit in the flat proposed on the western lot (see Exhibit 33).<sup>2</sup>
10. In December 2022 the Applicant applied for building permits reflecting the zoning relief granted in the original order. A subdivision that incorporated land acquired from the owner of the adjoining lot was approved and recorded on February 3, 2023. However, the Department of Buildings subsequently cancelled the subdivision after the owner of the adjoining property declined to complete the sale.
11. On January 25, 2024, the Applicant received a letter from an attorney, sent on behalf of the owner of the adjoining property, informing the Applicant that the owner “no longer wanted to proceed with the sale of land.” (Exhibit 6.)
12. The Applicant requested a modification of the prior order so as to add a request for an area variance from the lot width requirement, seeking to allow a lot width less than 16 feet on one of the new lots. The Applicant did not modify the plans approved by the original order except to reflect that the building on the western lot would be 7.25 inches narrower than previously proposed.
13. The western lot will have a lot width of 15 feet, 4.75 inches and a lot area of 2,214.3 square feet.
14. The eastern lot will have a lot width of 16 feet and a lot area of 2,280 square feet, as approved in the original order.
15. Square 2894 is split zoned, where the eastern portion, along Georgia Avenue, is located in a Neighborhood Mixed Use zone (NMU-4/GA) and the remainder of the square is in a Residential Flat zone, RF-1.
16. The lots in the RF-1 portion of Square 2894 along Morton Street are generally between 12 and 25 feet wide. A majority of those lots have lot widths less than 18 feet. (Exhibits 6, 15.)

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<sup>1</sup> See Subtitle C, Chapter 10 (Inclusionary Zoning).

<sup>2</sup> The Applicant indicated at the public hearing that the IZ unit would be in the building on the 16-foot-wide lot, not in the narrower building. (Transcript of June 5, 2024 at 12.)

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17. The subject property abuts a public alley, 15 feet wide, along its rear (north) lot line.
18. The lots abutting the subject property to the east and west contain two-story residential buildings.
19. Properties to the north, across the public alley, generally contain low-rise apartment houses. The surrounding neighborhood character is moderate-density residential, with some medium-density residential and commercial development located nearby along Georgia Avenue.
20. The subject property is located in a Residential Flat (RF) zone, RF-1.
21. The RF zones are residential zones that provide for areas developed primarily with residential row buildings, but within which there have been limited conversions of dwellings or other buildings into more than two principal dwelling units. (Subtitle E § 101.1.)
22. The RF zones are intended to (a) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (b) allow for limited compatible non-residential uses; (c) allow for the matter-of-right development of existing lots of record; (d) establish minimum lot area and lot width for the subdivision and creation of new lots of record in RF zones; (e) allow for the limited conversion of single household dwellings and other structures for flats; and (f) prohibit the conversion of single household dwellings and flats for apartment house as anticipated in the RA zone. (Subtitle E § 101.2.)
23. The purpose of the RF-1 zone is to provide for areas predominantly developed with residential row buildings on small lots within which no more than two principal dwellings are permitted. (Subtitle E § 101.4.)

**CONCLUSIONS OF LAW**

The Applicant requested a modification of significance to add an area variance from the lot width requirements of Subtitle E § 202.1 to the relief previously approved by order issued April 7, 2022 in Application No. 20631 (issued April 7, 2022) to allow a subdivision to create two new record lots and two new three-story attached buildings (two-unit flats), with one IZ unit, in a Voluntary Inclusionary Development in the RF-1 zone at 723 Morton Street, N.W. (Square 2894, Lot 917). Although the Applicant phrased the new relief as an area variance from Subtitle E § 202.1,<sup>3</sup> the

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<sup>3</sup> Pursuant to Subtitle E § 201.1, the minimum lot width required for a row dwelling or flat in the RF-1 zone is 18 feet.

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Applicant submitted the request as a modification of the original order, which approved a special exception under Subtitle E § 202.4 to allow lot widths of 16 feet in a Voluntary Inclusionary Development, and the Applicant continued to propose to create two lots that would be improved with new flats in a Voluntary Inclusionary Development with one IZ unit. In reviewing the application for a modification of significance, the Board considered the request as a variance from the minimum lot width requirement for two flats in a Voluntary Inclusionary Development at the subject property, without the additional lot width that could have been achieved if the Applicant had been able to buy a portion of the adjoining lot.

Pursuant to Subtitle Y § 704, the Board may consider a request for a modification of significance of a prior order. The public hearing on a request for a significant modification must be focused on the relevant evidentiary issues requested for modification. (Subtitle Y § 704.6.) The scope of the public hearing must be limited to the impact of the modification on the subject of the original application, and does not permit the Board to revisit its original decision. (Subtitle Y § 704.7.)

In this case, the Board originally approved a special exception under Subtitle E § 202.4 to allow the subdivision of the subject property into two new record lots, each 16 feet wide, for the construction of two new buildings configured as two-unit flats, one containing an IZ unit, in a Voluntary Inclusionary Development. Because the Applicant was unable to complete the acquisition of a portion of an adjoining lot, the subject property could not be enlarged to 32 feet in width as was originally anticipated. Accordingly, the Applicant now seeks a modification that would approve a request for a variance from the lot width requirement to permit a subdivision in which one of the two new lots would not meet the lot width requirement for a Voluntary Inclusionary Development.

The Board is authorized under § 8 of the Zoning Act 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. *See* 11 DCMR Subtitle X § 1000.1.

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the report of ANC 1E, the Board concludes that the application has met the burden of proof for the requested variance. The Applicant requested an area variance from the lot width requirement of 16 feet for a Voluntary Inclusionary Development because one of the two lots created in the proposed subdivision would fail to meet the minimum width requirement by less than seven and a half inches. The Board has the flexibility to consider a number of factors when deciding whether to approve an application for a variance, including the weight of the burden of strict compliance, the severity of the variance requested, and the effect the proposed variance would have on the overall zone plan. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*,

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579 A.2d 1164, 1171 (D.C. 1990); *see also Washington Canoe Club v. District of Columbia Zoning Com'n*, 889 A.2d 995, 1001 (D.C. 2006).

For purposes of an area variance, the “extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; however, the critical requirement is that the extraordinary or exceptional condition must affect a single property.” *Metropole Condo. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016). The Board concludes that the subject property faces an extraordinary and exceptional condition as the result of a confluence of factors affecting only the subject property, including its relatively large size, its current undeveloped state, and the Applicant’s inability to acquire additional land to satisfy the now applicable lot width requirement for a subdivision into two lots.

Notwithstanding the use of the subject property historically as two row buildings on separate lots, the Applicant’s plan to build two detached dwellings at the subject property did not create any exceptional condition, because generally an applicant’s desire to utilize property for a certain use is not by itself sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972). Also, the Board was not persuaded by the Applicant’s claim of “zoning history” as a basis for approval of the requested variance. The Applicant relied on a 2002 subdivision (which eliminated two substandard lots in the creation of one new lot that met zoning requirements), an unsuccessful attempt by a prior owner to construct an apartment house without authorization, and the razing of the two row buildings formerly occupying the subject property. None of these events provided a basis for a determination that the subject property now faces an exceptional situation that would warrant approval of an area variance. *Contrast, De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233 (D.C. 1978) (Court affirmed Board order granting an area variance from minimum lot width requirement due to extraordinary situation concerning lot where (a) the original parcel was susceptible to subdivision into three conforming lots, zoning office personnel on three occasions implicitly found applicant’s lot conformed to width requirements, applicant and predecessor proceeded in good faith and dispute over lot width was due to actions of zoning officials which were later found to be in error, and (b) the failure of applicant’s lot to meet width requirement could not accurately be described as a direct consequence of sole and affirmative acts of applicant and predecessors in title where zoning department employees played significant part by approving three separate applications concerning subdivision of parcel creating lot).

However, the Board agreed with the Applicant and ANC 1E that the subject property, in its current configuration as a single lot, faced an exceptional circumstance especially as the largest undeveloped property in its vicinity. The application demonstrated that the majority of lots along Morton Street near the subject property are improved with row buildings on relatively narrow lots, including a significant number of lots that were created and improved before the establishment of the 18-foot minimum lot width requirement. The subject property is faced with an extraordinary or exceptional situation as the only vacant parcel in its vicinity; its size, which is excessively large for development consistent with the primary intent of the RF zone as the location of row buildings configured as no more than two principal dwellings; and the Applicant’s inability to acquire

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additional land so as to meet the minimum lot width requirement for the creation of two record lots.

The Board concludes that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the subject property. The Applicant previously obtained zoning relief to allow two new row buildings in a Voluntary Inclusionary Development at the subject property based on the belief that the Applicant had purchased a portion of the adjoining lot to achieve the required lot width for both lots, but the expected transaction was not completed, apparently through no fault of the Applicant. Without the additional land from the adjoining lot, the subject property fails to meet the minimum lot width requirement for the creation of two lots by less than 7.5 inches. The Board credits the Applicant's testimony that a project at the subject property would not be financially viable with fewer than four dwelling units, considering especially the costs of development and the market conditions that militate against the development of very large dwelling units at that location (see Exhibits 32B-32F). The Board agrees with the Applicant that development of the subject property with one building configured as two units would not be feasible, given the resulting size and likely cost of the units and the likelihood that a significant portion of the subject property would not be developed if the Applicant opted to construct one building with smaller units typical for the location.

Approval of the requested variance would not result in substantial detriment to the public good and would not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Approval of the variance will permit development of the subject property with two new row buildings, each configured as a two-unit flat. The proposed use is permitted as a matter of right in the RF-1 zone (see Subtitle U § 301.1(b)). Accordingly, the Board concludes that approval of the requested area variance will be consistent with the purpose of the RF-1 zone to provide for areas predominantly developed with residential row buildings on small lots within which no more than two principal dwellings are permitted.

The Board notes that the RF zones are intended *inter alia* to allow for the matter-of-right development of existing lots of record and to establish the minimum lot width for the subdivision and creation of new lots of record in RF zones. However, the Board does not agree with the Office of Planning that approval of the Applicant's "request to further reduce the minimum required lot width below" the general requirement of 18 feet or the width of 16 feet permitted with IZ "would be inconsistent with the intent, purpose, and integrity of the Zoning Regulations" under the circumstances presented in this application. Approval of the requested variance will permit an infill development, which will otherwise be consistent with the use and development standards of the RF-1 zone, on a long-vacant property. The Board credits OP's testimony that the Applicant's proposed subdivision "would result in two lots that would not be inconsistent with the character of the block, which includes other similarly sized lots" and that "the subdivision and the resulting flats should not be detrimental to the public good, while the development of a vacant lot is in the public good." (Exhibit 25.) The Board concludes that approval of the application is consistent with the intent of the RF zones to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, improvements to the overall

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environment, and low- and moderate-density housing to the overall housing mix and health of the city.

Time extension. In accordance with Subtitle Y § 702.1, the original order in this proceeding was valid for a period of two years, until April 7, 2024. The Applicant's filing of a request for a modification did not act to toll the expiration of the original order, and the grant of the modification also would not extend the validity of the order. (Subtitle Y § 704.9.) However, a request for a time extension tolls the expiration date for the sole purpose of allowing the Board to consider that request. (Subtitle Y § 705.5.) The Applicant's request was filed February 22, 2024, before the expiration date of the original order.

The Board is authorized under Subtitle Y §§ 705.2 and 705.3 to extend the two-year time period of validity for up to two additional years when the Board finds that there is no substantial change in any of the material facts on which the Board based its original approval of the application that would undermine the Board's justification for approving the original application, and the Applicant demonstrates good cause for the extension with substantial evidence of specific criteria, which include the existence of a condition, circumstance, or factor beyond the Applicant's reasonable control. The Applicant requested a time extension to extend the validity of the zoning relief approved in the original order. The Board finds no substantial change in any of the material facts on which the Board based its original approval of the application, except for the Applicant's inability to purchase additional land to meet the minimum lot width requirement on the western lot. That circumstance led to the Applicant's request for an area variance, which the Board approves for the reasons discussed above. The Applicant's inability to acquire the additional land constitutes a condition, circumstance, or factor beyond the Applicant's reasonable control that warrants approval of the requested two-year time extension. The Board notes the ANC's support for and OP's lack of objection to the time extension.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board did not agree with OP's recommendation to deny the requested variance but recognized OP's lack of objection to the Applicant's request for a time extension.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)).) In this case, ANC 1E submitted a letter in support of the Applicant's request for an area variance, citing "the long and difficult history of the site" and the "unnecessary cost burden on the owner" that would result from the strict application of zoning requirements, which would result "in a lot larger than any other residential project on this block" and threaten the economic viability of development at the site. According to ANC 1E, approval of the variance would not "have an undue adverse impact on the neighboring properties or on the general intent of the zoning regulations for this neighborhood," or result in substantial detriment to the public good but would allow a project that "will return the site to its original configuration and uses and provide an IZ unit." ANC 1E also supported the Applicant's request for a time extension, citing the Applicant's efforts to obtain



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permits based on the original order and “the unforeseen circumstance of this case.” (Exhibit 24.) The Board notes the absence of issues and concerns stated by ANC 1E about the relief requested and, for the reasons discussed above, agrees with the ANC that the Applicant’s requests for a modification, with an area variance, and for a time extension should be approved.


Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof for a modification of significance of the order in Application No. 20631 (issued April 7, 2022) to add, pursuant to Subtitle X § 1002, an area variance from the lot width requirements of Subtitle E § 202.1 and, pursuant to Subtitle Y § 705, for a time extension of the validity of the original order, until **April 7, 2026**, to allow a subdivision to create two new record lots and two new three-story attached buildings (two-unit flats), with one Inclusionary Zoning unit, in a Voluntary Inclusionary Development in the RF-1 zone at 723 Morton Street, N.W. (Square 2894, Lot 917). Accordingly, it is **ORDERED** that the request is **GRANTED** consistent with the plans shown in Exhibit 33 of the record as required under Subtitle Y §§ 604.9 and 604.10.

**VOTE: 5-0-0** (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Tammy M. Stidham voting to **APPROVE** the requests for modification and time extension)

**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:** January 9, 2025

PURSUANT TO 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 SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS 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

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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 SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.