

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 20962 of Personable.com, Inc., pursuant to 11 DCMR Subtitle X § 901, for a special exception under Subtitle C § 305.1 to allow three detached principal dwellings on one record lot in a theoretical subdivision in the R-1A zone at 1840 Primrose Road, N.W. (Parcel 0078, Lot 58).¹

HEARING DATE: November 1, 2023
DECISION DATE: December 6, 2023

DECISION AND ORDER

This self-certified application was filed June 2, 2023 on behalf of Personable.com, Inc. (the “Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. The Office of Zoning scheduled a public hearing on the application for November 1, 2023. 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 letters sent on or before June 22, 2023, to the Applicant, the Office of Planning (“OP”) and the Historic Preservation Office, the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 4A, the ANC in which the subject property is located, and Single Member District ANC 4A01, the Department of Buildings, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 4, the Chairman of the Council, the at-large members of the D.C. Council, the Department of Public Works, the Metropolitan Police Department, the Fire and Emergency Medical Services Department, DC Water, the National Park Service, and the owners of all property within 200 feet of the subject property. Notice was sent to the Commission of Fine Arts (“CFA”) on or before September 19, 2023 and was published in the *District of Columbia Register* on July 7, 2023 (70 DCR 009447) as well as through the calendar on the Office of Zoning website.

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 4A were automatically parties in

¹ By orders issued August 25, 2023, the Zoning Commission approved text amendments changing the name of the zone district at issue in this proceeding. (See Zoning Commission Orders 18-16 and 19-27.) This proposed order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

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this proceeding. At the public hearing, the Board granted a request for party status in opposition to the application submitted by Lara Wagner, the owner of a property abutting the subject property to the east. The Board denied an untimely request for party status submitted by Alison Igoe, the owner of another property abutting the subject property to the east.

Applicant's Case. The Applicant presented evidence and testimony, including from Benjamin Chou, representing the owner of the subject property, David Landsman, an expert in civil engineering, and Will Teass, the project architect and an expert in architecture, in support of the application for the zoning relief to allow three detached principal dwellings at the subject property.

OP Report. By memorandum dated October 18, 2023, the Office of Planning recommended approval of the application. (Exhibit 21.)

DPW Report. By report dated November 1, 2023, DPW indicated that their trash and recycling collections would not be affected by the project. (Exhibit 22.)

ANC Report. By report dated October 3, 2023, ANC 4A indicated that at a regularly scheduled public meeting held on October 3, 2023 where a quorum was present the ANC approved a resolution that noted the ANC's opposition to the application. (Exhibit 33.)

Party in opposition. Lara Wagner argued that the Applicant's project would not be compliant with zoning requirements, alleging adverse impacts especially with respect to trees and stormwater runoff.

Person in support. The Board received a letter in support of the application from a resident near the subject property who described the Applicant's proposal as a reasonable use of the site.

Persons in opposition. The Board received letters and heard testimony in opposition to the application from residents living near the subject property, who raised concerns about the proposed vehicular circulation route and objected that the Applicant's project would cause flooding; the destruction of heritage trees; and increases in traffic, noise, and pollution; would be out of character with the neighborhood; and would harm wildlife.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the south side of Primrose Road NW, adjacent to the DC-Maryland border, with the address of 1840 Primrose Road, N.W. (Parcel 0078, Lot 58). (Exhibits 2, 7.)
2. The subject property is irregularly shaped but generally rectangular, approximately 71.7 feet wide and 390 feet long. The lot area is 27,954 square feet. (Exhibits 4, 37A1.)
3. The subject property is improved with a one-story detached principal dwelling that is located on the middle portion of the property. The existing dwelling has two side yards of

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approximately 7.5 feet and a rear yard of 97.4 feet. The existing lot occupancy is 12 percent, and 81 percent of the subject property constitutes a pervious surface. (Exhibits 4, 7, 12.)

4. A driveway extends approximately 212 feet across the subject property from a curb cut on Primrose Road NW to the existing dwelling. (Exhibits 7, 18, 27.)
5. The Applicant proposed a theoretical subdivision of the subject property into three new theoretical lots (known as Lots A, B, and C) and to construct new two-story detached principal dwellings on Lots A and B (the “Lot A Dwelling” and “Lot B Dwelling,” respectively) while retaining the existing dwelling on Lot C (“Lot C Dwelling”). A vehicular circulation route will extend from Primrose Road past the new dwellings to a driveway connecting to the Lot C Dwelling, providing vehicle access to each dwelling. (Exhibits 7, 7B1.)
6. Lot A, the northern-most theoretical lot, will be 71.7 feet wide and 100.4 feet deep. Its lot area will be 8,652 square feet. The Lot A Dwelling will be two stories and 26.1 feet in height, with a 25-foot rear yard and two side yards of 10 and 31.9 feet (west and east, respectively). Lot A will have a lot occupancy of 26 percent and 62 percent pervious surface.
7. Lot B, the middle theoretical lot, will be 71.6 feet wide and 98.2 feet deep. Its lot area will be 7,800 square feet. The Lot B Dwelling will be two stories and 33.3 feet in height, with two side yards of 10 and 30.9 feet (west and east, respectively) as well as a 25-foot rear yard. Lot B will have a lot occupancy of 26 percent and 63 percent pervious surface.
8. Lot C, the southern-most theoretical lot, will be 74.5 feet and 190 feet deep. Its lot area will be 15,963 square feet. Lot C will have a lot occupancy of 21 percent and 61 percent pervious surface.
9. As proposed, the Lot A Dwelling will have four bedrooms and four bathrooms; the Lot B Dwelling will have three bedrooms and three bathrooms; and the Lot C Dwelling will maintain its two bedrooms and two bathrooms. (Exhibit 7.)
10. The dwellings on Lots A and B will each have a garage that provides two vehicle parking spaces. Lot C will have one vehicle parking space. (Exhibit 7.)
11. Vehicular access to the dwellings will be provided by a 24-foot-wide vehicular circulation route extending from Primrose Road along the eastern edge of the subject property up to a driveway that will access the Lot C Dwelling. The vehicular circulation route will allow for two-way ingress and egress on the subject property via two 12-foot-wide lanes. The vehicular circulation route will connect to a shared court giving access to both Lots A and B and to a driveway that connects to the Lot C Dwelling. (Exhibits 7, 18, 37A1.)

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12. The vehicular circulation route will comprise 12 feet of pervious pavers and 12 feet of grass pavers, which are a structured paving system that can accommodate emergency loads and occasional use. (Exhibits 37; 37A1; Transcript of November 1, 2023 at 96-97.)
13. The subject property slopes upward to the south and west, with an increase in grade up to 40 feet. The highest points of the subject property are in the southwest portion of the site. Lot A is generally flat. The remainder of the site exhibits moderate slope, except for a portion of substantial slope in the southeast corner of Lot B. (Exhibits 7B2, 18, 27.)
14. The Applicant will retain an existing retaining wall located on Lot C. (Exhibits 27, 37A1.)
15. A depression in the northwest corner of the subject property near Primrose Road does not have hydraulic features, standing or flowing water, or vegetation that suggests it is a wetland or stream. (Transcript of November 1, 2023 at 37, 115.)
16. The subject property contains some trees, including one heritage tree near the center of the property and many other trees near the southern lot line. Another heritage tree is located in the public space near Primrose Road NW. (Exhibit 18.)
17. The Applicant will install a landscape buffer along the eastern lot line of the subject property ranging in width from six feet wide in the north, near Primrose Road, to 9.5 feet adjacent to Lot B. The plantings, which will include a mixture of evergreen shrubbery, will provide a buffer that will be thickest along the eastern portion of the subject property, adjacent to the existing dwellings fronting Sudbury Road NW. The Applicant did not propose to remove any heritage or special trees, and indicated that no construction would be undertaken within the heritage trees' structural root zone. (Exhibits 7B2, 18, 37, 37A2.)
18. The Applicant will implement stormwater management measures including permeable pavement for the vehicular circulation route, green roof areas on both of the new dwellings, inlets around entire property to capture/route runoff, and rain gardens and other plantings to minimize erosion. The stormwater management plan was designed to prevent runoff from entering adjacent properties and pooling on the site. (Transcript of November 1, 2023 at 36-37, Exhibits 27 and 37A1.)
19. The subject property is located in a low-density residential neighborhood that is defined by detached single-family homes and the presence of Rock Creek Park to the west. (Exhibit 7.)
20. The subject property shares its entire western lot line with Rock Creek Park. (Exhibit 7.) Due to its adjacency to Rock Creek Park, the subject property is within the area defined in the Shipstead-Luce Act subject to review by the Commission of Fine Arts. (Exhibit 18.)
21. Properties to the east and south of the subject property contain detached principal dwellings that front Sudbury Road or Sudbury Place NW. The dwellings closest to the subject

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property, on the abutting lots to the east, have rear yards of at least 25.9 feet. (Exhibits 7; 27; 37; 37A1.)

22. The abutting portions of Rock Creek Park sit at a higher elevation than the subject property, which is higher than the abutting lots to the east. (Exhibit 26.)
23. The subject property is located in a Residential House (R) zone, R-1A.
24. The Residential House zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 101.1.)
25. The R zones are intended to: (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) 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; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and lot width for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 101.2.)
26. The purpose of the R-1A zone is to: (a) protect quiet residential areas now developed with detached houses and adjoining vacant areas likely to be developed for those purposes; and (b) stabilize the residential areas and promote a suitable environment for family life. (Subtitle D § 101.3.)
27. The R-1A zone is intended to provide for areas predominantly developed with detached houses on large lots. (Subtitle D § 101.4.)
28. The uses permitted as a matter of right in the R-1A zone include a principal dwelling in a detached building. (Subtitle U § 201.1(a)(1).)
29. The segment of Primrose Road NW in the vicinity of the subject property has a 60-foot right of way and is classified by DDOT as a “collector” street that carries “low to moderate vehicular movement” and functions to “collect traffic from local streets and properties and channel it into the arterial system.” (See DDOT Design and Engineering Manual, § 30.4.1.1; Exhibits 18 and 37A1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under Subtitle C § 305.1 to allow three detached principal dwellings on one record lot in a theoretical subdivision in the R-1A zone at 1840 Primrose Road,

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N.W. (Parcel 0078, Lot 58). The Board is authorized under § 8 of the Zoning Act (D.C. Official Code § 6-641.07(g)(2) (2012 Repl.)) to grant special exceptions, as provided in the Zoning Regulations, when, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR Subtitle X § 901.2.)

Subtitle C § 305. Pursuant to Subtitle C § 302.1, a subdivision generally must be effected in a manner that will satisfy zoning requirements for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, lot occupancy, parking spaces, and loading berths applicable to the original lot and to the newly created lots. Each new primary building must be erected on a separate lot of record in all R zones, except as provided for in the theoretical lot subdivision regulations of Subtitle C § 305.1. (Subtitle C § 302.2.)

Pursuant to Subtitle C § 305.1, the Board is authorized to grant, as a special exception, a waiver of Subtitle C § 302.1 to allow multiple primary buildings on a single record lot subject to specific requirements. The number of buildings permitted in a theoretical subdivision is not limited so long as an applicant can demonstrate that specific requirements are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning Regulations. (Subtitle C § 305.2.) In accordance with Subtitle C § 305.3, the development standards applicable to theoretical lots include that: (a) the side and rear yards must be consistent with the requirements of the zone; and (b) each means of vehicular ingress and egress to any principal building must be at least 24 feet in width, exclusive of driveways.²

The Applicant requested approval of a special exception pursuant to Subtitle C § 305 to allow three primary buildings on a single record lot in a theoretical subdivision in the R-1A zone. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the report submitted by ANC 4A, the Board concludes that the Applicant has satisfied the requirements for a special exception in accordance with Subtitle C § 305.

The Applicant proposed to create three lots in a theoretical subdivision, where a principal building (a detached principal dwelling) would occupy each theoretical lot. As demonstrated in the table of zoning compliance (Exhibit 12A1, page 3) and in the revised plans (Exhibits 37A1, 37A2), the two new dwellings will be sited so as to provide side and rear yards consistent with the requirements of the R-1A zone, while the third lot will provide a compliant rear yard and retain an existing building with nonconforming side yards. Each dwelling will satisfy other applicable development standards, including with respect to building height and lot occupancy. The new theoretical lots will not meet the minimum requirement for lot width to create a new record lot; however, the Zoning Regulations authorize the Board to grant a waiver of certain subdivision requirements, including minimum lot width, in a theoretical subdivision that meets specific development standards. The Board may waive the minimum lot width requirement to allow a

² Subtitle C § 305.3 also states development standards applicable to theoretical lots governing the measurement of building height that were not at issue in this proceeding.

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theoretical lot created in a theoretical subdivision, unlike for a new record lot created in a subdivision undertaken in accordance with Subtitle C § 302.1. (See Application No. 20594 (Nezahat and Paul Harrison; October 23, 2023).) Under the circumstances of this application, the Board concludes that the minimum lot width requirement should be waived to allow two new principal dwellings on theoretical lots, which will each have a lot width in excess of 70 feet.

Pursuant to Subtitle C § 305.3(b), each means of vehicular ingress and egress to any principal building must be at least 24 feet in width, exclusive of driveways. The application proposed a 24-foot-wide vehicular circulation route that will provide access to each dwelling in a manner coordinated with the Applicant's proposed landscaping buffer, trees, and retaining walls. The application did not propose any fire apparatus roads or streets.

The application provided other materials required by Subtitle C § 305.4, including site plans, the location of proposed easements, lots lines of the proposed theoretical lots, existing and proposed grading plans, landscaping plans, typical floor plans and elevations of the proposed dwellings, required yards based on the regulations applicable to the zone, and a table of zoning information including required and proposed development standards. The Applicant did not propose significant changes in grading at the subject property, at least half of which will not be altered by the planned development. The Applicant will implement a landscaping plan as well as stormwater management measures, subject to approval by the Department of Energy and Environment, that were designed in part to mitigate stormwater runoff onto nearby properties at a site that currently lacks stormwater mitigation measures.

The Board does not find that the Applicant's proposal, the development of two new principal dwellings, will generate significant vehicle traffic to the site. The project will utilize a single curb cut, thereby minimizing potential danger to pedestrians along Primrose Road. Each dwelling will provide vehicle parking spaces consistent with zoning requirements. Given the significant distances between the Applicant's new dwellings and the closest existing dwellings, coupled with significant new vegetation installed in conformance with the Applicant's landscaping plan, the Board concludes that approval of the application will not cause any undue noise or privacy impacts or other objectionable conditions affecting other properties.

The Board credits the testimony of the Office of Planning in concluding that the proposed development will not have an adverse impact on neighboring properties, will comply with the substantive intent and purpose of the Zoning Regulations, and will not likely have an adverse effect on the present character and future development of the neighborhood. The application proposed a residential development consistent in type and scale with existing residential uses in the surrounding neighborhood, in keeping with the purpose of the Residential House zones to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. Approval of the application is consistent with the intent of the R zones to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. In particular, approval of the application is consistent with the intent of the provisions of the R zones to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development and to recognize and reinforce the

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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. The new development will also be consistent with the purpose of the R-1A zone to protect quiet residential areas developed with detached houses and adjoining vacant areas likely to be developed for those purposes, to stabilize the residential areas and promote a suitable environment for family life, and to provide for areas predominantly developed with detached houses on large lots.

The Board was not persuaded by unsubstantiated assertions by the party in opposition regarding stormwater management, wildlife protection, and tree preservation, noting that the Applicant's proposal will require compliance with applicable regulations governing those matters. Concerns about the construction process were also outside of the scope of the Board's purview in this proceeding, which was limited to whether the application met the requirements for approval of the requested special exception. Similarly, the Board was not persuaded that the application should be denied because the project would hinder direct views of Rock Creek Park and alter the sightlines of adjacent properties, as merely altering the viewshed enjoyed by neighbors is not a sufficient basis to warrant denial of the relief requested. See, e.g., Application No. 20843 (Christian Genetski and Anabel Genetski; November 13, 2024). The Board notes that the Applicant's proposal is subject to review by the Commission of Fine Arts in light of the proximity of the subject property to Rock Creek Park.

Subtitle X § 901.2. For the reasons discussed above, the Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is required for approval of the application under Subtitle X § 901.2.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (Section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)).) For the reasons discussed above, the Board agrees with OP's recommendation that the application should be approved.

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.)); *see also* Subtitle Y § 406.2.) In this case, ANC 4A adopted a resolution in opposition to the application, which cited concerns raised by neighbors and asserted that review by the Commission of Fine Arts should be considered as part of the BZA process. The Board credits the ANC's views but did not find its resolution a basis to deny the application. The Applicant acknowledged the need for CFA review of the proposal, which is separate from and outside of the scope of the Board's purview in this proceeding. For the reasons discussed above, the Board did not agree with the ANC's unsubstantiated assertion "the special exception for theoretical lot subdivision is not in the best interests of the neighborhood or the ecosystem of nearby Rock Creek Park." (Exhibit 33.)

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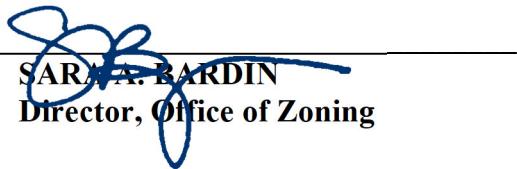
Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under Subtitle C § 305 to allow three detached principal dwellings on one record lot in a theoretical subdivision in the R-1A zone at 1840 Primrose Road, N.W. (Parcel 0078, Lot 58) Accordingly, it is **ORDERED** that the application is **GRANTED** in conformance with plans shown at Exhibits 37A1 and 37A2.

VOTE: 3-0-2 (Frederick L. Hill, Chrishaun S. Smith, and Joseph S. Imamura to APPROVE; Lorna L. John not participating; 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: October 23, 2024

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 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 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 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.

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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.