

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



Application No. 21065 of Thirteenth 202, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 421.1 to allow a new residential development, a nine-unit apartment house in a three-story detached building, in the RA-1 Zone at 6108 13th Street, NW (Square 2790, Lot 57).

HEARING DATES: March 20 and April 10, 2024
DECISION DATE: May 1, 2024

DECISION AND ORDER

This self-certified application was filed on November 3, 2023 by Thirteenth 202, LLC (“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. 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 dated December 8, 2023, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Buildings, the Office of State Superintendent of Education, the Department of Parks and Recreation, Advisory Neighborhood Commission (“ANC”) 4A, the ANC in which the subject property is located, the Single Member District 4A05, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 4 as well as the Chairman and four at-large members of the D.C. Council, the National Park Service, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on December 29, 2023 (79 DCR 016655).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 4A were automatically parties in this proceeding. The Board granted requests for party status in opposition to the application from Gayle Petersen and Donna Marie Alexander, the owners of properties in proximity to the subject property (Exhibits 22, 27). The Board denied a request for party status in opposition to the application from Kim Patterson. A request for party status in opposition to the application submitted by Elizabeth Falcon was withdrawn. (See Exhibit 39.)

Applicant’s Case. The Applicant provided evidence and testimony in support of the application, including from Ethan Arnheim and Adam Crain, the project architect. The application sought

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zoning relief needed to permit additions to an existing detached principal dwelling for use as a nine-unit apartment house.

OP Report. By reports dated March 8 and April 4, 2024, the Office of Planning recommended approval of the application subject to a condition requiring compliance with the Applicant's site and landscaping plans. (Exhibits 31, 71.)

DDOT Report. By report dated March 8, 2024, the District Department of Transportation stated no objection to approval of the application. (Exhibit 30.)

ANC Report. By report dated March 11, 2024 and subsequent letters, ANC 4A indicated that, at its regularly scheduled and noticed meeting on March 5, 2024, with a quorum present, the ANC voted to oppose the application. (Exhibits 35, 48, and 76.)

Parties in Opposition. The parties in opposition asserted that approval of the application would cause adverse impacts to nearby properties especially with respect to vehicular traffic in a public alley and parking. They expressed concerns that the proposed mass of the building would create a visual intrusion on the character of the neighborhood and cause adverse impacts related to the light, air, and privacy available to neighboring properties. (Exhibits 22, 28, 40.)

Persons in support. The Board received a letter in support of the application from Greater Greater Washington, stating that the subject property was an appropriate location for a low-rise apartment house given its existing zoning.

Persons in opposition. The Board received letters and heard testimony in opposition to the application, including from Janeese Lewis George, the Ward 4 Councilmember, and from persons living near the subject property. The persons in opposition generally asserted that the Applicant's proposal would not be in harmony with the zoning regulations, especially considering the number of dwelling units proposed, and would cause adverse impacts related to factors including traffic, parking, trash, rodents, crime, noise, and flooding.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the west side of 13th Street N.W. near its intersections with Rittenhouse Street, Fort Stevens Drive, and Piney Branch Road, with the address 6108 13th Street, N.W. (Square 2790, Lot 57).
2. The subject property is irregularly shaped. The south side lot line extends 117.6 feet to the southwest from 13th Street, then 25 feet to the northwest to the rear of the lot. The north side lot line extends in four segments of 30 feet west, 69.2 feet to the southwest, 15 feet to the south, and 25 feet to the northwest. The lot area is 5,641 square feet.
3. The subject property abuts a public alley, 16 feet wide, for 30 feet along the rear lot line (west).

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4. The subject property was improved with a two-story detached building with a one-story rear addition, and was formerly used as a principal dwelling. The existing building was 25 feet in height, with an attic and a cellar. The building provided side yards of 7.75 feet (north) and 9.25 (south), resulting in a lot occupancy of 43 percent and a floor area ratio ("FAR") of 0.45.
5. The subject property contains an accessory structure (garage) at the rear of the property.
6. The Applicant proposed to redevelop the subject property for use as a nine-unit apartment house. The existing attic will be enlarged to create a third floor. The existing one-story rear addition will be replaced with a three-story rear addition with a cellar.
7. The front portion of the enlarged building will contain five dwelling units and the rear portion will contain four dwelling units. The nine dwelling units will be configured as one one-bedroom apartment (327 square feet), one two-bedroom apartment (379 square feet), and seven three-bedroom apartments (ranging from 629 to 781 square feet). (Exhibit 67.)
8. The cellar will contain a bicycle storage room in addition to two dwelling units.
9. The front door of the existing dwelling will be reconfigured for use as an entry to one of the new units. An entry to the other units will be provided on the south side of the building, accessible via a walkway from 13th Street.
10. The new apartment house will be three stories and 30 feet in height, where 40 feet and three stories are permitted. (Subtitle F § 203.2.)
11. The new apartment house will have a floor area ratio of 0.9, where a maximum FAR of 0.9 is permitted. (Subtitle F § 201.1.)
12. The lot occupancy will be 34 percent, where a maximum of 40 percent is permitted. (Subtitle F § 210.1)
13. The new apartment house will provide two side yards at eight feet (north) and 9.25 feet (south).
14. The building, as enlarged, will provide a rear yard of 59.7 feet, where a minimum of 20 feet is required. (Subtitle F § 207.1.)
15. The new apartment house will not have roof decks. Balconies will be provided on all three levels at the rear and north side of the new addition, along with a first-floor terrace on the north side. The balconies will be partially enclosed with an open-air cladding designed to reduce views of neighboring properties.
16. The rear addition will have windows on each floor of each façade. The windows on the side façades will be located primarily at the rear of the building.

17. The Applicant will install a solid privacy fence, six feet high, along the side lot lines and across the front of the subject property in alignment with the front façade of the building. A solid fence, at least 48 inches in height, will be installed at the rear of the subject property around the parking and trash storage areas.
18. The Applicant will install security measures at the apartment house, including motion-activated lighting in common areas, walkways, and parking spaces, electronic locking systems at all entry points, and video cameras, with night vision capabilities, at all exits. (Exhibit 68.)
19. Three vehicle parking spaces will be provided at the rear of the subject property, accessible from the alley through a roll-up door. The existing accessory structure will be removed to create the parking area.
20. A trash storage enclosure will be provided at the rear of the lot near the parking area. The enclosure will be screened and fenced.
21. As shown on the existing site plan (Exhibit 67, sheet A006), the subject property exhibits a grade difference of approximately five feet, sloping down from the front to the rear of the lot. As shown on the building elevations (Exhibit 67, sheet A019-A020), the Applicant did not propose changes in the existing grade to accommodate the new development.
22. The Applicant did not plan any new rights of way or easements in connection with the new apartment house.
23. The Applicant will implement a landscaping plan at the subject property, which includes new plantings along the perimeter of the building, illuminated walkways, and pervious pavers in the driveway area. The landscape plan includes new tree plantings along the entry walk in the south side yard, on the north side of the lot, and in the rear yard. (Exhibit 67, sheet A007.)
24. The subject property is located within a quarter-mile of Metrobus routes along Georgia Avenue and 14th Street N.W.
25. The subject property is located within walking distance to several parks and recreational centers, including the Potomac Heritage National Scenic Trail and Fort Stevens Park, a National Park Service property.
26. According to information published by the Deputy Mayor for Education, the subject property is “in-boundary” for schools operated by D.C. Public Schools, Brightwood Elementary School, Ida B. Wells Middle School, and Coolidge High School. For the 2021-2022 school year, the capacity utilization rates for those schools ranged from approximately 73 to 98 percent. (Exhibit 31.)

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27. The subject property and nearby properties to the south and west are located in a Residential Apartment (RA) zone, RA-1.
28. Nearby properties to the north, across the public alley, are located in a Residential House (R) zone, R-3. Properties to the northeast, across Piney Branch Road, are zoned R-1B.
29. The abutting properties to the north and south of the subject property contain detached principal dwellings. Properties to the north and west of the subject property, in the R-3 zone across the public alley, are improved with attached dwellings.
30. The surrounding neighborhood is improved with a mix of low- to medium-density residential developments, predominantly comprising detached, semi-detached, and attached principal dwellings as well as small to moderate-sized apartment houses, including to the southwest of the subject property along Fort Stevens Drive. Properties to the east along Georgia Avenue are located in Mixed Use zones (MU-4 and MU-7B) and are primarily developed with higher density commercial and multi-family residential buildings.¹
31. The Residential Apartment (RA) zones are residential zones, designed to provide for residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 101.1.)
32. The RA zones are intended to (a) permit flexibility by allowing all types of residential development; (b) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (c) promote a walkable living environment; (d) allow limited non-residential uses that are compatible with adjoining residential uses; (e) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (f) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 101.2.)
33. The purposes of the RA-1, RA-2, RA-3, RA-4, and RA-5 zones are to: (a) permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts; and (b) permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 101.3.)
34. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached houses, row houses, and low-rise apartments. (Subtitle F § 101.4.)

¹ The Mixed-Use (MU) zones are designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers, and permit a broad range of commercial, institutional, and multiple-dwelling residential development at varying densities. (Subtitle G §§ 101.1, 101.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under Subtitle U § 421.1 to allow a new residential development, a nine-unit apartment house in a three-story building, in the RA-1 zone at 6108 13th Street, N.W. (Square 2790, Lot 57). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, where, 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.)

Pursuant to Subtitle U § 421, the proposed apartment house – as a new residential development in the RA-1 zone not comprising principal dwellings in detached or semi-detached dwellings – requires approval by the Board as a special exception in accordance with the specified standards. As required, the application was referred to various agencies for comment and recommendation, and the Applicant submitted the documents necessary to support the request for zoning relief.

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 4A, the Board concludes that the Applicant has satisfied the requirements for the requested special exception under Subtitle U § 421. The Applicant proposed to enlarge the existing building at the subject property for use as a new three-story apartment house containing nine units. The additions to the existing building will meet applicable development standards, including with respect to building height in feet and number of stories, side and rear yards, lot occupancy, and floor area ratio. For that reason, the Board was not persuaded by the parties in opposition that the planned additions will adversely affect the provision of light and air to neighboring properties. The Applicant submitted a solar study (Exhibit 25) comparing the differences in shading between the existing and proposed scenarios, which demonstrated that new shadows impacts will be minimal and will not vary significantly from existing conditions. The Board credits the testimony of the Office of Planning noting that “no relief from dimensional requirements – height, lot occupancy or setbacks – was requested” and OP’s conclusion that the enlargement of the existing building proposed by the Applicant and its siting “are consistent with the intention of the [zoning] regulations.” (Exhibit 31.)

The Board concludes that the new apartment house will not have an undue impact on the privacy available to neighboring properties. The design and orientation of the building, including the placement of windows in the rear addition, will prevent direct views into nearby dwellings. Views from the subject property at the ground level will be obstructed by a privacy fence and landscaping. Potential views from the planned balconies will be limited by their partial enclosures.

Given the relatively small number of new units in the building and their sizes, as well as the number of public schools in the surrounding neighborhood that serve children from elementary through high school, the Board concludes that the number of students who can be expected to reside in the new apartment house can be accommodated at existing and planned area schools. The Board also

concludes that the public streets, recreation, and other services can accommodate the residents who can be expected to reside in the new building. The subject property is located within walking distance of public transportation, recreational facilities, and commercial developments. In concluding that the public streets can accommodate the project, the Board notes that DDOT had no objection to approval of the application in light of its finding that the project's expected impacts on vehicular, transit, pedestrian, and bicycle trips, as well as on street parking conditions, will be "minor." (Exhibit 30.)

Subtitle X, Chapter 9. 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, as is required for approval of the application under Subtitle X § 901.2. Consistent with the provisions of the Residential Apartment zones, the new apartment house will permit flexibility in the type of residential development, promote a stable residential area while permitting a variety of types of urban residential neighborhoods, promote a walkable living environment, and encourage compatibility between the location of the planned new building and the existing neighborhood. Approval of the application will be consistent with the purposes of the RA-1 zone by allowing the development, a low-rise apartment house, that will conform to applicable height, density, and area requirements of the RA-1 zone.

The Board was not persuaded by ANC 4A or the parties in opposition that the new apartment house will be inconsistent with the general purpose and intent of the Zoning Regulations and Maps due to its close proximity to areas developed with detached and attached principal dwellings. The subject property is located in a Residential Apartment zone (RA-1) that contains some detached principal dwellings as well as apartment houses, and is close to properties that are designated as lower density Residential House zones. The RA-1 zone is intended for "low- to moderate-density development, including detached houses, row houses, and low-rise apartments" and permits "all types of urban residential development if they conform to [applicable] height, density, and area requirements," irrespective of the proximity of properties located in other zones. (See Subtitle F §§ 101.3, 101.4.) The Board is authorized to permit an apartment house use in the RA-1 zone by special exception consistent with the requirements of Subtitle U § 421. Accordingly, the Board concludes that an apartment house at the subject property will be consistent with its RA-1 zoning designation.

With respect to the Applicant's planned enlargement of an existing building, formerly used as a principal dwelling, the Board concludes that the proposed size and massing of the enlarged building will be in harmony with the general purpose and intent of the Zoning Regulations and Map because the application demonstrated that the proposal will meet or exceed the development standards for a building permitted as a matter of right in the RA-1 zone. *See, Massachusetts Avenue Heights Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, No. 19-AA-1049 (D.C., decided September 6, 2022) (Court affirmed Board order granting a special exception to allow a continuing care retirement community in R-1-B zone, which is intended to protect quiet residential areas now developed with detached dwellings and to stabilize residential areas and promote a suitable environment for family life, where Board recognized that the proposed use was specifically permitted by special exception and "reasonably referred to matter-of-right development standards pertaining to building size applicable in R-1-B in determining that the

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proposal would be in harmony with the general purpose and intent of the Zoning Regulations and not out of scale with the neighborhood in violation of Subtitle X § 901.2(a)).

The Board concludes that approval of the application will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Zoning Map, as is also required for approval of the application under Subtitle X § 901.2. The new apartment house will be devoted to a residential use appropriate at its location and will meet or exceed applicable development standards with respect to building height, density, lot occupancy, side yard, and rear yard, thereby avoiding the creation of undue impacts on the light or air available to neighboring properties. The Board was not persuaded by ANC 4A and the parties in opposition that the planned apartment house will adversely affect the use of neighboring properties, in part because the contentions were unsubstantiated and included concerns about matters outside the scope of the Board's purview in considering this application, such as vehicle access in the public alley, the construction process, and rodent abatement.²

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.) For the reasons discussed above, the Board agrees with OP's recommendation that, in this case, 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)).) In this case, ANC 4A recommended denial of the requested special exception, asserting that the application did not meet the requirements for approval. According to ANC 4A, the Applicant's project would not be in harmony with the general purpose and intent of the Zoning Regulations and would adversely affect the use of neighboring properties. (Exhibit 35.) The ANC's recommendation was based on factors including the opposition to the project expressed by the owners of dwellings near the subject property, the "density, size, and mass of the proposed development," adverse impacts on light and air available to nearby properties, and increased demand for parking spaces.³ (Exhibit 48.)

The Board has given the requisite great weight to the issues and concerns stated by ANC 4A but, for the reasons discussed above, did not find the ANC's lack of support for the application persuasive. Many of the concerns stated by ANC 4A, such as those related to property values, rodent activity, the construction process, the "overabundance of affordable housing," and alleged adverse impacts on the nearby Fort Stevens park were unsubstantiated or outside the scope of the

² The Applicant responded to neighbors' concerns by devising rodent mitigation and construction management plans (Exhibits 69, 70).

³ Part of the ANC's opposition to the application was based on arguments that the requested special exception would not meet the requirements for approval under Subtitle D § 5201. Although that provision was discussed in a portion of the application (see e.g. Exhibit 9), the requirements of Subtitle D § 5201 were not relevant to the Board's consideration of the Applicant's request for a special exception under Subtitle U § 421 to allow a new apartment house at the subject property in the RA-1 zone. (Subtitle D § 5201 applies to properties in Residential House zones to allow additions to a principal residential building with one principal dwelling, a new principal residential building on a substandard non-alley record lot, or a new or enlarged accessory building on a lot with a residential building containing one principal dwelling.)

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Board's purview in this proceeding, which was limited to a determination of whether the application met the requirements for approval of the requested special exception. The Board is required to accord "great weight" only to the issues and concerns of the affected ANC that are legally relevant to the application at issue. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), *citing Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 180 (D.C. 1981) (the "great weight" requirement extends only to "issues and concerns that are legally relevant").

Based on the findings of fact and conclusions 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 U § 421.1 to allow a new residential development, a nine-unit apartment house in a three-story detached building, in the RA-1 zone at 6108 13th Street, N.W. (Square 2790, Lot 57). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibit 67 in the record, and subject to the following **CONDITION**:


1. The Applicant shall comply with the site plan and landscaping plan included in the architectural plans (sheets 005, 007, 0023, and 0024 in Exhibit 67), including a screened trash area and tree plantings.

VOTE: 3-1-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith to APPROVE; Anthony J. Hood to deny; Lorna L. John not participating)

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: August 6, 2025

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.

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 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.