

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



**Application No. 20585 of Jacob Hensley**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions pursuant to Subtitle C § 1504 from the penthouse requirements of Subtitle C § 1500.4 and the penthouse setback requirements of Subtitle C § 1502.1, and under Subtitle E § 205.5 to allow a two-story rear addition with basement and penthouse at an existing two-story attached dwelling in the RF-2 Zone at premises 1457 Swann Street, NW (Square 206, Lot 170).

**HEARING DATE:** December 22, 2021

**DECISION DATE:** December 22, 2021

**DECISION AND ORDER**

This self-certified application was filed on August 20, 2021, by Jacob Hensley (“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 September 13, 2021, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Consumer and Regulatory Affairs, the Office of the Attorney General, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 2 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 2B, the ANC in which the subject property is located, the Single Member District ANC 2B09, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on September 24, 2021 (68 DCR 010090).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 2B were automatically parties in this proceeding. At a public meeting on December 15, 2021, the Board granted a request for party status in opposition to the application from Jeff Gay, the owner of a row dwelling abutting the subject property. (Exhibit 41.)

Applicant’s Case. The Applicant was represented by Ryan Beible of Stone Real Estate Project Management and provided evidence and testimony in support of the application from Patrick Jones, the project architect. The Applicant proposed a new two-story rear addition, with a penthouse, to his row building.

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Board of Zoning Adjustment  
District of Columbia  
CASE NO.20585  
EXHIBIT NO.52

**BZA APPLICATION NO. 20585**  
**PAGE NO. 2**

OP. By report dated December 10, 2021, the Office of Planning recommended approval of the application. (Exhibit 36.)

DDOT. By report dated December 10, 2021, the District Department of Transportation stated no objection to approval of the application. (Exhibit 37.)

ANC 2B. ANC 2B submitted a letter, dated December 15, 2021, stating that, at its regularly scheduled and noticed meeting on December 8, 2021, with a quorum present, the ANC voted to approve a resolution addressing the application. The resolution stated that the ANC opposed the request for zoning relief from the rear addition requirements for the planned rear addition but did not oppose the requests for relief from the penthouse requirements. (Exhibit 40.)

Party in Opposition. Jeff Gay (“Opposing Party”) expressed concerns about light, air, economic effects on property, visual intrusion on the character, scale, and pattern of houses along the street and alley frontage, and setting precedent in the neighborhood. (Exhibit 23.)

Persons in Support. The Board received letters from persons in support of the application who indicated no objection to the Applicant’s proposal.

Persons in Opposition. The Board received letters and heard testimony from persons in opposition to the application, who generally asserted that the planned addition would be too big for the area, thereby changing the character of the neighborhood and blocking sunlight to neighboring properties, and would set a bad precedent for the neighborhood.

**FINDINGS OF FACT**

1. The property that is the subject of this application is an interior lot on the north side of Swann Street, NW, between 14<sup>th</sup> Street, NW and 15<sup>th</sup> Street, NW, with the address of 1457 Swann Street, NW (Square 206, Lot 170).
2. The subject property is a rectangular lot measuring 17.5 feet wide and 90 feet deep, with a lot area of 1,575 square feet.
3. The rear lot line abuts a public alley 9.33 feet wide.
4. The subject property is improved with an attached residential building that was built in 1875 as one in a group of seven similar row dwellings.
5. The Applicant’s building, which extends 36 feet, four inches deep, is configured and used as a two-unit flat.
6. The Applicant’s building is 29.2 feet and two stories in height.

**BZA APPLICATION NO. 20585**

**PAGE NO. 3**

7. The existing lot occupancy of the subject property is approximately 42.19 percent.
8. The subject property has a rear yard of 44 feet. A parking pad is located at the rear of the lot, accessible from the alley through a roll-up door.
9. The Applicant proposed to enlarge the existing building with a two-story rear addition with a penthouse providing stair access to a new roof deck.
10. The rear addition will be built to each side lot line and extend 15 feet from the rear of the existing dwelling.
11. The addition will increase the lot occupancy at the subject property to approximately 58.8 percent, where a maximum of 60 percent is permitted as a matter of right. (Subtitle E § 404.1.)
12. The addition will reduce the rear yard to approximately 29 feet, where a minimum of 20 feet is required. (Subtitle E § 406.1.)
13. The Applicant also proposed to create a new roof deck accessible via a penthouse situated along the east lot line. The penthouse will provide stair access to the roof and contain 30 square feet of storage space ancillary to the roof deck. The penthouse will be one story, ranging from approximately 8.6 to 9 feet in height, with the roof sloped from front to back to provide drainage.
14. The penthouse will be set back approximately 27.10 feet from the front of the building.
15. Four feet of the penthouse wall on the east side of the roof deck will be constructed to appear as a parapet wall. The upper portion of the penthouse wall will be set back approximately three feet from the east building wall.
16. The new construction will not increase the height of the Applicant's building, which will remain approximately 29 feet and two stories, where 35 feet and three stories are permitted. (Subtitle E § 403.1.)
17. The addition will not have windows on the side façades facing east or west. The rear (north) façade of the addition will have doors on the ground floor and the basement level as well as windows on the first and second floors.
18. The Applicant's dwelling is attached to similar two-story row dwellings on similarly sized lots to the east and west of the subject property.
19. Solid wood fences were installed behind the residences along both side lot lines shared by the subject property and the adjoining properties.

20. The existing rear wall of the Applicant's dwelling aligns with the rear walls of both abutting dwellings.
21. Other dwellings in the same block have been enlarged with rear additions, some of them containing three stories. A number of nearby dwellings have roll-up doors along the alley.
22. Properties along Swann Street and to the north, across the public alley, in the vicinity of the subject property are primarily improved with two-story attached dwellings.
23. The subject property is located in the Greater U Street Historic District.
24. The surrounding neighborhood is improved with a mix of low- to medium-density residential development, predominantly comprising of rowhouses, as well as commercial development nearby on 14<sup>th</sup> Street, NW.
25. The subject property is located in a Residential Flat (RF) zone, RF-2. The RF zones are residential zones, which provide for areas developed primarily with row dwellings, but within which there have been limited conversions of dwellings or other buildings into more than two (2) dwelling units. (Subtitle E § 100.1.) In addition to the purpose statements of individual chapters, the provisions of 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 dimensions for the subdivision and creation of new lots of record in RF zones; (e) Allow for the limited conversion of rowhouse and other structures for flats; and (f) Prohibit the conversion of flats and row houses for apartment buildings as anticipated in the RA zone. (Subtitle E § 100.3.)
26. The purpose of the RF-2 zone is to provide for areas proximate to Dupont Circle predominantly developed with row houses within which no more than two (2) dwellings are permitted. (Subtitle E § 400.1.) The RF-2 zone is intended to: (a) Recognize that Dupont Circle area is a unique resource in the District of Columbia that must be preserved and enhanced; (b) Provide strong protections to retain its low scale, predominantly residential character, independent small retail businesses, human scale streetscapes, and historic character; (c) Enhance the residential character of the area by maintaining existing residential uses and controlling the scale and density of residential development; (d) Protect the integrity of "contributing buildings," as that term is defined by the Historic Landmark and Historic District Protection Act of 1978,); (e) Preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide; (f) Enhance the streetscape by maintaining the public space in front of buildings as landscaped green

spaces; and (g) Encourage greater use of public transportation and the free circulation of vehicles through public streets and alleys. (Subtitle E § 400.2.) The RF-2 zone requires a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk and ensures a general compatibility in the scale of new buildings with older, low-scale buildings. (Subtitle E § 400.3.)

## **CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks special exceptions, pursuant to 11 DCMR Subtitle X, Chapter 9, under Subtitle C § 1504 from the penthouse requirements of Subtitle C § 1500.4 and the penthouse setback requirements of Subtitle C § 1502.1,<sup>1</sup> and under Subtitle E § 205.5 to allow a two-story rear addition with basement and penthouse at an existing two-story attached dwelling in the RF-2 Zone at 1457 Swann Street, NW (Square 206, Lot 170). 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, 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 C § 1500.4, a penthouse is permitted on the roof of a rowhouse or flat in the RF-2 zone if approved as a special exception, subject to requirements including that the penthouse must be no more than 10 feet and no more than one story in height and that the penthouse may contain only stair or elevator access to the roof, with a maximum of 30 square feet of storage space ancillary to a rooftop deck. Pursuant to Subtitle C § 1502.1, the penthouse must be set back a distance equal to its height from the side wall of the roof unless relief from the one-to-one side setback requirement is approved as a special exception pursuant to Subtitle C §1504.1 subject to the following considerations: (a) the strict application of the zoning requirements would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes; (b) the relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall; (c) the relief requested would result in a roof structure that is visually less intrusive; (d) operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors, the size of the building lot, or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly, or unreasonable; (e) every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and (f) the intent and purpose of the zoning regulations would not be materially impaired by the structure, and the light and air of adjacent buildings must not be affected adversely.

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning, the Board concludes that the application has met the requirements for special

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<sup>1</sup> These penthouse provisions were subsequently modified by text amendments approved by the Zoning Commission in Z.C. Case No. 14-13E (effective December 24, 2021).

**BZA APPLICATION NO. 20585**  
**PAGE NO. 6**

exceptions consistent with Subtitle C § 1504. The planned one-story penthouse will not exceed nine feet in height. The Applicant submitted plans showing the penthouse will contain only stair access to the roof and 30 square feet of storage space ancillary to the planned new roof deck.

The Board agrees with the Applicant and OP that the strict application of the zoning requirements would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, and that operating difficulties such as code requirements, the size of the building lot, and other conditions relating to the building would make full compliance unduly restrictive, prohibitively costly, or unreasonable. In light of the narrow width of the subject property and the minimum penthouse height requirement, the Applicant could not provide a code-compliant enclosed stair access with a one-to-one side setback. Another option, to locate the stair access away from the eastern side wall, would be unduly restrictive, unreasonable, and prohibitively costly because that option would require relocating the existing stairway inside the dwelling, requiring significant interior demolition and structural reconfiguration and substantially reducing the habitable area. The Board concludes that approval of the Applicant's proposal would result in a better penthouse design without creating the appearance of an extension of the building wall as well as a penthouse that is visually less intrusive. On the east side, the lower portion of the planned penthouse will be built to appear as a parapet wall while the upper portion will be set back to provide visual distinction from the building wall. The penthouse will not be visible from the street, given its setback of almost 28 feet from the front of the Applicant's dwelling. The Applicant demonstrated that other potential penthouse designs, including options not requiring special exception relief, such as the provision of roof access in a rear addition, would likely create a greater visual intrusion. The application reflected that the Applicant attempted to house the stairway in compliance with the required setbacks but proposed a different design for reasons related especially to the narrow lot width. The Board concludes that the Applicant's proposal will not materially impair the intent and purpose of the zoning regulations in light of the planned size of the penthouse, consistent with applicable height and size limits, and its lack of adverse impacts on the light and air available to adjacent buildings as demonstrated in the shadow study submitted by the Applicant.

The Applicant also requested a special exception to allow a rear addition extending more than 10 feet beyond the furthest rear walls of the residential buildings on the adjoining lots. Pursuant to Subtitle E § 205.5, the rear wall of a row building may be constructed to extend farther than 10 feet beyond the farthest rear wall of any principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9, and subject to Subtitle E § 5201 if applicable. In this case, the Applicant proposed a rear addition extending 15 feet beyond the rear walls of the principal residential buildings on both adjoining lots.

Based on the findings of fact, and having given great weight to the recommendation of OP, the Board concludes that the application satisfies the requirements for approval of the requested special exception. Under Subtitle E § 5201.4, an application for special exception relief must demonstrate that a proposed addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically: (a) the light and air available to neighboring properties must not be unduly affected; (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised; (c) the proposed addition,

together with the original building, as viewed from the street, alley, or other public way, must not substantially visually intrude on the character, scale, and pattern of houses along the street or alley frontage. As required by Subtitle E § 5201.4(d), the Applicant submitted graphical representations including plans, photographs, and elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

The Board concurs with the Applicant and the Office of Planning that the planned rear addition will not unduly affect the light and air available to neighboring properties. After construction of the addition, the subject property will continue to meet zoning requirements with respect to lot occupancy, building height, and rear yard, thereby ensuring that the Applicant's dwelling, as enlarged, will not create undue impacts on the light and air available to nearby properties. The Applicant submitted a shadow study comparing the differences in shading between the existing, matter of right, and proposed scenarios. (Exhibit 10.) Given the height of the planned addition, lower than that permitted as a matter of right, and the proximity of larger dwellings near the subject property on either side in the same block, the Board concludes that the Applicant's rear addition will not significantly alter the light and air now available to nearby dwellings. The Board was not persuaded by the Opposing Party's contention that the length of the planned addition will create significant impacts on the light and air available to the abutting property. The Applicant's planned addition will extend five feet beyond the 10 feet permitted as a matter of right while still maintaining a rear yard that will exceed the minimum requirement in a zone that allows row dwellings without side yards. The Board agrees with the Applicant and OP that the light and air impacts of the planned addition will not be significantly greater than a matter-of-right condition.

The Board concludes that the proposed addition will not unduly compromise the privacy of use and enjoyment of neighboring properties, especially considering that the addition will not have windows facing any adjacent properties and the existing privacy fences will continue to maintain privacy at the ground level. The Office of Planning did not recommend any special treatment, such as design, screening, or other features found necessary for the protection of nearby properties (*see* Subtitle E § 5201.5). The Board was not persuaded by the Opposing Party's assertions that the addition would compromise the privacy of use and enjoyment of their neighboring property, especially with respect to the existing patio and landscaping. The Opposing Party did not demonstrate how the additional five feet of the Applicant's proposed addition, beyond the 10-foot extension permitted as a matter of right, would adversely affect the use of their property, especially considering the lack of windows on the addition.

The Board concludes that the planned addition, together with the original building, as viewed from the street, alley, or other public way, will not substantially visually intrude on the character, scale, and pattern of houses along the street or alley frontage. The rear addition will not be visible from Swann Street but will be visible from the alley abutting the rear of the subject property. The application provided photographs reflecting the existing variety of buildings in the vicinity, some of which have been enlarged with third-floor or rear additions. Several nearby properties also have roll-up doors along the alley and privacy fences that impede views of the Applicant's property. The Board heard testimony in opposition to the application asserting that the Applicant's proposed rear addition would be too large for the site and out of scale with neighboring dwellings. The

Board does not agree, noting that the Applicant's proposal will satisfy applicable development standards including with respect to building height, lot occupancy, and rear yard. The Board also notes that the Historic Preservation Review Board ("HPRB") granted concept approval to the Applicant's proposal on July 22, 2021, finding the scale and massing of the project compatible with the character of the U Street historic district; the accompanying staff report stated that the planned rear addition would be "compatible in height, size and materials with the character of the historic district and consistent with previous [HPRB] approvals" and that "from a compatibility standpoint, the addition is not out of scale with other additions on this block and throughout the historic district." (Exhibits 28, 28A.) The Board agrees with the Applicant and the Office of Planning that the planned addition will not substantially visually intrude on the character, scale, and pattern of the buildings along the alley.

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. The Residential Flat (RF) zones, including RF-2, are residential zones that provide for areas developed primarily with row dwellings with one or two dwellings. Approval of the application will continue the residential use of the Applicant's building and will be consistent with the provisions of the RF zones to recognize and reinforce the importance of neighborhood character, 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. Approval of the application is also consistent with the specific purposes of the RF-2 zone by preserving the low-scale residential character of the subject property, enhancing the residential character of the area by maintaining an existing residential use with a project consistent with the historic district, and preserving an area on the subject property as a rear yard while providing light, air, and privacy.

For the reasons already discussed, the Board concludes that approval of the requested special exceptions will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is also required for approval of the application under Subtitle X § 901.2. The Applicant's building, as enlarged, will continue in residential use and will satisfy the development standards applicable in the RF-2 requirements with respect to lot occupancy, building height, and yards without adversely affecting the light, air, or privacy available to nearby properties.

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 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) (2012 Repl.)).) In this case, ANC 2B submitted a resolution that did not state any issues or concerns about the requested penthouse relief but opposed the relief requested from the rear addition requirements for the Applicant's planned rear addition without stating any specific issues or concerns. The ANC's

**BZA APPLICATION NO. 20585**  
**PAGE NO. 9**

report related that its land use committee had found the proposed rear addition “inconsistent with the character and context of neighboring residential structures along this segment of Swann Street NW” and therefore the committee suggested that the Applicant should consider “alternatives for reducing the length of the proposed rear addition to the by-right limit,” recognizing “the myriad of concerns expressed” in opposition to the project. (Exhibit 49.) The Board has considered the ANC’s resolution but did not find the ANC’s lack of support for the rear addition persuasive. For the reasons discussed above, the Board concluded that the proposed addition will not be visually intrusive on the character, scale, and pattern of houses along the alley, and therefore does not agree that the project will be inconsistent with the surrounding character and context.

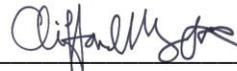
Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions pursuant to Subtitle C § 1504 from the penthouse requirements of Subtitle C § 1500.4 and the penthouse setback requirements of Subtitle C § 1502.1, and under Subtitle E § 205.5 to allow a two-story rear addition with penthouse at an existing two-story attached dwelling in the RF-2 Zone at 457 Swann Street, NW (Square 206, Lot 170). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibit 4 in the record.

**VOTE: 3-1-1** (Lorna L. John, Carl H. Blake, and Chrishaun S. Smith to APPROVE; Peter G. May to DENY; Frederick L. Hill not present, 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:** December 27, 2022

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

**BZA APPLICATION NO. 20585**  
**PAGE NO. 10**

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.

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.