

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19480 of Ilya Zusin, pursuant to Subtitle X § 901, Subtitle E § 5007, and Subtitle E § 5201, for a special exception from the lot occupancy requirements of Subtitle E § 304.1, the lot occupancy requirements for accessory buildings of Subtitle E § 5003.1, and the rear yard requirements for accessory buildings of Subtitle E § 5004.1, to allow construction of an accessory two-story carriage house in the RF-1 Zone at premises 202 9th Street, S.E. (Square 944, Lot 814).

HEARING DATES: April 19, 2017 and May 17, 2017
DECISION DATES: June 14, 2017 and June 28, 2017

DECISION AND ORDER

This self-certified application was submitted on February 17, 2017 by Ilya Zusin, the owner of the property that is the subject of the application (the “Applicant”). The application requested special exception relief to allow construction of a two story carriage house¹ as an accessory building that would not meet requirements for lot occupancy, lot occupancy for an accessory building, or the rear yard requirements for an accessory building in the RF-1 district at 202 9th Street, S.E. (Square 944, Lot 814) (“subject property”). After a public hearing, the Board of Zoning Adjustment (“Board” or “BZA”) voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated February 23, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6 as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission 6B (the “ANC”), the ANC in which the subject property is located; and Single Member District/ANC 6B05. Pursuant to 11 DCMR Subtitle Y § 402.1, on January 4, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 6, ANC 6B,

¹ The term “carriage house” is not defined in the Zoning Regulations, or in Webster’s Dictionary. The Board takes note that the term has been widely used to refer to accessory buildings used for residential, storage, and parking uses. *See Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990).

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and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on March 3, 2017 (64 DCR 2397).

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Candace Gill (“Party in Opposition”), the owner of a residence abutting the subject property to the north with an address of 905 Independence Avenue, S.E. (Exhibit 38.)

Applicant’s Case. The Applicant provided evidence and testimony about the planned accessory building, and asserted that the proposal would satisfy all requirements for approval of the requested zoning relief. With his pre-hearing statement dated March 29, 2017 (Exhibit 34), the Applicant submitted a Zoning Map (Exhibit 34A), a copy of HPRB’s concept approval of the design (Exhibit 34B), a report from EHT Traceries regarding whether the window located on 905 Independence Avenue was original to the structure or was added some time later (Exhibit 34C), a copy of BZA Order 17251 (Exhibit 34D), and eight letters in support of the application.² (Exhibit 34E.) On March 29, 2017, the Applicant also submitted a zoning analysis prepared by his architect, photographs showing the existing site conditions, a site plan showing neighboring properties, architectural plans showing the proposed new accessory carriage house, including elevation and section drawings showing the relationship between the proposed accessory carriage house to adjacent buildings and views from public ways. (Exhibit 35.) On May 11, 2017, the Applicant submitted revised architectural plans showing a more accurate depiction of the depth of the carriage houses to the south of the Applicant’s proposed new accessory structure. (Exhibit 106.)

Correction of Applicant’s pre-hearing statement. On April 13, 2017, the Applicant filed a motion requesting that he be allowed to file a revised pre-hearing statement. (Exhibit 79.) The Applicant’s attorney stated that he had erroneously included in the conclusion of the pre-hearing statement that the Applicant was seeking approval of an application to permit an eating and drinking establishment on the Property, and that the mistake was a scrivener’s error. Attached to the motion was a corrected pre-hearing statement with exhibits. (Exhibit 80.) The Board granted the motion.

Continuance. The party in opposition requested a postponement of the April 19, 2017 hearing. (Exhibit 56.) The Applicant originally opposed the postponement (Exhibit 71), then consented to the postponement. (Exhibit 93.) On April 19, 2017, the Board opened the hearing, granted the request for party status, considered the submissions related to the continuance, and continued the rest of the hearing until May 17, 2017.

OP Reports. OP submitted four reports in this case. By memorandum dated April 7, 2017³, the Office of Planning recommended approval of the three special exceptions requested by the

² Two of the letters were signed by the same person, listing different addresses as his residence. Another letter of support was later rescinded by the signatory, who then opposed the application.

³ OP stated that it submitted the report on April 6th via IZIS, but it was not included in the exhibits of the case as of April 13, 2017, so it resubmitted the same report again on April 13, 2017.

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Applicant. (Exhibit 81.) In a supplemental report dated May 5, 2017, OP expanded its analysis and included additional information, and again recommended approval of the application. (Exhibit 103.) In a second supplemental report dated May 24, 2017, OP responded to questions asked by the Party in Opposition. (Exhibit 122.) In a third supplement report dated June 16, 2017, OP again responded to questions asked by the Party in Opposition. (Exhibit 129.)

DDOT. By memorandum dated April 5, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 39.)

ANC Report. By letter dated April 14, 2017, ANC 6B indicated that, at a properly noticed public meeting on April 12, 2017 with a quorum present, the ANC voted to support the application without stating any issues or concerns. (Exhibit 88.) The letter mentioned an enclosed Form 129, which appears as Exhibit 89. That form only referenced the lot occupancy request. The ANC submitted a second Form 129 on April 15th. That form added a reference to the side yard relief and indicated that the ANC “determined that granting these special exceptions would not be inconsistent with the general intent and purpose of the Zoning regulations”, and for that reason recommended that the Board “grant the Special Exceptions to construct an accessory two-story carriage house for use as covered parking and an office.” (Exhibit 98.)

Party in Opposition. The Party in Opposition, Ms. Gill, contended that the Applicant’s proposed accessory building would cause a loss of light and air to her property by enclosing her kitchen window, and diminish the value of her property. (Exhibit 96.) On May 13, 2017, Ms. Gill submitted photographs showing conditions on her property (Exhibit 107), and conditions in the alley (Exhibit 108-111.) On May 15, 2017, Ms. Gill submitted additional photographs showing the exterior of her property, and conditions on the subject property at various points in time. (Exhibit 112.) On May 16, 2017, Ms. Gill submitted tax documents related to her property. (Exhibit 113.) On May 17, 2017, Ms. Gill submitted a copy of a newspaper article (Exhibit 114), contested several factual assertions made by the Applicant (Exhibit 115), submitted additional photographs showing conditions of her property (Exhibit 116), and a copy of a building permit. (Exhibit 117.)

Persons in support. With his pre-hearing statement dated March 29, 2017 the Applicant submitted eight letters in support of the application.⁴ (Exhibit 34E.) A letter of support was submitted April 12, 2017 by Karen Kerr and Pierre Chone, who reside two doors away at 206 9th Street, S.E. (Exhibit 70.) The letter stated that they supported the application because the Applicant’s property was one of the few on the alley that lacked a carriage house, and that the Applicant’s proposed carriage house would enhance security for adjacent houses and improve the appearance of the alley. A letter of support was submitted on April 18, 2017 by the Capitol Hill Restoration Society Zoning Committee. (Exhibit 95.) An additional letter of support was submitted on April 21, 2017

⁴ Two of the letters were signed by the same person, listing different addresses as his residence. Another letter of support was later rescinded by the signatory, who then opposed the application.

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by Amy Dinan, who stated she believed the proposed carriage house would improve the block. (Exhibit 101.)

Persons in opposition. The Board received letters from persons in opposition to the application. The persons in opposition objected that the Applicant's proposed accessory building be used for commercial use, would compound parking difficulties in the area, and would negatively impact Ms. Gill's property's access to light and air.

FINDINGS OF FACT

1. The subject property is located on the east side of 9th Street, S.E. near its intersection with Independence Avenue (Square 944, Lot 814).
2. The subject property has a total land area of 2,452 square feet and is improved with a two-story attached building used as a principal dwelling. It is a rectangular shaped lot with approximately 23 feet of street frontage on 9th Street S.E., and a depth of approximately 106 feet. The rear of the lot faces a public alley.
3. Square 944 is bounded by Independence Avenue to the north, 9th Street to the west, C Street to the south, and 10th Street to the east. The Square is bisected by a 20-foot north-south alley that runs from Independence Avenue to C Street. A majority of the buildings in the square are attached and located on rectangular lots of a typical Capitol Hill row pattern. Many of the attached dwelling units in the square have accessory structures, including the properties surrounding the subject property.
4. The subject property is located in an RF-1 Zone, where applicable zoning provisions are intended, among other things, to 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. (Subtitle E § 100.3(a).)

Proposed project

5. The Applicant proposes to construct a two-story accessory structure⁵ (a carriage house) at the rear of the subject property. The carriage house will have a height of 20 feet at the building height measuring point. At its tallest point, the carriage house will have a height of approximately 23½ feet with a chimney that extends approximately two feet above that.
6. The western wall of the Applicant's proposed accessory structure is 24 feet from, and parallel to, the alley. The western walls of Ms. Gill's carriage house, and the western wall

⁵ The Zoning Regulations use both the terms "accessory building" and "accessory structure" to describe what the Applicant proposes to construct. The development standards refer to "accessory buildings", while 11-E DCMR § 5201, which allows for deviations from those standards, refers to "accessory structures." For the purposes of this order, the Board will use each term in its applicable context.

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of the garage located to the south of subject property, are also 24 feet from, and parallel, to the alley. An outdoor fireplace will be attached to the western wall of the proposed carriage house and will project 2 ½ feet into the rear yard. There is also a chimney projection on Ms. Gill's property. With the exception of these projections, the western walls of the three carriage houses will align at an even depth.

7. Parking for two automobiles will be provided in the first floor garage of the accessory structure. The garage will be accessed via the public alley. The second floor of the accessory building will be used as an office for the residents of the primary dwelling and/or as auxiliary living space by the residents of the primary dwelling.
8. The combined lot occupancy for the principal building and the proposed accessory building is 68.9%. The maximum permitted combined lot occupancy as a matter of right is 60% pursuant to 11-E DCMR § 304.1.
9. The lot occupancy for the proposed accessory building itself is 566 square feet. The maximum permitted lot occupancy for an accessory structure is 450 square feet, pursuant to Subtitle 11-E DCMR § 5003.1.
10. The rear yard measured from the center line of the alley for the proposed carriage house is 10 feet. A rear yard of 12 feet is required by 11-E DCMR § 5004.1.

Neighboring properties

11. To the north of the subject property are lots 63 and 64.
12. Lot 63 has an address of 200 9th Street, N.E and is improved with a two-story semi-detached building.
13. Lot 64 is located at the intersection of Independence Avenue, S.E. and the north-south alley. The Property is owned by the Party in Opposition and is improved with a carriage house residence at premises 905 Independence Avenue.
14. To the south of the subject property is lot 22, which has an address of 204 9th Street, S.E. It is improved with a two and a half story attached building with an accessory garage at the rear of the property. The north face of this garage is separated from the northern property line with the subject property by an approximately three-foot wide walkway leading to the alley.
15. To the east of the subject property is the 20-foot wide north-south alley dividing Square 944. Across the alley is a row of accessory structures facing the alley in the rear yards of the primary structures facing 10th Street, S.E.
16. To the west of the subject property is 9th Street, S.E. On the opposite side of the street is a row of attached dwellings.

The light and air available to neighboring properties

17. The Applicant's proposed accessory structure would block a 24-inch by 32-inch window that opens onto the kitchen of the residence owned by the Party in Opposition. This is the only window on the south side of that building, which was constructed to the property line adjacent to the Applicant's property. There is no side yard required for an accessory structure in the RF-1 Zone District. (11-E DCMR § 5005.1.) Therefore, the window was constructed at the risk that it would someday be blocked through the construction of an accessory structure with no side yard, as is happening here.

The privacy of use and enjoyment of neighboring properties

18. The proposed west-facing windows would be approximately 30 feet from the rear walls of neighboring structures and the oblique views from the proposed carriage house's second story would not likely intrude on the privacy of adjacent structures.
19. The existing principal structure's west-facing windows overlook the same back yards that the proposed carriage house's west-facing windows would overlook, and would, thus, not further compromise the privacy or use of these back yards.
20. The proposed structure would have no views into the north-adjacent carriage house residence or its yard.
21. The privacy of properties to the east would be protected by the combined width of the alley and rear yard depths to the east, as well as accessory structures in rear yards to the east.

Potential for visual intrusion upon the character, scale, and pattern of houses along the subject street frontage

22. The proposed accessory structure would not be visible from 9th Street.
23. The proposed accessory dwelling would be visible from Independence Avenue and the alley. It would have a similar appearance to several of the existing two-story garages and carriage houses along the north-south alley along the rear of the property. It would also have a similar alignment to the alley as several existing carriage houses on the alley.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks special exceptions under 11-E DCMR § 5201 from the lot occupancy requirements of Subtitle E § 304.1, the lot occupancy requirements for accessory buildings of Subtitle E § 5003.1, and the rear yard requirements for accessory buildings of Subtitle E § 5004.1, to allow construction of an accessory two-story carriage house in the RF-1 Zone at premises 202 9th Street, S.E. (Square 944, Lot 814).

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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 11-E DCMR §§ 5201.1 and 5201.2, the Board may approve, as a special exception under Subtitle X, chapter 9, relief from specific development standards applicable to residential buildings in the RF-1 Zone, including the lot occupancy (up to 70%), lot occupancy for accessory buildings, and rear yard for accessory building relief sought in this application, subject to certain requirements. Those requirements are as follows. Pursuant to Subtitle E § 5201.3, an applicant for a special exception must demonstrate that the accessory structure will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. In particular, the applicant must demonstrate that the accessory structure will not unduly affect the light and air available to neighboring properties, or unduly compromise the privacy of use and enjoyment of neighboring properties. The planned accessory structure, as viewed from a street, alley, and other public way, must not substantially visually intrude on the character, scale, and pattern of houses along the street frontage. Pursuant to Subtitle E § 5204.5, the application shall not permit the introduction or expansion of a nonconforming use. Pursuant to Subtitle E § 5204.6, the application shall not permit the introduction or expansion of nonconforming height or number of stories.

In addition, the application must meet the general special exception criteria of Subtitle X, Chapter 9.

The accessory structure will not unduly affect the light and air available to neighboring properties

The Board concludes that the light and air available to neighboring properties will not be unduly affected by the accessory structure.

The accessory structure will block a 24-inch by 32-inch window that opens onto that property's kitchen. This is the only window on the south side of that building. That side was constructed at the south property line adjacent to the Applicant's property. Since there is no side yard requirement for an accessory building, the window was always at risk to be blocked as a matter of right, and therefore the loss of light and air that results from this addition is not relevant in this unusual circumstance. Although the Board could consider the loss of light due to the blockage of an at-risk window, the loss in this instance is minimal. Most of the light and air available to Ms. Gill's carriage house comes from its 14 remaining windows. The Board therefore agrees with the Office of Planning that "while the applicant's proposed accessory structure would likely have a substantially adverse impact on the light and air available to the kitchen in 905 Independence Avenue, that impact could not be considered undue because the window that would be blocked is

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an at-risk, ... window ... that is located on the property line shared by the two properties.” (Exhibit 103.)

The light and air available to the properties to the west and east will not be affected by the structure.

The accessory structure will not unduly compromise the privacy of use and enjoyment of neighboring properties

The Board concludes that the privacy and enjoyment of neighboring properties will not be unduly compromised.

The privacy of the property to the north that is owned by the Party in Opposition will not be impacted since there are no windows in the proposed accessory structure with views towards her residence or yard. As noted, the impact resulting from the proposed structure blocking the sole window on the south side is irrelevant because the window was at risk and was, in any event, small, with 14 other windows remaining.

For the properties to the northwest and south, the Applicant’s proposed west-facing windows would be approximately 30 feet from the rear walls of the neighboring structures and the oblique views from the proposed carriage house’s second story would not likely intrude on the privacy of adjacent structures or yards. The project will not impact on the enjoyment of these properties.

The privacy and enjoyment of the properties to the west and east will not be affected by the structure.

The accessory structure, together with the original building, as viewed from the street, alley, and other public way, will not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage

The proposed accessory structure will not be visible from 9th Street, and although the structure will be visible from Independence Avenue and the alley, it would have a similar appearance to several of the existing two-story garages and carriage houses along the north-south alley along the rear of the property. The proposed structure would also have a similar alignment to the alley as several existing carriage houses on the alley.

The Board therefore concludes that the accessory structure combined with the original building will not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage.

Other criteria.

Consistent with 11-E DCMR § 5201.3(d) the Applicant submitted plans, photographs, elevation and section drawings to demonstrate compliance with the Subtitle E § 5201.3 standard. The lot

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occupancy relief requested, at 68%, did not exceed the 70% limitation of Subtitle E § 5201.3(d). The lot occupancy and rear yard relief will not introduce or expand a nonconforming use in contravention of 11-E DCMR § 5201.5, but will allow for a new accessory structure that will be occupied by matter of right uses. And, since no height relief is being requested, the grant of the application will not permit the introduction or expansion of nonconforming height or number of stories as is prohibited by 11-E DCMR § 5201.6.

General special exception criteria of Subtitle X, Chapter 9

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested 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. Approval of the requested special exception will be in harmony with the purpose of the RF-1 Zone, and consistent with the intention of provisions applicable in the RF-1 Zone to recognize and reinforce the importance of neighborhood character, 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. As discussed above, the Board concludes that while the Applicant's proposed accessory structure will have an adverse effect on Ms. Gill's property by enclosing her window, this is unrelated to the zoning relief requested. The special exceptions will not otherwise affect adversely the use of neighboring property.

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 concurs with OP's recommendation that the application should be approved in this case.

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 6B expressed support for the Applicant's proposal without stating any issues and concerns to which the Board can give great weight.

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 E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, the lot occupancy requirements for accessory buildings of Subtitle E § 5003.1, and the rear yard requirements for accessory buildings of Subtitle E § 5004.1, to allow construction of an accessory two-story carriage house in the RF-1 Zone at premises 202 9th Street, S.E. (Square 944, Lot 814). It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 35 – ARCHITECTURAL PLANS AND ELEVATIONS.**


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VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter A. Shapiro (by absentee ballot) to APPROVE; 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 31, 2018

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

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

PURSUANT TO 11 DCMR SUBTITLE 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.