

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19576 of William Skelton**, pursuant to 11 DCMR Subtitle X § 901.2 for a special exception under Subtitle E §§ 205.5 and 5201 from the rear addition requirements of Subtitle E § 205.4, to construct a two-story rear addition to an existing one-family dwelling in the RF-1 Zone at premises 1745 Harvard Street, N.W. (Square 2588, Lot 163).

**HEARING DATES:** October 18, 2017 and November 1, 2017  
**DECISION DATES:** October 11, 2017 and November 15, 2017

**DECISION AND ORDER**

On July 3, 2017, William Skelton, the property owner of the subject premises (the “Owner” or the “Applicant”) submitted an application for special exception relief to allow the construction of a two-story rear addition at 1745 Harvard Street, N.W. (Square 2588, Lot 163) the “Subject Property”). The Board of Zoning Adjustment (“Board”) held a public hearing on the application on November 1, 2017 and voted to approve the Application on November 15, 2017.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Public Hearing. By memoranda dated August 24, 2017, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1D, the ANC for the area within which the Subject Property is located; ANC 1C, the ANC adjacent to the area where the Subject Property is located; and the single-member district ANC 1D-05, and the owners of all property within 200 feet of the Subject Property. The application requested an expedited review (i.e. deliberations without a hearing) and the application was originally scheduled for the Board’s decision meeting agenda on October 11, 2017 but was automatically removed from the expedited review calendar because of a party status request made in opposition and scheduled for hearing on November 1, 2017.<sup>1</sup>

Party Status

The Applicant and ANC 1D were automatically parties in this proceeding. There were two requests

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<sup>1</sup> Before the hearing was rescheduled to November 1, 2017, the hearing was administratively moved to October 18, 2017.

**BZA APPLICATION NO. 19576**  
**PAGE NO. 2**

for Party Status, one from Steven Roberts (Exhibit 41) and one from Jeremy and Jana Kadden (Exhibit 47.) As Mr. Roberts lived nearly half a block from the Subject Property and had only general concerns, the Board denied his party status request at the hearing on November 1, 2017. The request for party status from Mr. and Mrs. Kadden was granted. The Kaddens (the “Party Opponents”) live directly to the east of the Subject Property, at 1743 Harvard Street, N.W. The Party Opponents cited a number of concerns including general opposition to any special exceptions or variance for this block, that a lack of sunlight will impact gardens and make backyards cold and icy in the winter, that views will be negatively altered because of brick walls, that any two-story addition impacts the quality of life, and that it would increase their property value which would eliminate affordable housing stock.

Applicant’s Case. The Applicant provided evidence and testimony describing the planned enlargement of the building at the Subject Property. The Applicant asserted that the proposal satisfied the applicable requirements of the Zoning Regulations under 11-U DCMR § 205.5.

OP Report. In its memoranda dated September 29, 2017, the Office of Planning recommended approval of the requested relief. In its report, the Office of Planning states that based on the shadow studies, the proposed addition would not cause an undue increase in shadow to the adjacent property to the east. The only additional shadow created would be on the adjacent property to the west and that shadow is limited to 12:00 PM. The Office of Planning also determined that the privacy of use and enjoyment of the adjacent neighbors would not be unduly compromised, as the rear addition would have no windows facing either property. Further, the Applicant offered to pay up to \$1,000 to the adjacent neighbor at 1743 Harvard Place, N.W. for landscaping, which could include making the addition’s wall vegetated.

DDOT Report. By memoranda dated September 27, 2017, DDOT indicated it had no objection to the approval of the application, noting that the proposal will have no adverse impacts on travel conditions of the District’s transportation network.

ANC Report. As the affected Advisory Neighborhood Commission, ANC 1D, an automatic party to this proceeding, submitted two reports regarding the application. In its first report dated September 27, 2017, the ANC voted 4-0-1 to advise the Board of Zoning Adjustment to postpone the hearing and request updated burden of proof statements that directly address the concerns raised by residents within a 200-foot radius. At the public hearing of October 18, 2017, the Board granted ANC 1D’s motion for postponement in Exhibits 44 and 45 of the record and the Application was continued until November 1.

In its second report, dated October 24, 2017, the ANC indicated that at a regularly scheduled monthly meeting with a quorum present, the ANC voted 5-0-0 to recommend denial of the application. (Exhibit 64.) The ANC considered the Application in concert with BZA Application No. 19560 (1739 Harvard Street, N.W.). The ANC expressed several issues and concerns. First the ANC expressed its frustration in applying the 11-E DCMR § 5201.3 standard, that the Applicant must demonstrate “that the addition ... shall not have a substantially adverse effect”.

**BZA APPLICATION NO. 19576**  
**PAGE NO. 3**

The ANC advised the Board that this is “a very difficult judgment to make, because the text clearly implies that some ‘adverse effect’ is acceptable; the ANC must somehow decide if any effect is ‘substantially adverse’, a vague and subjective term.” Nevertheless, the ANC noted that in general the “backyards on Harvard Street are extremely narrow and shallow compared to the rest of the city” and therefore additions “on Harvard Street may thus have a more pronounced effect on adjacent properties than elsewhere in the city with larger backyards.” With respect to the instant Application, the ANC requested that the Board consider that the immediately adjacent rear yards function “as outdoor living space, in both design and fact” and are “so shallow and narrow ... that any rear addition on an adjacent property could have a particularly pronounced adverse effect.”

Persons in Support. The Board received five letters in support from (1) Peng Wu, the owner of 1739 Harvard Street, N.W.; (2) Russel Bushey and Nina Gregg, the owners of 1751 Harvard Street, N.W.; (3) Joe McReynolds and Aditi Gorur, the owners of 1755 Harvard Street, N.W.; (4) Manish Shah, the owner of 3303 18<sup>th</sup> Street, N.W.; and (5) Elizabeth Rogan and Timothy Farrell, owners of 3226 19<sup>th</sup> Street, N.W. These supporters urged the Board to approve the special exception and stated that modest additions are standard practice on the row and help keep growing families in the neighborhood rather than moving away to the suburbs.

Persons in Opposition. The Board received a petition in opposition from residents on the 1700 Block of Harvard Street. The Board received one individual letter in opposition from Nicole Melcher who owns 1732 Harvard Street, N.W. The letters and petition cited a number of concerns, ranging from general opposition to any special exceptions or variance for this block, that a lack of sunlight will impact gardens and make backyards cold and icy in the winter, that views will be negatively altered because of brick walls, and that any two-story addition impacts the quality of life of the neighbors.

## **FINDINGS OF FACT**

### **The Subject Property and Nearby Properties**

1. The Subject Property is located at 1745 Harvard Street, N.W. (Square 2588, Lot 163).
2. The Subject Property is in the Mount Pleasant Historic District.
3. The Subject Property is a small rectangular record lot measuring 1,747 square feet in land area.
4. The Subject Property is located in the RF-1 Zone District.
5. The Subject Property is currently improved with a principal dwelling unit in an attached building.
6. Abutting the Subject Property to the east and west are attached buildings.

**BZA APPLICATION NO. 19576**  
**PAGE NO. 4**

7. Abutting the Subject Property to the north and south are a public alley and Harvard Street, respectively.

**The Proposal and BZA Application**

8. The Applicant is the owner of the existing, attached building at 1745 Harvard Street, N.W.
9. The existing building currently extends 13 feet past the adjacent property to the east.
10. The existing building currently extends three-point-three feet (3.3 ft.) past the adjacent property to the west.
11. The Applicant proposes to demolish the portion of the existing structure and replace it with a two-story addition that only extends 13 feet past the adjacent property to the east and 3.3 feet past the adjacent property to the west.
12. The intended use of the addition will be a new living room on the ground floor of the house, and a new master bedroom and bathroom on the upper-most floor.
13. The existing and proposed rear yard is 34.8 feet and complies with the 20-foot rear yard requirement of the RF-1 Zone.
14. The proposed lot occupancy is 36.4 percent, which complies with the 60 percent lot occupancy limitation of the RF-1 Zone.
15. The proposed height is 31.1 feet, which complies with the 35-foot height requirement of the RF-1 Zone.
16. The Applicant is maintaining the existing parking space.
17. The Applicant received conceptual approval for the project from the Historic Preservation Review Board ("HPRB") on May 25, 2017.

**The Required Zoning Relief**

18. The proposed addition will extend more than ten feet past the rear wall of the adjacent building to the east, as prohibited by Subtitle E § 205.4.
19. Subtitle E § 205.5 provides for special exception relief from the requirements of Subtitle E § 205.4 pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6.

**BZA APPLICATION NO. 19576**  
**PAGE NO. 5**

20. The Applicant is proposing to construct a two-story addition in place of the existing one-story addition.
21. The proposed addition will not impact the light and air available to neighboring properties. The Applicant provided shadow studies demonstrating the proposed addition would not cause an undue increase in shadow to the adjacent property to the east. The only additional shadow created would be on the adjacent property to the west and that shadow is limited to 12:00 PM.
22. The privacy of use and enjoyment of neighboring properties will not be unduly compromised, as the rear addition would have no windows facing either property. Further, the Applicant offered to pay up to \$1,000 to the adjacent neighbor at 1743 Harvard Place, N.W. for landscaping, which could include making the addition's wall vegetated.
23. The addition 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 Harvard Street. The addition is set far enough from the building façade so as not to be visible from Harvard Street. The first story is hidden by the existing board-on-board fence. As the second story would be visible, the Applicant worked with HPRB to design the addition to be consistent with the Historic District.<sup>2</sup> The colors and materials used for the addition are compatible with the character of surrounding rowhouses.
24. The lot occupancy of the proposed building is 36.4 percent, which is less than 70 percent lot occupancy.
25. The Applicant provided graphical representations such as plans, photographs, elevations, shadow studies, and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways. (See Exhibit 38, Exhibit 70.)
26. The purpose of the RF-1 zone is to provide for areas predominantly developed with attached houses on small lots within which no more than two dwelling units are permitted. (11-E § 300.1.) Accordingly, the proposal is in harmony with the general purpose and intent of the zoning regulations and zoning maps, as the Applicant is maintaining both the building attachment and the size of its small lot.

**CONCLUSIONS OF LAW AND OPINION**

The Applicant requests special exception relief under Subtitle E § 205.5 of the Zoning Regulations from the rear yard requirements of the RF-1 Zone in Subtitle E § 205.4. The RF-1 Zone requires a

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<sup>2</sup> The Applicant originally requested a 15-foot addition. At the time of the HPRB approval, a 15-foot addition was permitted as a matter-of-right.

**BZA APPLICATION NO. 19576**  
**PAGE NO. 6**

rear wall of an attached or semidetached building shall not be constructed to extend farther than ten feet beyond the farthest rear wall of any adjoining principal residential building on an adjoining property. The existing building already extends 13 feet past the rear wall of the adjacent building to the east and does not extend more than ten feet past the rear wall of the adjacent building to the west. The Applicant is not proposing to expand the existing building footprint, but to construct a two-story addition within the existing building footprint. However, the impact of the addition must be judged on its own, and not against the existing condition.

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) 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-X DCMR § 901.2.)

Subsection 205.4 of Subtitle E provides “that a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property.” However, Subtitle E § 205.9 allows a “rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) 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 as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6.

Subsection E § 5201.3 includes the following substantive criteria:

- 5201.3      An applicant for special exception under this section shall demonstrate that the addition or accessory structure shall not have *a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*
- (a)      The light and air available to neighboring properties shall not be unduly affected;
  - (b)      The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
  - (c)      The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage; ... ,

The Applicant meets all three criteria.

(a) The light and air available to neighboring properties shall not be unduly affected;

**BZA APPLICATION NO. 19576**  
**PAGE NO. 7**

The Applicant provided evidence in the form of shadow studies demonstrating that the difference in impact with regard to shadow between the proposed addition and the matter-of-right addition was negligible. (Fact 22, Exhibit 43, Exhibit 60.)<sup>3</sup> The architect testified as to how the shadow studies are compiled. The architects used a sun modeling study and geo-located this model as to where it was in real life, not a generic model, and picked different times of the year in order to model the conditions.

In its report, the Office of Planning found that the light and air available to neighboring properties would not be unduly affected by the proposed addition.

The Board was tasked to look at the difference between the matter-of-right ten-foot addition and the proposed 13-foot addition. The Board is persuaded by shadow studies and testimony provided by the Applicant and the Office of Planning that the proposed addition will not unduly affect the light and air available to neighboring properties.

5201.3 (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The Applicant provided evidence in the form of plans and elevations demonstrating that because the proposed addition would have no windows facing either of the adjacent neighbors, and because they were maintaining significant vegetation, the privacy and use of enjoyment of neighboring properties would not be unduly compromised. (Fact 22, 25, Exhibit 70.)

In its report, the Office of Planning found that the privacy and use of enjoyment of adjacent neighbors should not be unduly compromised by the rear addition. The Applicant's plan to maintain three trees on the eastern side of the site and to plant additional trees would reduce the addition's potential impact on the Party Opponents.

The Board is persuaded by the testimony of the Applicant and the Office of Planning that the privacy and use of enjoyment of neighboring properties will not be compromised by the proposed addition.

5201.3(c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage;

The addition together with the original building as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along Harvard Street. The addition is set far enough from the building façade so as to not be visible from

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<sup>3</sup> The owners of 1741 Harvard Street pursued a BZA Case at the same time as the present Application. The Party Opponents requested that the shadow study include the proposed addition at 1741 Harvard Place to show the combined effect. The Board found that the shadow study did not change the impact of the proposed addition on the neighbors' properties.

**BZA APPLICATION NO. 19576**  
**PAGE NO. 8**

Harvard Street. The first story is hidden by the existing board-on-board fence. As the second story would be visible, the Applicant worked with HPRB to design the addition to be consistent with the Historic District. The colors and materials used for the addition are compatible with the character of surrounding rowhouses. (Fact 23; Exhibits 49-50.)

The OP Report found that because the addition was in the rear and because the Applicant worked with HPRB to design the addition, it would not visually intrude upon the character, scale, and pattern of houses along Harvard Street or the alley.

Subtitle E §§ 5201.5 and 5201.6 provide that Subtitle E § 5201 shall not be used to permit the introduction or expansion of a nonconforming use or introduction or expansion of nonconforming height or number of stories, respectively. The Applicant did not request to do either.

***General Special Exception Requirements***

The Application must also satisfy the general special exception criteria of Subtitle X § 901.2 which states that the Board is authorized to grant special exception relief where, in the judgement 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 Maps.”

In harmony with the general purpose and intent of the Zoning Regulations

The purpose of the RF-1 zone is to provide for areas predominantly developed with attached row houses on small lots within which no more than two dwelling units are permitted. (11-E § 300.1.) Accordingly, the proposal is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as the Applicant is providing an update to an existing attached dwelling.

Will not tend to affect adversely the use of neighboring property

The second prong of the general special exception requirements is that the requested relief will not tend to affect adversely the use of neighboring property.

Other than the impacts on light, air, and privacy, which have been addressed above, the petition and letters in opposition from the Party Opponents claimed that any two-story addition would impact the quality of life for neighbors. They also raised concerns that the property values would increase, resulting in less affordable housing. The Party Opponents testified that because they were able to raise a family in a small house, the Applicant should be able to as well.

The Board finds that the Party Opponents provided no proof as to how property values would go up as a result. In making this observation, the Board is not shifting the burden of proof to the Party Opponents, “but is stating that it cannot address [a] conclusion when no basis is provided.” *Vision*



**BZA APPLICATION NO. 19576**  
**PAGE NO. 9**

*McMillan Partners, LLC and Office of the Deputy Mayor for Planning and Economic Development*, Zoning Commission Order No. 13-14(6) at 79 (2018). The Applicant let it be known that it wanted sought the expansion in contemplation of raising children. In response the Party Opponents indicated that since they were able to raise a family in close quarters, so could the Applicant. The Board bases its decision on whether the applicant has provided sufficient evidence demonstrating how it meets the special exception criteria that pertains to its application.

Accordingly, the Board finds that the Application and proposed addition will not tend to affect adversely the use of neighboring properties.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs 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) (2001).) As noted, in this case, ANC 1D is the affected ANC and voted to recommend denial of the application, principally based upon what it considered the disproportionate impact of any addition on the relatively small rear yards on Harvard Street when compared with larger yards located elsewhere in the District and the fact that the adjacent yards function as living space, and are so small that any addition would have a pronounced effect. The ANC also noted the difficulty in applying the “substantially adverse affect” standard.

Starting with the last point, the Board notes that “substantially adverse affect” standard for additions has been in the Zoning Regulations since the adoption of former Section 223 in 1998 and for over 20 years the Board and many ANCs have managed to make sense of it. Indeed, the standard does not standalone but can be met through demonstrating compliance with paragraphs E § 5201.3 (a) through (c) which the Applicant has done.

The Board acknowledges that the difficulty in this case is that the actual deviation here three feet from the matter of right standard is relatively small. During the Board’s deliberations, Zoning Commissioner Peter May noted that the Zoning Commission’s imposition of a ten-foot matter of right limit on rear additions was meant to address far larger extensions than what is before this Board. Although the Zoning Commission may have drawn its line too conservatively, the Board must apply the rule before it. It is clear from the evidence that the impact of this 13-foot extension when compared to a matter of right extension would “not tend to affect adversely the use of neighboring property”, which means that it’s adverse impact cannot be a substantial one. That is so even considering the relatively small size of the adjacent yards and their function as outdoor living space.

Based on the case record, the testimony at the hearing, the additional submissions by the Applicant, and the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied

**BZA APPLICATION NO. 19576**  
**PAGE NO. 10**

the burden of proof with respect to the request for a special exception under 11-E DCMR § 205.5, to allow an exception from limitations on the limitations on rear additions of 11-E DCMR § 205.4.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 70 – UPDATED ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 4-0-1** (Frederick L. Hill, Peter G. May, Carlton E. Hart, and Lesylleé M. White 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:** August 24, 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

**BZA APPLICATION NO. 19576**  
**PAGE NO. 11**

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.