



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

November 6, 2020

James R. Benjamin Jr., County Attorney
The Baltimore County Office of Law
Historic Courthouse, 400 Washington Avenue
Towson, Maryland 21204
Via email: jrbenjamin@baltimorecountymd.gov

Dear Mr. Benjamin:

We write on behalf of Homes for America, developer of *Red Maple Place*, a proposed affordable multifamily housing development in Towson. The Washington Lawyers' Committee for Civil Rights and Urban Affairs is a private non-profit law firm that focuses on eliminating discriminatory practices, including those in housing, through advocacy and litigation. We write to notify you that the Baltimore County Council has introduced legislation – Bill No 107-20 – that, if passed, threatens the viability of Homes for America's development project and, therefore, raises serious concerns about a violation of the federal Fair Housing Act.

Homes for America has a well-established reputation for building and preserving quality affordable housing in Maryland, Delaware, Pennsylvania, and Virginia, with over 3,500 apartments in Maryland alone. Homes for America's commitment to the development of quality, well-maintained affordable properties has been lauded by federal, state, and local agencies, and community members for over 25 years. The organization is committed to providing affordable housing to ensure that residents will have greater access to good schools, jobs, and an environmentally friendly neighborhood. With the Red Maple Place development, Homes for America is proposing to create 56 multifamily units serving residents with a mix of incomes. The development will include 50 long-term affordable units.

The Red Maple Place project has been proceeding through Baltimore County's development review and approval process, and from what we understand, at this time, fully complies with all applicable Baltimore County Zoning Regulations ("BCZR"). The zoning classification of the building area, R.A.E. 2 (Residence, Apartment, Elevator), is designed to accommodate "elevator-apartment buildings at relatively high-density, in residential settings close to the major commercial and cultural centers of the county." BCZR Section 201.1.A. We understand that the proposed number of units is significantly less than the maximum allowed density in the R.A.E. 2 zone (80 density units per acre), and the building is under the maximum permitted height of 144 feet.

One month before the scheduled hearing on the Red Maple Place development plan, following vocal community opposition to this affordable housing project, Councilman David Marks announced that he, too, was opposed to the project and introduced Bill No. 107-20, which would change the rules on Homes for America and reduce the maximum height of an apartment building on the property to 30 feet. This legislation is a clear attempt to stop the project from



going forward. As a result, this bill's adoption will violate the Fair Housing Act, both because it will have a disparate impact on Black and Latinx households by eliminating 50 homes for which these households would qualify in greater numbers than white households in an area where Black and Latinx residents are underrepresented, and because it will intentionally discriminate against Black and Latinx households.

The Fair Housing Act seeks to provide for fair housing throughout the United States.¹ The Act makes it unlawful to sell or rent or otherwise make unavailable or deny housing based on a person's race, color, religion, sex, familial status, national origin, or disability.² Both the U.S. Supreme Court and the U.S. Court of Appeals for the Fourth Circuit have held that a plaintiff can prove a violation of the Fair Housing Act through evidence that a challenged policy or practice has had, or will have, an unjustified discriminatory effect (or disparate impact).³ Zoning policies that restrict the development of affordable housing in predominantly white communities are what the Supreme Court has referred to as “the heartland” of Fair Housing Act disparate impact jurisprudence.⁴

As in cases like *Town of Huntington* and *U.S. v. City of Black Jack*, Bill No. 107-20 will have a disparate impact because people of color in Baltimore County and the broader region, and Black and Latinx people in particular, are disproportionately likely to be income-eligible for affordable housing like the units proposed for Red Maple Place. According to the 2014-2018 American Community Survey 5-Year Estimates, the median household incomes for Black and Latinx households in Baltimore County, respectively, are \$66,037 and \$62,910 while the median household income for white, non-Latinx households is \$79,609. In the broader metropolitan area, the median household incomes for Black and Latinx households are \$53,918 and \$70,576 while the median household income for white, non-Latinx households is \$92,346. Black and Latinx households are also much more likely to be renters and much less likely to be homeowners than are white, non-Latinx households in Baltimore County and the broader region. In the County, 54.2% of Black households and 54.8% of Latinx households are renters as opposed to just 24.1% of white, non-Latinx households. In the region, 54.1% of Black households and 51.0% of Latinx households are renters as opposed to just 22.7% of white, non-Latinx households.

In light of this data, it is patently clear that the occupancy of Red Maple Place, if developed, would be more heavily Black and Latinx than the demographics of the broader

¹ 42 U.S.C. § 3601.

² 42 U.S.C. § 3604(a); 42 U.S.C. § 3604(f).

³ *Texas Department of Housing & Community Affairs v. Inclusive Communities Project*, 576 U.S. 519 (2015); *De Reyes v. Waples Mobile Home Park L.P.*, 903 F.3d 415 (4th Cir. 2018).

⁴ *Texas Department of Housing & Community Affairs*, 576 U.S. at 539-40 (citing *Town of Huntington v. Huntington Branch, N.A.A.C.P.*, 488 U.S. 15, 16-18 (1988); *U.S. v. City of Black Jack*, 508 F.2d 1179, 1182-88 (8th Cir. 1974)).

County and region. After all, the median Black household in the region would be income-eligible for the property while the median white, non-Latinx household would make one and a half times the income limit.

Even more egregious, by blocking this development, Bill No. 107-20 would cut Black households off from a community – Towson – that is disproportionately white in comparison to the broader County and region. 72.6% of Towson residents are white, non-Latinx, far higher than the 58.1% of County residents and 57.0% of residents of the region that are white, non-Latinx. Towson's Black population, at 15.0%, is just over half that of the County, at 27.9%, and the region, at 28.7%. Blocking Red Maple Place would unlawfully perpetuate residential segregation by preventing Black households from moving to a community in which they are underrepresented.

Further, it is clear that no legitimate interest of the County will be served by reducing the maximum height on a property that is otherwise zoned for high-intensity residential development. Located on a street that would be shared with many much taller buildings than Red Maple Place's proposed four stories, the development would be entirely in keeping with the existing character of the community. There is no sound justification for Bill No. 107-20.⁵ Because Bill No. 107-20 would disproportionately deny housing to Black and Latinx households and do so in a manner that would perpetuate segregation in Baltimore County and the broader region, all while failing to advance any valid interest of the County's, its adoption would violate the Fair Housing Act.

There is also significant evidence that an intent to discriminate against Black and Latinx households motivates the adoption of Bill No. 107-20. Courts have held that, where elected bodies like the Baltimore County Council acquiesce to the discriminatory biases of their constituents, those entities themselves engage in unlawful intentional discrimination.⁶ Explicit statements of racist intent or the use of racial slurs are not necessary to show bias among the constituents to whom elected officials are acquiescing, and euphemisms or coded language that speak to stereotypes about race can also show bias.⁷ Here, the statements of opponents of Red Maple Place betray pure animus. Commentators have stated that they do not want the area to become "ghetto," they do not wish to "send good neighbors elsewhere," and finally, they did not

⁵ See *De Reyes*, 903 F.3d at 432 (noting that, after a plaintiff makes a *prima facie* case of disparate impact, the burden shifts to the defendant to show that a policy or practice is necessary to serve a substantial, legitimate, nondiscriminatory interest before shifting back to a plaintiff to show that a less discriminatory alternative could serve such an interest).

⁶ *Mhany Management, Inc. v. County of Nassau*, 819 F.3d 581, 611-12 (2d Cir. 2016).

⁷ *Id.*

want their "property values" to go down.⁸ These comments are both baseless, and they use coded language like that which courts have held allude to a discriminatory motivation to deny housing.⁹

Baltimore County has a long history of housing discrimination as is confirmed by the fact that the County settled systemic complaints of violations of the Fair Housing Act in 2016 and in doing so, agreed to support the development of 1,000 hard units of affordable housing over a 12-year period in places just like Towson and through developments just like Red Maple Place.¹⁰ There is substantial evidence that discriminatory intent motivates any decision to enact Bill No. 107-20. Further, this is the second time in less than a year that the Baltimore County Council has introduced legislation, which, on its face, reduces the maximum height of a multifamily building, but, in effect, is intended to stop affordable housing from being constructed within its jurisdiction. *See also* Bill No. 54-19. The old pattern of discrimination appears to be re-emerging.

Councilman David Marks, who introduced Bill No. 107-20, supported the following residential developments in his district: Circle East Towson, a 371-unit residential luxury apartment building,¹¹ Aspen Heights Towson, a 14-story, 611-unit apartment building for Towson University students,¹² and The York, a 15-story, 231-unit luxury student apartment building.¹³ The difference between these 1,200 units supported by Councilman Marks and the 56 proposed units at Red Maple Place opposed by Councilman Marks is that Red Maple Place will contain affordable housing.

If a court judges Baltimore County to have violated the Fair Housing Act on a disparate impact and/or an intentional discrimination theory, the County could be liable for damages, including compensatory damages, consequential damages, punitive damages, and attorneys'

⁸ Nancy Goldring, *Replace Red Maple Place: Better Solutions Exist to Meet Mandates AND Preserve East Towson*, FORWARD BALTIMORE (Aug. 25, 2020), <https://forwardbaltimore.com/2020/08/25/replace-red-maple-place-better-solutions-exist-to-meet-mandates-and-preserve-east-towson/>.

⁹ *See, e.g., Mhany Management, Inc.*, 819 F.3d at 608-12; *Avenue 6E Investments, LLC v. City of Yuma*, 818 F.3d 493, 505-07 (9th Cir. 2016); *Smith v. Town of Clarkton*, 682 F.2d 1055, 1066 (4th Cir. 1982).

¹⁰ *HUD Conciliation Agreement*, BALTIMORE COUNTY GOVERNMENT (Mar. 29, 2017), <https://www.baltimorecountymd.gov/departments/planning/fairhousing/hudconciliation.html>.

¹¹ Councilman David Marks, *Circle East to Transform Downtown Towson* (August 3, 2017), <http://councilmandavidmarks.com/circle-east-to-transform-downtown-towson/>

¹² Taylor Deville, *Towson University signs agreement with 101 York Road developer for off-campus student housing*, BALTIMORE SUN (August 7, 2020), <https://www.baltimoresun.com/maryland/baltimore-county/towson/cng-co-to-towson-off-campus-housing-20200807-jogm7r65fbblvi3u5t2qdttrldu-story.html>

¹³ Melody Simmons, *Towson Row kicks off its second student apartment project, The York*, BALTIMORE BUSINESS JOURNAL (August 14, 2020), <https://www.bizjournals.com/baltimore/news/2020/08/14/towson-row-apartments-the-york-greenberg-gibbons.html>



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fees.¹⁴ That is in addition to the imposition of injunctive relief specific to the proposed Red Maple Place and structural injunctive relief to continue to dismantle residential segregation in Baltimore County. Baltimore County would spare its taxpayers substantial expense by doing the right thing and stepping back from the rash course of action that is Bill No. 107-20. The County may also avoid additional enforcement action by the U.S. Department of Housing and Urban Development (“HUD”) if it withdraws this bill.

Homes for America’s development of Red Maple Place aligns closely with Baltimore County’s own expressed long-term goals, whether through its Comprehensive Plan goal to “Expand Housing Choice for All Residents” or through its commitments to HUD in the 2016 voluntary compliance agreement. Please contact me at catherine_cone@washlaw.org to discuss a resolution of this situation that permits the development of Red Maple Place as currently envisioned so that it can provide needed affordable housing in Baltimore County.

Sincerely,

Catherine Cone

Catherine Cone
Counsel
Washington Lawyers’ Committee
for Civil Rights and Urban Affairs

¹⁴ 42 U.S.C. § 3613(c).