

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
THE CITY OF NEW ORLEANS, LOUISIANA,)	
)	
and)	
)	
THE LOUISIANA STATE)	
BOND COMMISSION,)	
)	
Defendants.)	
_____)	

COMPLAINT

1. This action is brought by the United States to enforce the Fair Housing Act, as amended (“the Fair Housing Act”), 42 U.S.C. §§ 3601 et seq., and Title II of the Americans with Disabilities Act (“the ADA”), as amended, 42 U.S.C. §§ 12131, et seq., and the regulations implementing Title II, 28 C.F.R. Part 35.
2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 3614(a) and (b), and 42 U.S.C. § 12133. The Court may grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.
3. Venue is proper under 28 U.S.C. § 1391(b), because the events giving rise to the claims alleged herein occurred in the Eastern District of Louisiana.

DEFENDANTS

4. The City of New Orleans (“City”) is a political subdivision of the State of Louisiana, located in Orleans Parish, within the Eastern District of Louisiana, and organized under

the laws of the State of Louisiana. The City is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104 and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131, et seq., and its implementing regulations, 28 C.F.R. Part 35.

5. The City operates under the Mayor-Council form of government. Since May 3, 2010, the duly elected Mayor of the City has been Mitchell J. Landrieu.
6. The City’s Planning Commission consists of nine members appointed by the Mayor and subject to approval by the City Council. Among its functions, the City Planning Commission prepares and makes recommendations on the City’s Comprehensive Zoning Code (“Zoning Code”). The Zoning Code contains certain of the zoning and land use requirements that govern development applications within the City.
7. The Board of Zoning Adjustment (“BZA”) is a Board attached to the City Planning Commission. The BZA comprises seven members who are appointed by the Mayor and subject to approval by the City Council. Among its duties, the BZA acts on applications for variances from the Zoning Code. Decisions of the BZA are final and may be appealed to the Civil District Court in Orleans Parish.
8. The Department of Safety and Permits (“Permit Department”) is a Department of the Executive Branch of the City, the director of which is approved by the Mayor. The Permit Department decides applications for building and other permits required by the Zoning Code. Decisions of the Permit Department may be appealed to the BZA. During the events described herein, the Director of the Permit Department was Paul May.
9. The City’s Historic District Landmark Commission (“HDLC”) comprises nine members appointed by the Mayor and subject to approval by the City Council. Among its duties, the HDLC approves requests to demolish or alter buildings located in geographic areas

designated by the City Council as “historic districts.” Determinations of the HDLC may be appealed to the City Council.

10. The Louisiana State Bond Commission (“Bond Commission”) is an agency of the State of Louisiana, established by Article VII, Section 8 of the Louisiana Constitution of 1974, which provides that “No bonds or other obligations shall be issued or sold by the State directly or through any State board, agency or commission, or by any political subdivision of the State, unless prior written approval of the Commission is obtained.” The Bond Commission meets monthly to act on requests for approval of bond funding that have been submitted to it.

FACTS

A. The Esplanade Affordable Housing Proposal

11. There has been a substantial need for, and a short supply of, affordable housing for low-income individuals in New Orleans since Hurricane Katrina. According to the City’s Consolidated Plan (Draft 2012-2016) (“Consolidated Plan), the homeless population has grown by over 70% since Katrina. In 2011, nearly 22,000 individuals were served by homeless programs in the City. In 2012, nearly 5,000 individuals were living in temporary shelters or without any shelter at all, according to annual “Point in Time” surveys reported in the Consolidated Plan. Among renters in New Orleans, nearly 27%, or 10,000 renters, are “severely cost burdened,” which means they pay more than 50% of their income on rent, according to HUD’s 2009 Comprehensive Housing Affordability Strategy (CHAS) Report of U.S. Census Bureau data for the area.
12. The shortage of affordable housing is particularly severe for low-income persons with disabilities, according to the Consolidated Plan. Approximately 55% of the local

homeless population is disabled. On any given night, there are more than 2,300 disabled persons who are homeless, 570 of whom are veterans. More than 2,000 disabled persons are on the waiting list for Permanent Supportive Housing.

13. The Gulf Coast Housing Partnership (“GCHP”) is a nonprofit real estate development company. Since Hurricanes Katrina and Rita, its principal focus has been to develop affordable housing for low-income individuals in southern Louisiana and Mississippi.
14. Since 2009, GCHP has attempted to redevelop an abandoned property located at 2535 Esplanade Avenue in New Orleans, which was formerly used as a nursing home, as an affordable apartment complex (“Esplanade” or “Esplanade development”). The property is owned by GCHP-Esplanade LLC, a nonprofit corporation, which is a wholly owned subsidiary of GCHP. GCHP-Esplanade LLC and GCHP are collectively referred to hereinafter as “GCHP.”
15. To develop the Esplanade, GCHP has worked in partnership with two nonprofit organizations, the Common Ground Institute (“Common Ground”), a New York-based organization which has developed an innovative approach to providing supportive housing for the homeless, and Unity of Greater New Orleans (“Unity”), an umbrella organization of charities focused on the issue of homelessness in New Orleans.
16. GCHP’s proposal for the Esplanade originally called for construction of 42 efficiency units, half of which would be rented to low-income individuals whose annual incomes were between 50% to 60% of the area median annual income for the New Orleans area (or between approximately \$21,000 to \$25,000). The remaining 21 units were intended as “Permanent Supportive Housing,” pursuant to Title IV of the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. § 11301 et seq. Permanent Supportive

Housing is a type of affordable housing that provides on-site services to people who may need support to live independently. Such housing is only available to persons with disabilities who are formerly homeless, including veterans and emancipated youth.

17. GCHP's proposal also includes a case management office to be located within the Esplanade. The office will be staffed by members of Unity, who were available to provide supportive housing services to tenants, at their request, to assist them from transitioning from homelessness to independent living.
18. The principal source of funding for the Esplanade is to be provided under the "Piggyback Program," which was created by the State of Louisiana to assist in the redevelopment of areas devastated by Hurricane Katrina. Under this program, eligible projects receive a combination of federal Community Development Block Grant ("CDBG") funds, commensurate tax-exempt bond authority, and 4% Low Income Housing Tax Credits ("LIHTC"). The Bond Commission is required to approve the tax-exempt bond financing and 4% LIHTC component of the Piggyback Program.
19. In December 2008, GCHP received approximately \$3.2 million in CDBG funds for the Esplanade under the Piggyback Program. As of this date, the Bond Commission has not approved the bond financing and 4% LIHTC component of the program.

B. The City's Discriminatory Zoning and Permit Denials

20. From 2009 and continuing through the present, the City has taken a series of actions designed to prevent the construction of the Esplanade. The City has taken these actions in response to community opposition that has been based on stereotypes and fears of the Esplanade's prospective tenants with disabilities.
21. In January 2010, GCHP applied to the BZA for a variance from the requirement in the

Zoning Code that apartments provide a minimum of one parking space per unit (“First Variance Application”). GCHP sought permission to provide 28 parking spaces rather than the 42 spaces that would otherwise be required for the 42-unit Esplanade development.

22. The Esplanade is located in a district zoned RM-3 under the Zoning Code, which allows an apartment complex as a “permitted use.” At the time of GCHP’s First Variance Application, the City did not contest that the Esplanade was an apartment complex and a permitted use in the RM-3 district.
23. Upon learning of GCHP’s proposal and First Variance Application, residents in the surrounding area objected to the proposal. They circulated petitions and wrote numerous letters to members of the BZA, to community groups, and to other City officials expressing vehement opposition to the development. Many of the communications contained terms that were derogatory and that were based on stereotypes of persons with mental and physical disabilities. Letters referenced “drug addicts,” “junkies,” and “transients.” They expressed fears that the prospective tenants would “rather be drunk, outdoors, than sober indoors,” would “incessantly travers[e] through the neighborhood,” would “bring more blight and more crime,” would endanger the children who attended the schools nearby, and would “destroy the neighborhood.”
24. An unsigned flier was sent to City officials and circulated through the surrounding neighborhoods. It urged residents to contact BZA and other city officials and warned that the units would be occupied by “the **homeless, ex-offenders**, people with **mental illness**, HIV/AIDS, people with a history of drug usage, and others similarly situated in a concept described as “Supportive housing.’ NO facility of this nature should be located in a

residential neighborhood, particularly an Historic Residential Neighborhood!!!!!!”
(emphasis in original).

25. On March 3, 2010, the president of the Esplanade Ridge & Treme Civic Association (“ERTCA”) submitted to the BZA, on behalf of the ERTCA, a letter opposing the variance stating, among other things, that “[t]hese are people who really need more intensive care. In truth, they should be in an institutional setting.”
26. On March 8, 2010, the BZA held a hearing on the First Variance Application (March 8, Hearing). Nearly a dozen residents, including members of the neighborhood association ERTCA, spoke at the hearing in opposition to the application. Some of the residents stated expressly that they opposed the Esplanade on account of its prospective tenants with disabilities. Prospective tenants of the Esplanade were described as “recovering drug addicts” who belonged in a “medical complex” or an “institution that would limit access in and out of the building.”
27. At the end of the March 8 Hearing, GCHP requested that the variance be treated as reasonable accommodation of the parking requirements in the Zoning Code. Instead, the BZA voted to deny the variance request without explanation. The BZA stated at the end of the hearing that GCHP should make an effort to address the concerns of neighborhood residents. Under the Zoning Code, the BZA’s denial meant that GCHP was required to wait one year before reapplying for a variance from the parking requirement.
28. Following the March 8 Hearing, the GCHP sought to revise its plan for the Esplanade in order to find a way to comply with the parking requirements of the Zoning Code. Under the revised plan, GCHP proposed to reduce the number of units from 42 to 40. GCHP also proposed to demolish a portion of the building and enlarge and reconfigure the

parking lot to provide the required 40 parking spaces. Because the Esplanade sat on an irregularly shaped lot, some of the parking spaces were located less than ten feet from the street, which is the minimum required setback distance under the Zoning Code for the lot at issue. GCHP's revised plan therefore required a variance from the setback distance.

29. On March 31, 2010, GCHP submitted a second variance request to the BZA ("Second Variance Application") seeking a waiver of the ten-foot setback requirement. Again, residents from the surrounding neighborhoods, including members of the neighborhood association ERTCA, wrote letters to City officials opposing the variance and the Esplanade because of its prospective tenants with disabilities. Over 70 residents signed a neighborhood petition to the City, which stated that the undersigned were opposed to "supportive housing (a group home) for 84 indigents."
30. On May 10, 2010, the BZA held a hearing on the Second Variance Application ("May 10 Hearing"). The Staff Report prepared prior to the hearing recommended that the BZA approve the application because it met the requirements under the Zoning Code.
31. At the beginning of the May 10 Hearing, members of the BZA asked representatives of GCHP whether they had met with neighborhood groups and whether there was neighborhood support for the project. Thereafter, over a dozen residents, including members of the neighborhood association, ERTCA, spoke to oppose GCHP's application. As with previous comments, some of the testimony contained derogatory comments about the tenants with mental and physical disabilities who would live at the Esplanade. At the conclusion of the hearing, the BZA voted to deny the Second Variance Application, against the recommendation of the Staff Report and without any explanation.

32. Prior to the May 10 Hearing, the City had instructed GCHP that in addition to obtaining a variance from the BZA for its revised plan, it would need to obtain approval from the City's Historic Districts Landmark Commission ("HDLC") for the proposed demolition of the building. The Esplanade building itself is not an historic building but is located in an Historic District.
33. On May 12, 2010, the HDLC held a public hearing on partial demolition of the building for the Esplanade. Again, neighbors attended and voiced their opposition to the Esplanade because of its prospective tenants with disabilities. The HDLC voted to deny approval for the demolition against the recommendation of its own Architectural Review Committee and without any explanation. In September of 2010, the City Council overturned the HDLC's denial.
34. Following the May 10 BZA Hearing and the May 12 HDLC Hearing denials, GCHP revised the plan for the Esplanade project a third time. The revised plan provided 43 parking spaces instead of 40, increased the green space, and reconfigured the lot so as to reduce the setback waiver needed. The application also contained a request for a reasonable accommodation in the form of BZA approval of the reduced setback waiver.
35. On October 4, 2010, GCHP submitted its third variance request to the BZA seeking a reduced setback waiver ("Third Variance Application").
36. On November 8, 2010, the BZA held a public hearing ("November 8 Hearing") on the Third Variance Application. The City staff report recommended partial approval of the application. As in previous hearings, many residents spoke or submitted written comments in opposition to the Third Variance Request and the Esplanade because of its prospective tenants with disabilities. One speaker stated that the proposal aimed to

“collect homeless people from all over New Orleans and put them where they can stagger to their drug rehab facility.”

37. Also during the November 8 Hearing, the neighborhood group ERTCA filed a “Motion to Dismiss For Lack of Jurisdiction and Opposition to the Application For a Variance” with the BZA. In this document, the ERTCA argued that the proposed use had been improperly classified as an apartment complex and should be considered a “Residential Care Center,” which is not a permitted use in an RM-3 district. The BZA determined that it did not have jurisdiction to consider this argument.
38. At the conclusion of the November 8 Hearing, the BZA voted 3-3 on the motion to deny the Variance Application, which resulted in a denial without prejudice.
39. On January 24, 2011, the Executive Director of the City Planning Commission sent a memorandum to the Director of the Permit Department requesting a determination on whether the Esplanade was a permitted use in the RM-3 district (“Plan Commission Request”). The memorandum stated that she was asking for this determination because of the testimony of residents at the November 8 Hearing:

The Third Variance Application] was previously heard by the Board of Zoning Adjustments on November 8, 2010 The request was denied at that time due to the lack of majority decision. However, at that meeting, area residents gave public testimony that they had spoken to you and that you had indicated to them that you had never issued an opinion as to the zoning classification of the proposed use. Thus, we are forwarding this new application to you so that you can provide the BZA with your written interpretation of the classification of the proposed use.

40. On April 8, 2011, the Director of the Permit Department issued a letter decision in response to the Plan Commission’s Request (“April 8 Permit Department Decision”), which stated in relevant part:

It is the determination of the Department of Safety and Permits that the use as represented is not permitted because it does not comply with the Zoning Ordinance. The proposed development includes an on site office for a case manager to provide certain supportive services to the tenants. This proposed accessory use is not specifically listed as a permitted accessory use in the RM-2 [sic] District.

41. Because the April 8 Permit Department Decision concluded that the Esplanade was no longer a permitted use, GCHP was barred from taking further action on the Esplanade.
42. On December 12, 2011, nearly two years after GCHP's first variance request, the BZA granted GCHP's application for a variance from the parking requirement of the Zoning Code. ("December 2011 BZA Decision"). The neighborhood association, ERTCA, has appealed this action to the District Court for Orleans Parish.

C. The Discriminatory Refusals to Fund the Esplanade Development

43. From August 2009 to the present, the City and the Bond Commission have taken actions designed to prevent the funding and commencement of the Esplanade development. Defendants' actions were taken in response to the continuing community opposition to the Esplanade's prospective tenants with disabilities.
44. In August 2009, the State Bond Commission adopted a Moratorium on approving bond financing under the Piggyback Program for low-income housing projects located in the City ("Bond Commission Moratorium"). The City and Bond Commission were aware that, at the time, the Esplanade and two other affordable housing projects in New Orleans would be subject to the Bond Commission Moratorium. The Bond Commission stated that its Moratorium was needed to study whether the housing market in the City would support the Esplanade and the other two projects. In March 2011, a final study was

completed, which concluded affirmatively that the City's housing market would support additional affordable housing for very low-income individuals. Despite this report, the Bond Commission has not lifted the Moratorium on the Esplanade, which remains in effect today.

45. In April 2010, a State Senator who served in a representative capacity on the Bond Commission, wrote to the Director of the City Planning Commission stating that he was "very familiar with the proposed use" of the Esplanade and "strongly urge[d]" its denial. The letter stated that the project would "be occupied by recovering drug addicts, the perennially homeless, and former convicts, with no direct supervision and unlimited ingress and egress, . . . [and] would constitute a death sentence for the surrounding" neighborhood.
46. The Bond Commission will make exceptions to the Moratorium if the City asks the Commission to do so. The City is aware that unless the City asks the Bond Commission to approve bond financing for the Esplanade, the Commission will not do so.
47. In at least two instances, the Bond Commission has approved projects that would otherwise have been subject to the Moratorium because the Mayor requested the Bond Commission to do so.
48. On August 4, 2010, the Mayor wrote to the Chairman of the Bond Commission to request that a 70-unit affordable housing development for seniors known as the Oretha Castle Haley development be placed on the August 2010 Bond Commission agenda and approved.
49. At its August 19, 2010 meeting, and in response to the Mayor's request, the Bond Commission placed the Oretha Castle Haley project on the agenda. During the meeting,

Deputy Mayor Andrew Koppelin spoke in favor of the project. Thereafter, the Commission approved its funding.

50. On August 17, 2011, the Mayor wrote to the Chairman of the Bond Commission in support of bond financing for a mixed-income housing development known as the B.W. Cooper development.
51. At its August 18, 2011 meeting, and in response to the Mayor's request, the Bond Commission placed the B.W. Cooper project on the agenda. The Deputy Mayor spoke in favor of the project. Thereafter, the Commission approved its funding.
52. Neither of these projects provided housing targeted for persons with disabilities.
53. On numerous occasions throughout 2011, representatives of the GCHP have requested the Bond Commission Chairman place funding for the Esplanade project on the Commission's agenda. On each occasion, the Bond Commission declined to do so and provided no explanation to GCHP for its refusal.
54. On numerous occasions, representatives of GCHP have asked the Mayor, through his subordinates, to seek bond financing approval from the Bond Commission for the Esplanade project. On each occasion, the Mayor has refused these requests and provided no explanation to GCHP for his refusal.
55. The City and the Bond Commission are aware that the \$3.2 million in CDBG funds awarded for the Esplanade development in December 2008 will be terminated unless GCHP can soon secure the additional bond financing required under the Piggy Back program from the State Bond Commission. If the Esplanade does not receive Bond Commission approval for the bond financing, the Esplanade development may lose its CDBG funds and consequently will not be built.

56. By the actions of their agents and employees described above in paragraphs 1-55, defendants have delayed and denied affordable and supportive housing to prospective tenants based on their mental and physical disabilities and have forced GCHP to incur substantial monetary damages. Defendants' actions threaten to defund and permanently prevent the construction of the Esplanade development.

COUNT ONE - Violation of the Fair Housing Act

57. The Defendants' conduct described above has made housing unavailable in violation of 42 U.S.C. §§ 3604(f)(1) and 3604(f)(2) and has interfered with the exercise or enjoyment of rights granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.

58. The Defendants' conduct described above constitutes:

- a. a denial of rights to a group of persons granted by the Fair Housing Act that raises an issue of general public importance under 42 U.S.C. § 3614(a); and
- b. a discriminatory housing practice under 42 U.S.C. § 3614(b)(1).

59. The GCHP and other persons who may have been the victims of the Defendants' discriminatory housing practices, are aggrieved persons as defined in 42 U.S.C. § 3602(i), and have suffered damages as a result of the Defendants' conduct.

60. The proposed apartment units at the Esplanade project would be dwellings within the meaning of 42 U.S.C. § 3602(b).

61. The Defendants' actions were intentional, willful, and taken in disregard of the rights of others.

COUNT TWO - Violation of the Americans with Disabilities Act

62. The City's conduct described above has excluded individuals with disabilities from participation in and denied them the benefits of the services, programs, or activities of a

public entity, in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130.

63. The City's discriminatory actions were intentional, willful, and taken in disregard for the rights of others.

WHEREFORE, the United States prays that the Court enter an ORDER that:

1. Declares that the Defendants' actions described above constitute violations of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., and that the City's actions described above constitute violations of Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 et seq.
2. Enjoins the Defendants, their agents, employees, assigns, successors, and all other persons in active concert or participation with them, from discriminating on the basis of disability in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., and enjoins the City, its agents, employees, assigns, and successors, and all other persons in active concert or participation with them, from discriminating on the basis of disability in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 et seq. and its accompanying regulations;
3. Enjoins the Defendants, their agents, employees, assigns, successors, and all other persons in active concert or participation with them further:
 - a. Excluding individuals with disabilities from participation in and denied them the benefits of the services, programs, or activities of a public entity;
 - b. Refusing to approve or fund the Esplanade;
 - c. Interfering with any person in the exercise or enjoyment of any rights granted or protected by the Fair Housing Act;
 - d. Failing to make a reasonable accommodations in its policies, practices, or

procedures, which would result in the City's excluding individuals with disabilities from participating in and or denying them the benefits of the services, programs, or activities of the City;

e. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of the Defendants' unlawful practices; and

f. Awards monetary damages in an appropriate amount to fully compensate each person aggrieved by the Defendants' discriminatory housing practices for its injuries caused by the Defendants' failure to comply with the requirements of the Fair Housing Act and the City's failure to comply with the requirements of the ADA; and

4. Assesses a civil penalty against the Defendants in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

ERIC H. HOLDER JR.
Attorney General

\s\ Thomas E. Perez

JIM LETTEN
United States Attorney
Eastern District of Louisiana

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

\s\ Steven H. Rosenbaum

STEVEN H. ROSENBAUM
Chief, Housing and Civil Enforcement Section

\s\ Harvey L. Handley

GLENN SCHRIEBER
Assistant United States Attorney
500 Poydras Street, Suite B-210
New Orleans, Louisiana 70130

REBECCA B. BOND
Deputy Chief
HARVEY L. HANDLEY
SAMEENA SHINA MAJEED
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue
The Northwestern Building
Washington, D.C. 20530
Tel.: (202) 514-4756
Facsimile: (202) 514-1116

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2012 , I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following: Churita H. Hansell; Glenn Kenneth Schreiber; James B. Letten; Richard F. Cortizas; James Bryan Mullaly; Matthew J. Lindsay; and Sharaonda R. Williams. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: **None..**

s/ Harvey L. Handley

Harvey L. Handley
Virginia Bar No. 412105
Attorney for Plaintiff
U.S. Department of Justice
950 Pennsylvania Ave. N.W.
Washington, DC 20530
(202) 514-4756
Fax: (202) 514-1116
Harvey.l.handley@usdoj.gov