

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER: (Title VIII)
(Title VI)
(Section 504)

1. Complainant

PathStone Housing Corporation of Pennsylvania
648 Buena Vista Drive
Kennett Square, PA 19348

Representing Complainants:

Michael Allen
Jean Zachariasiewicz
Relman, Dane & Colfax, PLLC
1225 19th St., N.W., Ste. 600
Washington, DC 20036-2456
Phone: 202-728-1888 Fax: 202-728-0848
E-mail: mallen@relmanlaw.com
jzachariasiewicz@relmanlaw.com

2. Other Aggrieved Persons

Prospective residents of The Lofts at Fullerton Mill who have been denied equal housing opportunity and subjected to discrimination by the Township of Whitehall and the Whitehall Zoning Hearing Board on the basis of race, color, national origin, familial status, and disability.

3. The following is alleged to have occurred or is about to occur:

The Township maintains a discriminatory zoning ordinance that discourages the development of affordable, multifamily housing in high-opportunity areas. The Zoning Hearing Board denied zoning relief for the construction of The Lofts at Fullerton Mill—an affordable, multifamily rental development with 49 units—on the basis of the race, color, national origin, familial status, and disability status of the prospective residents of the housing.

4. The alleged violation occurred because of:

Race, color, national origin, familial status, and disability.

5. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

215 Quarry St.
Whitehall, PA 18052

6. Respondents

Township of Whitehall
c/o The Hon. Edward D. Hozza, Jr., Mayor
3219 MacArthur Rd.
Whitehall, PA 18052

Zoning Hearing Board
c/o Lee Christman, Chairperson
Township of Whitehall
3219 MacArthur Rd.
Whitehall, PA 18052

7. The following is a statement of the facts regarding the alleged violation:

- a. PathStone Corporation is a private, not-for-profit regional community development and human service organization providing services to farmworkers, low-income families and economically depressed communities throughout a seven state service area. PathStone Housing Corporation of Pennsylvania (“PathStone”) is a wholly owned non-profit subsidiary of PathStone Corporation, and its mission is to meet the housing needs of economically and socially disadvantaged persons in Pennsylvania.
- b. In keeping with its mission, PathStone identified a former mill building at 215 Quarry Street, in Whitehall, Pennsylvania that was vacant and suitable for conversion to affordable, multifamily rental housing.
- c. The parcel of land at 215 Quarry Street is zoned R-5A (High Density Without Apartments). It had most recently been used as warehouse industrial buildings—a non-conforming use—and all of the parcel’s most recent uses have been non-conforming.
- d. The parcel is currently owned by Fuller Sportswear Company, Inc., which has been trying to sell the property since 2010. PathStone has an option to purchase the property, conditional on receiving use and variance relief.
- e. On three previous occasions concerning the same parcel, the Township of Whitehall Zoning Hearing Board (“the Board”) quickly and easily granted

zoning relief to applicants who did not propose to develop affordable, multifamily housing.

- f. Most pertinent here, on one occasion, in 2006, the Board unanimously granted relief in the appeal of Whitehall Manor Retirement Condos, Inc. to convert the use from a garment factory non-conforming use to a non-conforming use with 43 market-rate condominium units for senior citizens, and reduced the requirement for on-site parking. The Board also granted variances from the maximum impervious coverage and density.
- g. Apparently, the Whitehall Manor developer did not proceed, and neither did a subsequent applicant for whom the Board again approved a non-conforming use as self-storage units. As a consequence, the parcel remains disused and the buildings continue to deteriorate.
- h. On February 26, 2014, PathStone submitted its Site Review application to the Township of Whitehall Planning Commission, describing The Lofts at Fullerton Mill (“The Lofts”), a multifamily rental housing development with 52 units and 52 on-site parking spaces. PathStone made clear that the property would not be age-restricted senior housing.
- i. Therefore, PathStone sought special exception use approval to convert one nonconforming use to another, and also sought variances to make the most effective use of the parcel, including a reduction of the number of required, on-site parking spaces from two per unit to one per unit, recognizing that the type of households expected to live at The Lofts would likely have only one automobile, and some would likely not own an automobile at all.
- j. At a hearing held on March 19, 2014, the Planning Commission expressed support for the project concept, but had concerns about the number of proposed parking spaces, and recommended denial of PathStone’s application.
- k. On April 15, 2014, the project and the requested special exception and variances were presented to the Board. PathStone made clear that it was proposing affordable rental housing, which would be supported by federal tax credits and other funding made available through the Pennsylvania Housing Finance Agency, and would be focused on serving households with incomes at 60 percent of the area median.
- l. During the hearing, the Board took issue with PathStone’s requested variance to reduce the required parking spaces per unit from two to one, and the requested variance to reduce the size of parking spaces.
- m. The April hearing before the Board lasted for two hours, and was eventually continued to May. During the interim, PathStone made revisions to its

requested relief based on criticisms voiced during the April hearing, in the hopes that the Board would approve the revised plan. These revisions included reducing the number of units at The Lofts from 52 to 49, so that the proposed parking spaces would be larger. The modifications to the project plan also eliminated other dimensional variance requests.

- n. On May 20, 2014, the second Board hearing regarding The Lofts took place. During this hearing, the Board heard more testimony in support of PathStone's requested variance and exceptions, including from a transportation engineer who presented a parking study indicating the presence of sufficient available on-street parking in the neighborhood.
- o. Also during the May 20, 2014 hearing, PathStone noted that The Lofts would provide units affordable to households at or below 60 percent of area median income, and would be open to families with children, consistent with PathStone's approach to many of its other rental properties.
- p. In a unanimous vote, the Board denied every element of use and variance relief requested by PathStone, even though that relief was very similar to the package it had previously approved for Whitehall Manor.
- q. At both public hearings, the Board permitted objectors to express stereotypical and discriminatory views concerning the prospective low- and moderate-income residents of The Lofts. For instance, one community member objected, worrying about "having HUD in your backyard, what it's going to do to your property value." Another objector noted that, "[w]hatever kind of housing goes in there is going to drastically change that entire neighborhood, drastically." Finally, a community member stated that, "if this is allowed, we're going to need a lot more police surveillance in the area than what we have now."¹
- r. In denying the relief sought by PathStone for The Lofts, the Board adopted—and was influenced by—the discriminatory views of objectors.
- s. The Board's action is consistent with a broader hostility towards affordable rental housing in Whitehall Township, as reflected in the Township's zoning ordinance. An independent study commissioned by Lehigh County and other municipalities recently concluded that, of the dozens of covered municipalities in Lehigh Valley, Whitehall Township's zoning ordinance "ha[s] the greatest potential to result in housing discrimination." Regional Analysis Impediments to Fair Housing Choice (November 2013), at 7.

¹ These comments are taken from the transcript of the May 14, 2014 ZHB hearing, which is in the possession of PathStone and will be provided to the HUD investigator of this complaint upon request.

- t. Whitehall Township has no rent- and income-restricted housing available to families.
- u. Through application of the zoning ordinance and decisions by the Board, almost all of the affordable, multifamily rental housing in Whitehall Township has been concentrated in Census Tract 57.03 which has, by far, the greatest minority composition of any such tract in the Township.
- v. The parcel at 215 Quarry Street is located outside of Tract 57.03, and The Lofts would have an integrative effect on the tract in which the parcel is located, where 85 percent of the residents are white and where the Township has disfavored such housing.
- w. The Board's recent (and unanimous) denial of use and variance relief for the redevelopment into apartments of a similarly-situated former mill building located at 4154 Roosevelt Street in Whitehall, also outside Census Tract 57.03, suggests that this is part of a pattern by which the Township limits such housing in higher-opportunity neighborhoods.
- x. Separately and collectively, the discriminatory policies of the Respondents have injured PathStone in multiple ways, including but not limited to the following:
 - i. Increasing the carrying and development costs for The Lofts at Fullerton Mill, including the costs of securing site control until June 30, 2015, extending the closing date on the Quarry Street parcel to May 2016, and additional interest on the predevelopment loan for The Lofts project;
 - ii. Requiring that PathStone pay legal fees, including to modify the sales agreement for the Quarry Street parcel and to file an appeal of the ZHB decision;
 - iii. Forcing PathStone to bear the costs of reapplication to the Pennsylvania Housing Finance Agency in order to obtain an allocation of Low-Income Housing Tax Credits;
 - iv. Diverting substantial time of PathStone staff members away from other affordable housing efforts so that they can address the Respondents' discriminatory actions;
 - v. Diminishing PathStone's reputation with potential financial partners; and
 - vi. Frustrating PathStone's mission to create affordable, multifamily housing in Pennsylvania.

8. The most recent date on which the alleged discrimination occurred:

Ongoing as of the date this Complaint was submitted.

9. Types of Federal Funds identified:

Respondents are recipients of federal Community Development Block Grant (CDBG) funds.

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

- Otherwise making housing unavailable, in violation of 42 U.S.C. §3604;
- Failure to affirmatively further fair housing, in violation of 42 U.S.C. § 3608;
- Discriminating on the basis of race, color and national origin, in violation of Title VI of the Civil Rights Act of 1964; and
- Discriminating on the basis of disability, in violation of Section 504 of the Rehabilitation Act of 1973.

11. Conclusion

HUD has the authority, and the obligation, to review the discriminatory actions and inactions of the Respondents alleged herein. The Secretary also has the obligation and responsibility to review the Respondents' submissions and certifications in applications for federal funds and to enforce compliance therewith.

For the reasons set out above, Complainant asks HUD to:

- i. Declare that Respondents' policies and conduct violate 42 U.S.C. §§ 3604, 3608, Title VI of the Civil Rights Act, and Section 504 of the Rehabilitation Act of 1973;
- ii. Deem the Respondents' AFFH certifications insufficient to support obligation of Block Grant Funds;
- iii. Award Complainant damages pursuant to its proof in these proceedings; and
- iv. Award any other relief that may be available pursuant to the Fair Housing Act, Title VI, or Section 504, including monetary damages, reasonable attorneys' fees, and costs.

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.



Wendy Carter, for PathStone

2/25/15
(Date)

NOTE: HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.