

# EYE ON THE CLIFFS

*"Let us not seek the Republican answer or the Democratic answer, but the right answer. Let us not seek to fix the blame for the past. Let us accept our own responsibility for the future." John F. Kennedy*

Volume 12

April 2019

Carin Geiger, President

Debbie Fehre, Acting Vice President/Secretary

Lynn Liaskos, Treasurer

\*

\*

\*

\*

\*

## **NJ COURT OVERTURNS PLANNING BOARD'S 2017 DENIAL OF CORPORATE BUILDING APPLICATION AT 800 SYLVAN AVENUE**

### **PLANNING BOARD'S REJECTION OF NORMANDY APPLICATION RULED ARBITRARY, CAPRICIOUS AND UNREASONABLE**

### **PLANNING BOARD SEEKS APPELLATE COURT PERMISSION TO APPEAL**

NJ Superior Court Judge Christine Farrington signed an order on March 13, 2019 essentially reversing the Englewood Cliffs Planning Board's rejection of the application Normandy made in 2017 to develop a first class corporate headquarters at 800 Sylvan Avenue. Judge Farrington wrote:

*"The Planning Board's denial of the Plaintiff's application is hereby reversed, and the application is approved, subject to a limited remand to the Planning Board to consider, in accordance with the Court's February 22, 2019 Opinion, (1) whether Plaintiff's proposed parking structures satisfy the special reasons required to obtain a variance...and (2) whether Plaintiff is entitled to a modification of ... deed restriction.... "*

The March 13 Court Order formalizes the Judge's thirty page February 22 Opinion. At issue was whether the Planning Board's October 2017 decision to deny the Normandy application for a corporate building at 800 Sylvan Avenue should be upheld. Normandy challenged the Planning Board's denial and sued to have it overturned. Representing the interests of EC for Responsible Government, Carin Geiger appeared *pro se* in the litigation as a *Plaintiff Intervener*, and concurred with Normandy that the Englewood Cliffs Planning Board decision was arbitrary, capricious and unreasonable, and should be reversed.

The Planning Board, whose attorney defended its denial of the 800 Sylvan corporate project application at Englewood Cliffs taxpayer expense, sought to bar Geiger's intervention as well as her submission of a brief opposing its denial of the proposed corporate development. The Planning Board also sought to delay the public release of the court order, but the Borough Council asked that it be released as soon as it was available, and the court complied.

Judge Farrington's ruling in favor of Normandy was based on applicable State law, the borough's Master Plan and ordinances, the transcripts of the four 2017 public hearings on the Normandy application, reports of professionals, and the briefs and motions submitted by all parties to the lawsuit. The court ruled that the Planning Board could not reasonably have reached its decision to deny Normandy's application based on the record. Her opinion recognized that the court must grant "substantial deference to the municipal zoning board's decision to grant or deny variances...and that a local zoning determination will be set aside only when it is arbitrary,

capricious or unreasonable.” The court affirmed that is “scope of review is...to determine whether a board could reasonable have reached its decision on the record.” The court decided that the Planning Board did not.

### **SUBDIVISION and SHARED PARKING ARE APPROVED 800 SYLVAN AVENUE TO BE DIVIDED INTO TWO PROPERTIES**

The court stated that “*it is well established law that a planning board must approve a subdivision unless it fails to comply with requirements...in the zoning ordinances*” and found that Normandy’s subdivision plan complied with the requirements of the borough’s zoning ordinance. The Planning Board had argued that the subdivision would not further the Master Plan and was not consistent with good planning, but the court sided with the statements made by Normandy and the *Plaintiff Intervener* which contradicted the assertions of the Planning Board. Accordingly, the court reversed the Planning Board’s denial of Normandy’s subdivision application, declaring such denial to be arbitrary and unreasonable. Normandy’s shared parking plan, surface parking and building height were also approved by the court, which again found the Planning Board’s denial of these variances to be “*arbitrary, unreasonable and capricious*”.

### **FRONT PARKING GARAGE AND DEED RESTRICTION REMANDED BACK TO PLANNING BOARD WITH SPECIFIC GUIDELINES FOR APPROVAL**

The court did not decide whether Normandy met the legal requirements for a variance for its front parking garage, and remanded it back to the Planning Board citing testimony in the record which supported approval. The court cited testimony of the borough’s own engineer that “*the front yard was the only location that the structure could be located on the property*”, and opined that “*the testimony that the structure would not be visible from 9W appears to be uncontroverted*.” The court noted that Planning Board Chairman Russell Porrino’s objections about the visibility of the structure from 9W “*appear to be without support in the record*”.

The court determined that the Planning Board’s conclusion that “*the benefits inure mostly to the applicant and not to the public*” ignores that fact that “*all applications, by their very nature benefit the applicant*.” The court’s list of benefits to the community that would result from approval of corporate development at 800 Sylvan is nearly two pages long. Such benefits include the “*prevention of blight, aesthetic improvement along Sylvan Avenue, a net increase in trees...elimination of parking in the Hollywood Avenue buffer and ... enhancements to the new building bringing it up to code...*”

### **KRANJAC AND PORRINO ARGUMENTS ABOUT NORMANDY’S INTENT REJECTED**

The court specifically addressed and rejected Mayor Mario Kranjac’s and Planning Board Chairman Russell Porrino’s frequently repeated arguments that Normandy intended from the outset to construct dense residential units at 800 Sylvan Avenue and wrote as follows:

***“The court rejects these arguments as calculated to inflame local citizens against the applicant ... Arguments of this ilk, and the unprofessional attacks on the applicant and their counsel ... are both unproductive and unpersuasive.”***

On April 2, Normandy filed a Motion for Reconsideration, asking the court to approve its corporate development application without any limited remand back to the Planning Board.

## **PLANNING BOARD DENIAL OF NORMANDY LED TO AFFORDABLE HOUSING LITIGATION**

For the first time in Englewood Cliffs history, the borough is threatened with dense multi-family residential development and affordable housing. This results directly from the Planning Board's decision, which has now been affirmed by the court to be have been "*arbitrary, unreasonable and capricious*". The Planning Board's denial of Normandy's corporate building application, which turned down a corporate building on a large tract of land, was the catalyst for multiple lawsuits by Normandy, including a Builder's Remedy lawsuit and an Affordable Housing lawsuit.

In December 2015, borough documents indicate the borough's affordable housing obligation was only 9 residential units because the borough was considered to be a fully developed community with virtually no available vacant land. The borough, along with 300 other communities, was awaiting a court decision on its submission of its affordable housing plan for the 9 units when the Englewood Cliffs Planning Board rejected Normandy's corporate application.

In November 2017, following the denial of its corporate application, Normandy asked the court to modify the borough's affordable housing obligation to include the 20 acre site of its proposed corporate construction which, because of the Planning Board's denial, were now available for affordable housing. Normandy stated that it would build over six hundred (600) residential units on its property in order to provide 80 to 120 affordable housing units. It proposed that 480 units would be built as market rate housing. As a result, the borough's affordable housing obligation skyrocketed from 9 units to over 130 units. The borough's December 2018 purchase of a building near borough hall further increased the number of required affordable housing units.

## **BOROUGH INITIATES NEW MEDIATION IN EFFORT TO SETTLE CASE**

On March 20, Councilwoman Tsabari, the Affordable Housing Committee Chairperson, stated that the December 10, 2018 Affordable Housing Plan submitted to the court is not sufficient to meet the borough's realistic affordable housing obligation. That plan provided for the construction of only 57 affordable housing units at a cost to taxpayers in excess of \$12.7 million. Court papers indicate that the Fair Share Housing Center (FSHC) believes that the borough's current affordable housing obligation exceeds 232 units. Normandy concurs. The borough has two choices. It can proceed to trial on April 29 and allow the court to determine the number of affordable housing units that must be built, and thereafter appeal the court decision (which is Kranjac's position); or it can work with FSHC and Normandy to negotiate a settlement and have a role in shaping the future of Englewood Cliffs.

On April 1 and 2, the borough resumed mediation with Normandy and FSHC to try to reach a settlement that would avoid a costly trial. At issue are: (i) how many units of affordable housing will be required, (ii) where they will be located, (iii) who will build and pay for them, (iv) how many market rate units will be allowed, (v) the site plan for 800 Sylvan Avenue, and (vi) overlay zones for future affordable housing locations throughout the borough.

More than a staggering \$1 million has been spent by the borough so far on the affordable housing litigation and related costs. In addition, all costs incurred by FSHC in affordable housing litigation are typically also paid by the municipality as part of a court order. Experience in other Bergen County communities has shown that a negotiated settlement is more likely to result in a lower affordable housing obligation than one dictated by the court. Most communities have settled rather than continue costly and lengthy litigation and risk an unfavorable court determination.

EC for Responsible Government  
PO Box 1812  
Englewood Cliffs, New Jersey 07632

\*\*\*\*ECRWSEDDM\*\*\*\*

RESIDENTIAL CUSTOMER

PRSR.T.STD  
ECRWSS  
U.S.POSTAGE  
PAID  
EDDM RETAIL

## **PLANNING BOARD FILES MOTION SEEKING APPELLATE COURT PERMISSION TO APPEAL COURT DECISION THAT WOULD HAVE ALLOWED CORPORATE DEVELOPMENT AT 800 SYLVAN AVENUE**

### **EDITORIAL**

*Residents want corporate development to continue and flourish along our "Trillion Dollar" Sylvan Avenue corridor and do not want dense multi-family housing at 800 Sylvan Avenue. Judge Farrington's March 13, 2019 Court Order basically **reversed** the Planning Board's 2017 denial of Normandy's corporate building application, and opened the door to Normandy to reconsider its corporate plan. The interest of our community is not served by fighting corporate development on Sylvan Avenue. However, instead of encouraging Normandy to reinstate its corporate building application, the Planning Board continues to challenge Normandy's application to build a first class corporate headquarters at 800 Sylvan Avenue. It now seeks to reverse Judge Farrington's ruling.*

*Mayor Kranjac and his Planning Board members, led by Chairman Russell Porrino, are now wasting even more borough tax dollars by filing a motion seeking permission to appeal the decision to the Appellate Court. It simply does not make sense. With the very real prospect of dense residential development at 800 Sylvan, it is alarming that Porrino and the Planning Board continue to spend taxpayer dollars to defend their disastrous and now judicially reversed decision that rejected desirable corporate development and sparked the affordable housing controversy.*

*Have Kranjac and Porrino's egos and arrogance replaced rational decision-making? Do they understand the consequences of what they have brought to pass in Englewood Cliffs? Aside from 800 Sylvan Avenue, the Planning Board also jeopardizes our "Trillion Dollar" mile and our tax base because it sends a negative message to corporations that might once have considered Englewood Cliffs as their new home. The stubborn insistence by the Mayor and the Planning Board to continue to fight Normandy's corporate plan, a corporate plan supported by the community, informs other corporations that Englewood Cliffs may no longer be hospitable to corporate development. The currently occupied LG site is likely to be for sale in late 2019, or early 2020, after LG moves to its new corporate headquarters. Will a corporation seek to occupy that site, or will it look to another community whose planning board values corporate development and works with corporations, not against them, to address their needs?*

*The borough cannot turn back the clock and undo the damage done to our community by the ill-advised decision of the Planning Board in 2017 to deny Normandy's application. The State Constitution requires that the borough provides opportunities for affordable housing and Normandy now seems committed to pursue residential development on its site. The Planning Board's intent to appeal Judge Farrington's Order can only serve to frustrate ongoing mediation efforts on the borough's affordable housing obligation between the FSHC, Normandy and the borough. Mediation requires cooperation between all parties and a willingness to work together. The Planning Board continues on a path that will not only cost taxpayers more for lawyers and litigation, but could also make Normandy less willing to work with the borough and make concessions.*

*EC for Responsible Government believes the borough must negotiate an alternative to the inadequate plan developed by the prior administration. The borough should strive to reduce the number of market rate homes that Normandy would be permitted to construct. It must also obligate Normandy, and not the borough, to build the majority of the affordable housing units required. A negotiated plan could provide several million dollars in annual tax revenue and limit taxpayer liability for affordable housing units that the borough might otherwise be required to construct and maintain. The borough must work with Normandy and the FSHC to develop a plan which minimizes the impact of the changes which are bound to come to our community. A negotiated settlement gives Englewood Cliffs a role in shaping its future.*

***Eye on the Cliffs is a publication of EC for Responsible Government, a non-partisan not-for-profit corporation.***

*We do not support any candidates for public office.*

*We are inspired by the words of President Abraham Lincoln, "Let the people know the facts and the country will be safe."*

*Contact us at: [ecfrg2017@gmail.com](mailto:ecfrg2017@gmail.com). Visit our website at: <https://ecfrg.org/>*

***We count on your support to provide this newsletter to all residents. Please send contributions to:***

*EC for Responsible Government, PO Box 1812, Englewood Cliffs, N.J. 07632.*