

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

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ENGLEWOOD CLIFFS LOSES AFFORDABLE HOUSING LAWSUIT

BOROUGH AFFORDABLE HOUSING OBLIGATION IS 347 UNITS, INCLUDING UP TO 167 UNITS AT 800 SYLVAN AVENUE.

COURT ORDERS BOROUGH TO REVISE ITS ZONING.

The Borough of Englewood Cliffs has lost its affordable housing case. On Friday, January 17, Superior Court Judge Christine Farrington determined that the Borough of Englewood Cliffs has an obligation to provide **347** units of affordable housing. The Court ordered the Borough of Englewood Cliffs to do the following by April 16, 2020:

- to change its zoning to allow **167** of these units to be built at 800 Sylvan Avenue. The resulting multi-family residential development at 800 Sylvan could be as large as 835 units.
- to change its zoning to allow **6** affordable housing units to be built on the Cioffi property in the southern part of Sylvan Avenue in the borough.
- to present to the Court assurance that the Borough has clear title to the properties at the Hudson Terrace site where it proposes to construct **57** units of affordable housing.
- to present to the Court a plan for the construction of the **57** units of affordable housing at the Hudson Terrace site.

Should the Borough fail to comply by April 16, 2020, the Court stated that it will consider voiding all zoning ordinances of the Borough.

The Court explained the reasoning behind its decision. The Court *"must closely examine the facts and the law, find the facts and apply the law."* The Court stated:

“The uncontroverted reality is a community [Englewood Cliffs] becoming increasingly more exclusive and which has failed to build a single unit of affordable housing. The Court finds that by rejecting the 800 Sylvan site, the Borough has signaled its intent to continue its exclusionary practices....It is clear to the court that without affirmative measures, the Borough’s failure to comply with its constitutional obligations will continue. More opportunities, most particularly 800 Sylvan will be squandered as the Borough continues to fail to take affirmative measure which will result in the construction of low and moderate income housing.”

“The Borough has opted not to pursue a negotiated resolution and sought determination of the facts and issues by this court. The court finds the Borough’s plan to be constitutionally non-compliant as agreed by all experts who testified on the subject, save that of the Borough.” Opinion pages 119-121

As you may recall, the Borough Council’s Affordable Housing Committee had negotiated a non-binding Memorandum of Understanding (MOU), which could have led to a negotiated settlement of the Borough’s affordable housing obligation. However, the MOU was abandoned following the public outcry at a town meeting on July 10, 2019, demanding that the Borough litigate rather than settle its affordable housing obligation. “STOP 800 SYLVAN” was the battle cry of the 2019 Republican campaign, which was successful in re-electing the Mayor and two councilmen.

COMPARISON OF AFFORDABLE HOUSING COURT ORDER TO THE MOU

	Court Order	MOU	Difference
Total Borough affordable housing required:	347	95	+252
800 Sylvan affordable housing allowed:	167	80	+87
Cioffi properties affordable housing allowed:	6	**	-
800 Sylvan total residential units allowed:	835	400	+435
Borough’s additional affordable Housing requirement:	174	15	+159

**** Borough ordinance requires 20% of all new residential construction greater than 5 units to be set aside for affordable housing, and applies to Cioffi properties**

The findings of the court that influenced its decision are as follows:

- No affordable housing units have been built in Englewood Cliffs.

- The Borough has “chosen to pursue a path of resistance.” Opinion page 10. The Borough declined to settle.
- The Borough Affordable Housing Plan excluded the 800 Sylvan Avenue site even though it was the only large, available site for the construction of affordable housing in the Borough.
- The Borough did not properly calculate its affordable housing requirement. The 77 unit requirement proposed by the Borough was understated and not justified as a matter of law.
- The Court had “*serious reservations about the viability of the Borough project*” which proposed to build 57 units at Hudson Terrace to satisfy the Borough’s calculated 77 unit affordable housing requirement. The Court’s concerns included the failure of the Borough to disclose problems with the title on the property which might limit development on the site, possible underestimation of utility allowances, the proximity of the proposed 57 units to the police and fire stations, the proximity of the buildings to Hudson Terrace, the insufficiency of parking and circulation of vehicle and pedestrian traffic, failure to include demolition costs, the potential underestimation of the costs of new police, fire and community center and the failure to provide a phasing program and construction timetable.
- The Court determined that a 20-unit rental bonus was not allowable, which together with the proposed 57 units, would have totaled what the Borough believed to be only a 77 unit affordable housing requirement.

The Court’s decision should come as no surprise. The lawyers representing the Borough warned the public at the July 10, 2019 town meeting when they stated the “*risks of proceeding to trial are overwhelming.*”

800 SYLVAN AVENUE PRESENTS PLANS TO COURT FOR APPROVAL TO BUILD 600 RESIDENTIAL UNITS INCLUDING 80 TOWNHOMES AND 520 RENTAL UNITS

On January 22, 800 Sylvan (Normandy) presented its Builder’s Remedy plans to the Court. Although the Court’s Order of January 17 approved up to 835 units on the site, 800 Sylvan presented two plans to the Court for approval of fewer units.

Normandy’s preferred plan includes 600 new residential units, including 520 rental apartments, of which 120 would be “affordable”. Its second and alternative plan calls for a total of 617 units, including 537 rental apartments, of which 124 would be “affordable.”

The 600-unit plan will require the Court to void an existing deed restriction relating to parking or for the Englewood Cliffs Planning Board to end the deed restriction. If such restriction is not voided, the alternative 617 unit plan will necessitate the construction of an extra level on a new parking structure proposed to be built on the site.

Both plans include an 80 townhouse complex, which would have a separate entrance on Floyd Street. The townhouses, each including 3 bedrooms, would be 42 feet high and are intended to provide a transition between the existing private residences along Floyd Street and the two sizeable rental apartment buildings to be built on the 800 Sylvan Avenue site. The rental buildings will vary from 40 to 60 feet in height. A sidewalk will also be built along Floyd street from Hollywood Avenue to Witte field.



This is a picture of a rendering presented to the Court on January 22 for a 600 multi-family residential unit project at 800 Sylvan Avenue. The buildings marked as “A” and “B” are the apartment buildings housing a total of 520 rental units. The apartment buildings are planned to contain 120 affordable housing units including 24 one-bedroom, 72 two-bedroom, and 24 three-bedroom units. The number of bedrooms in the 400 market rate units has not been disclosed. The development also includes an 80 townhouse complex that is entered on Floyd Street.

Thomas Trautner, the Borough’s affordable housing litigation attorney, stated in court that the Borough was not in favor of residential development at 800 Sylvan Avenue and reserved its right to appeal. The trial will continue on February 5.