

FILED**APR 17 2020**

: SUPERIOR COURT **CHRISTINE A. FARRINGTON,**
 : **J.S.C.**
 IN THE MATTER OF THE : LAW DIVISION: BERGEN COUNTY
 BOROUGH OF ENGLEWOOD : DOCKET NO. BER-L-6119-15
 CLIFFS : CIVIL ACTION
 : ORDER
 :

This matter having come before the court pursuant to provisions contained in the orders of the court dated January 17, 2020 and February 25, 2020 which required the Borough of Englewood Cliff to adopt ordinances as directed on or before April 16, 2020; and the court having scheduled a hearing on April 21, 2020 to receive the testimony of the Special Master regarding the Borough's compliance which for the reasons which follow has been rendered moot.

The Borough of Englewood Cliffs having refused to abide by the orders of the court so advising the court by various correspondence from its counsel as well as having passed Resolution 20-70 on March 11, 2020 stating, "The Borough is not willing to rezone the sites the Court has ordered it to rezone, enable the developers to argue that they have vested rights merely by filing a development application and thwart the Borough's ability to meaningfully secure appellate court review of rulings with which it disagrees for reasons the Appellate

Division might very well find compelling[;]" and the Special Master, Mary Beth Lonergan having affirmed to the court that the Borough refuses to comply; and for good cause shown;

IT IS on this 17th day of April, 2020,

ORDERED:

1. The court reserves the right to address the Borough's contempt of the orders of the court on a later date. However, in the face of the Borough's deliberate failure to comply the orders of the court, particularly, but not limited to its failure to adopt the ordinances as directed "under protest," thereby preserving its rights on appeal, there are consequences. The court now voids the zoning ordinances of the Borough and appoints by separate order of the Honorable Bonnie J. Mizdol, A.J.S.C, the Hon. Maurice J. Gallipoli, (ret) as Special Hearing Officer for purposes of reviewing and making recommendations to this court as to the site plan proposal of the Intervenor-Defendant/Counterclaimant 800 Sylvan Avenue (hereinafter the Builder) in accord with the procedures set forth in Cranford Development Associates. LLC. et al's v. the Borough of Cranford et als., 445 N.J. Super. 220 (App. Div. 2016). The Planning Board and its experts, including its engineer and the Borough Planner shall be permitted to participate in the hearing as directed by the Special Hearing Officer and further elucidated

in this order. However, the participation of the Planning Board or the failure of the Planning Board members to participate or constitute a quorum shall not delay, thwart or otherwise impede the hearing. The Special Master and Ms. London shall assist the Special Hearing Officer and shall provide an initial procedural memorandum to all parties. The Planning Board members shall be provided copies of the Builder's plans and supporting documents.

The Special Hearing Officer shall undertake the following specific tasks in the review, evaluation and recommendation as the Builder's site plan application:

- A. Conduct a hearing on public notice as to all aspects of the Builder's site plan application for the purpose of rendering a recommendation to the Court as to whether the Court should enter an order and judgment approving, denying, or approving with conditions the Builder's site plan application.
- B. The Builder's site plan application shall be deemed a fully conforming "as of right" application in accordance with proposed zoning regulations the Builder shall submit with its site plan submission, which shall be deemed to be the standards applicable to the Builder's proposed site plan. The Builder is encouraged to incorporate existing Borough standards for similar types of housing as is reasonably practicable. The Special Master may make such recommendations as to the proposed zoning regulations as she deems appropriate for the protection of the public

health, safety and welfare and in furtherance of sound land use planning principles. The Special Hearing Officer shall review the site plan application and shall grant preliminary and final site plan approval, with or without conditions, unless the Special Hearing Officer concludes that the site plan application is clearly contrary to sound land use planning principles or environmental concerns. Compliance with Residential Site Improvement Standards ("RSIS") shall be dispositive as to all residential design elements governed by the RSIS.

C. The Builder may elect to include nonresidential components as part of its site plan proposal before the Special Hearing Officer, but only on notice to and with the consent of the Borough, Fair Share Housing Center, the Special Master and the Special Hearing Officer. Upon approval by the Court, the nonresidential components may be included in such relief as may be granted by this Court upon recommendation of the Special Hearing Officer.

D. Thirteen (13) sets of the Builder site plans, reports and supporting documentation shall be filed with the following persons at least sixty (60) days prior to the hearing date scheduled before the Special Hearing Officer:

Honorable Maurice J. Gallipoli, J.S.C., ret'd, Special Hearing Officer;

Mary Beth Lonergan, P.P., Special Master;

Leslie London, Esq., Special Counsel and Administrator

Thomas Trautner, Esq., Borough attorney;

Jeffrey R. Surenian, Esq. Borough attorney;

Albert Wunsch, III, Esq., Borough attorney

Christopher E. Martin, Esq., Planning Board Attorney;

Michael Mistretta, P.P., Borough Planner;

Borough Engineer

Planning Board Engineer

Borough Construction Official

Borough Clerk

Joshua Bauers, Esq. of Fair Share Housing Center shall be copied on all submissions to the Special Hearing Officer, which submission may be accomplished electronically.

In addition, eleven (11) sets of the Builders' site plans, reports and supporting documentation shall be filed with the Borough Planning Department for distribution to other experts and officers of the Borough as the Borough deems appropriate. In the event the Borough requests additional submission sets of plans, such requests shall be directed to the Special Master,

who will determine what, if any additional submissions of Builder's site plans are to be submitted to the Borough.

E. The Builder shall post a professional review escrow fee for the review of the Builder's site plan application as required by the Borough Ordinance with the initial submission. Any supplemental escrow request by the Borough shall include the basis for the additional escrow request and be directed to the Builder and Special Master. The Special Master shall resolve any and all disputes as to supplemental escrow requests.

F. The Borough shall conduct a substantive review of the Builder's submission, and may engage the Planning Board, Borough staff and other Borough professionals in the review of the Builder's submission as the Borough deems appropriate. All responsive reports, requests for additional information and comments by the Borough shall be filed with the Special Hearing Officer, Special Master and applicable Builder at least thirty (30) days prior to the hearing date. The Builder may be asked to submit additional information, reports or studies by the Borough, with such requests being made at least thirty (30) days prior to the hearing date. Such request should be made promptly upon determination by the Borough, and any objection to such additional submission shall be resolved by the Special Master.

In no event shall the submission of such additional information delay the hearing date. Any supplemental Borough review submission shall be filed with the Special Hearing Officer, Special Master and applicable Builder no later than (14) days prior to the hearing date. The Special Master shall serve as the nonbinding arbiter of any disputes relating to the submissions and reports on Builder's site plans.

G. Public notice of the hearing before the Special Hearing Officer shall be provided in accordance with N.J.S.A. 40:55D-12, which notice shall be provided by the Builder. All documents, reports, plans and other data in support of the Builder's submission shall be on file with the Borough Planning Office and the Office of the Municipal Clerk at the Borough Municipal Building at least ten (10) days prior to the hearing date. The Builder may respond to Borough reports and comments at the hearing date, in accord with customary Planning Board practice.

H. The Special Hearing Officer shall conduct the proceedings in accord with the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-10. The Builder shall present such expert testimony as it deems necessary to demonstrate that the Builder's proposal meets sound land use planning principles and satisfies applicable environmental regulations. The Builder shall present its testimony and evidence in support of its site

plan, which may be subjected to cross-examination. Following completion of the Builder's testimony and evidence, the Borough may present its response and testimony regarding the Builder's site plan, which also may be subjected to cross-examination. The public and all interested parties shall be allowed to comment on and/or present evidence and testimony either for or against the Builder's site plan upon the conclusion of the Borough's presentation. The Special Master shall participate in all hearings before the Special Hearing Officer and shall provide such planning review and testimony as may be deemed necessary by the Special Hearing Officer. The Builder shall identify all other Federal, State and ancillary governmental permits and approvals that are required for the Builder's project, and the satisfaction of these ancillary permit requirements shall be a condition of any order approving the Builder's application.

In the event the Special Hearing Officer requires additional expertise by separate expert review of the Builder's site plan, the Special Hearing Officer may engage such additional experts as the Special Hearing Officer deems appropriate, upon notice and consultation with the Court and all parties.

I. All hearings conducted by the Special Hearing Officer shall be in the Superior Court of New Jersey in Hackensack during

regular court hours, at a courtroom designated by the Court. The Builder shall secure a transcript of each hearing on an expedited basis, to be paid for by the Builder, and shall distribute copies of the hearing transcripts to the Borough, the Special Hearing Officer, Special Master and Ms. London.

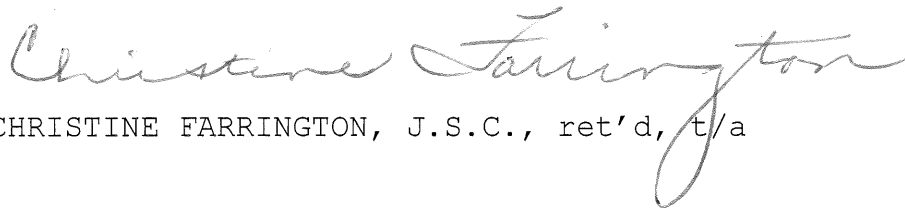
J. All costs for the Special Hearing Officer, and any expert retained on behalf of the Special Hearing Officer, shall be equally shared between the Builder and the Borough. All costs associated with the Special Master and Ms. London shall continue to be borne by the Borough.

K. Upon conclusion of the hearing, the Special Hearing Officer shall provide the Court, the Borough and the Builder with its recommendation as to whether the Builder site plan should be approved, denied, or approved with conditions in the form of a resolution. Any comments or objections to the Special Hearing Officer's recommendations set forth in the resolution shall be filed with the Court no later than ten (10) days from the date of the recommendation. The Special Hearing Officer shall set forth such findings of fact and conclusions necessary to appropriately summarize the evidence presented, so as to enable the Court to enter judgment. The Court's order as to the site plan shall be considered a preliminary and final site plan

approval for purposes of filing an application for a building permit.

The court continues and expands the scarce resource provisions of the February 25, 2020 order with regard to all utilities and sewer capacities to include land, finding land to be a scarce resource. All zoning, land use, and development ordinances of the Borough of Englewood Cliffs, including site plan and subdivision ordinances, are hereby suspended and rendered ineffectual relating to any and all future land use, construction, or development efforts in the municipalities. Such ordinances shall be treated as advisory only and shall serve as commentary to serve the Special Hearing Officer. Until further order of this court 1) no development applications shall be reviewed by the municipalities' boards of adjustment or planning boards and 2) no building or other land use permits shall be issued by any officer, agent, or employee of the defendant municipalities, except (a) those necessary to implement inclusionary housing; and (b) those for renovations of existing one- and two-family houses. Said ordinances, however, shall continue in full force and effect for all uses and structures that currently exist (meaning that there is a valid certificate of occupancy or building permit in effect) in order to prevent the illegal use of land and structures. Uses and structures that have been approved by a local construction official, zoning

officer, board of adjustment, or planning board but have not yet commenced operation or begun construction are prohibited from commencing operation or beginning construction until reviewed and approved by the Special Hearing Officer for compliance with this judgment.

A handwritten signature in cursive script that reads "Christine Farrington". The signature is written in dark ink and is positioned above the typed name.

CHRISTINE FARRINGTON, J.S.C., ret'd, t/a