

Special Public Meeting of the Englewood Cliffs
Planning Board Minutes
April 25, 2016

The Special Meeting of the Englewood Cliffs Planning Board was called to order by Chairman Fehre at 7:30 PM.

Present at Roll Call:

Mr. Fehre
Mrs. Rosenberg
Mr. Kilmartin
Mr. Trovato
Mr. Chinman
Mrs. O'Shea – Borough Rep
Mr. Kim – 1st Alternate
Mr. Porrino – 3rd Alternate
Mr. Lee – 4th Alternate

Absent:

Mr. Villari
Mr. Duffy – 2nd Alternate
Councilman Park
Ms. Eastwood
Mayor Kranjac
Stephen Duffy – 2nd Alternate

Also Present:

Michael Kates, Esq., of Kates Nussman Rapone Ellis & Farhi, the Board's attorneys.

Public notice of this special meeting has been given in compliance with the Open Public Meeting Law by advertisement in The Record, The Northern Valley Press, and posting of notice on the municipal building bulletin board at 482 Hudson Terrace.

Flag salute led by Mr. Trovato

Old Business:

Application #238K - Major Subdivision
Estate of Josephine Mauro – 361, 365, 369 Mauro Road
Block 406 – Lots 1, 2, 3
Resolution - Approved

Mr. Kates, Board Attorney, read the resolution which is incorporated herein as though fully stated and made a part hereof. The Chairman asked for a motion to approve. Motion was made by Mrs. Rosenberg, seconded by Mrs. O'Shea. Chairman asked for roll-call vote of the members that were eligible to vote: Mr. Fehre, Mr. Trovato, Mr. Kilmartin, Mrs. Rosenberg, Mr. Chinman, Mr. Kim, Mrs. O'Shea each voted to adopt this Resolution; it was unanimous.

Application #261K - Preliminary & Final Site Plan Review and ancillary variance(s),
Including d(6) height variance for building height in excess of
35 feet; and design standard exceptions
LG Electronics U.S.A., Inc.
111 Sylvan Avenue – Block 207 – Lot 6
Resolution - Approved

Mr. Kates, Board Attorney, read the resolution which is incorporated herein as though fully stated and made a part hereof. The Chairman asked for a motion to approve. Motion was made by Mr. Chinman, seconded by Mrs. O'Shea. Chairman asked for roll-call vote of the members that were eligible to vote: Mr. Fehre, Mr. Trovato, Mr. Kilmartin, Mr. Chinman, Mr.

Kim, Mrs. O'Shea each voted to adopt this Resolution; it was unanimous. Mrs. Rosenberg and Mr. Porrino recused themselves from the vote.

Resolution appointing of Maser Engineering as Planning Board Planner

Mr. Kates, Board Attorney, read the resolution which is incorporated herein as though fully stated and made a part hereof. The Chairman asked for a motion to approve. Motion was made by Mr. Porrino, seconded by Mr. Lee. Chairman asked for roll-call vote of the members that were eligible to vote: Mr. Fehre, Mr. Kilmartin, Mrs. Rosenberg, Mr. Chinman, Mr. Kim, Mr. Porrino, Mrs. O'Shea each voted to adopt this Resolution, 1 Abstention: Mr. Trovato

After the appointing of the Planner the board decided they would like the Planner to review the application for 100 Sylvan Avenue, FCA Realty prior to the next meeting of May 12, 2016 in which they are coming back to continue the application. Chairman Fehre asked for a motion to approve the planner to review the application. Motion was made by Mr. Porrino, seconded by Mr. Lee. CHariman asked for a roll-call vote of the board: Mr. Fehre, Mr. Kilmartin, Mrs. Rosenberg, Mr. Chinman, Mr. Kim, Mr. Porrino, Mr. Lee, and Mrs. O'Shea voted yes. Mr. Trovato voted no.

New Business:

None

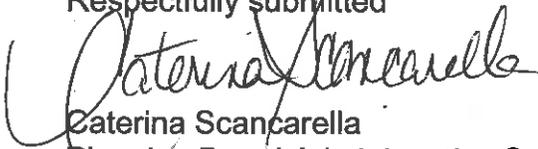
Chairman Fehre asked for a motion to open to public. Motion was made by Mrs. Rosenberg, seconded by Mrs. O'Shea and carried unanimously by voice vote.

Carin Geiger, 240 Alfred questioned when she would be able to obtain a copy of the LG resolution. Cathy Scancarella responded that she would email a copy to her tomorrow.

Chairman Fehre asked for a motion to close to public. Motion was made by Mr. Kilmartin, seconded by Mr. Rosenberg and carried unanimously by voice vote.

Chairman Fehre asked for a motion to adjourn the meeting at 7:54 pm. Motion was made by Mr. Kilmartin, seconded by Mrs. Rosenberg and carried unanimously by voice vote.

Respectfully submitted



Caterina Scancarella
Planning Board Administrative Secretary

ENGLEWOOD CLIFFS PLANNING BOARD

SPECIAL MEETING – April 25, 2016 – 7:30 PM

10 Kahn Terrace, Englewood Cliffs, NJ

CALL TO ORDER

The meeting of the Englewood Cliffs Planning Board will come to order this (date). The time is (time).

"OPEN PUBLIC MEETINGS ACT" STATEMENT

Public notice of this special meeting has been given in compliance with the Open Public Meeting Law by advertisement in The Record, and Northern Valley Press posting of notice on the Borough Hall bulletin board at 482 Hudson Terrace, Englewood Cliffs.

ROLL CALL

FLAG SALUTE LED BY:

APPROVAL OF MINUTES: April 11, 2016

OLD BUSINESS:

Application #238K – Major Subdivision
Estate of Josephine Mauro – 361,365,369, Mauro Road – Block 406 – Lots 1,2,3
Resolution – Approved

Application #261K - Preliminary & Final Site Plan Review and ancillary variance(s),
including d(6) height variance for building height in excess of 35 feet;
and design standard exceptions
L.G. Electronics U.S.A., Inc.
111 Sylvan Avenue – Block 207 – Lot 6
Resolution – Approved

Resolution appointing of Maser Engineering as Planning Board Planner

NEW BUSINESS:

COMMUNICATIONS

COMMITTEE REPORTS

PUBLIC COMMENTS OTHER THAN HEARING ON THIS AGENDA

ADJOURNMENT

**NOTICE OF SPECIAL MEETING
PLANNING BOARD
BOROUGH OF ENGLEWOOD CLIFFS**

At the call of the Chairman, a Special Meeting of the Englewood Cliffs Planning Board will take place on **Monday, April 25, 2016, at 7:30 P.M.**, in the Council Chambers in the Municipal Building, **10 Kahn Terrace**, Englewood Cliffs, New Jersey.

The Agenda of the Meeting, to the extent known at this time, is as follows:

Adoption of Memorializing Resolution

Application #261K -

L.G. Electronics U.S.A., Inc.

Preliminary and Final Site Plan Review and ancillary variance(s), including d(6) height variance for building height in excess of 35 feet; and design standard exceptions.

111 Sylvan Avenue
Block 207, Lot 6

The Agenda for this meeting will be posted at the Borough Hall, 482 Hudson Terrace, Englewood Cliffs, NJ.

Formal action may be taken.

In the discretion of the Chairman, matters not presently known may be added to the Agenda.

Caterina Scancarella
Planning Board Secretary

Cathy Scancarella

From: Cathy Scancarella
Sent: Thursday, April 14, 2016 12:38 PM
To: North Jersey Classified Public Notices
Subject: Public Notice
Attachments: SKMBT_28316041412360.pdf

To Whom It May Concern;

Public Notice Advertising for the following:

Englewood Cliffs Planning Board Special Meeting Notice

Please publish the attached Public Notice in the Record for your Tuesday, April 19, 2016 publication. Kindly notify me of when the ad will appear.

Thank you,

Cathy Scancarella

Planning Board Administrative Secretary

Borough of Englewood Cliffs

482 Hudson Terrace

Englewood Cliffs, NJ 07632

Office 201-568-9262

Fax 201-227-7775

planningboard@englewoodcliffsnj.org

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Cathy Scancarella

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Tuesday, April 19, 2016

Notice Content

NOTICE OF SPECIAL MEETING PLANNING BOARD BOROUGH OF ENGLEWOOD CUFFS At the call of the Chairman, a Special Meeting of the Englewood Cliffs Planning Board will take place on Monday, April 25, 2016, at 7:30 P.M., in the Council Chambers in the Municipal Building, 10 Kahn Terrace, Englewood Cliffs, New Jersey. The Agenda of the Meeting, to the extent known at this time, is as follows: Adoption of Memorializing Resolution Application #261K - L.G. Electronics U.S.A., Inc. Application #261K - Preliminary and Final Site Plan Review and ancillary variance(s), including d(6) height variance for building height in excess of 35 feet; and design standard exceptions. 111 Sylvan Avenue Block 207, Lot 6 The Agenda for this meeting will be posted at the Borough Hall, 482 Hudson Terrace, Englewood Cliffs, NJ. Formal action may be taken. In the discretion of the Chairman, matters not presently known may be added to the Agenda. Caterina Scancarella Planning Board Secretary April 19, 2016-fee:\$43.47 (46) 4020077

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Cathy Scancarella

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To Whom It May Concern;

Public Notice Advertising for the following:

Englewood Cliffs Planning Board Special Meeting Notice

Please publish the attached Public Notice in the Northern Valley Press for your Monday, April 18, 2016 publication.

Kindly notify me of when the ad will appear.

Thank you,

Cathy Scancarella

Planning Board Administrative Secretary

Borough of Englewood Cliffs

482 Hudson Terrace

Englewood Cliffs, NJ 07632

Office 201-568-9262

Fax 201-227-7775

planningboard@englewoodcliffsnj.org

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NOTICE OF SPECIAL MEETING

PLANNING BOARD - BOROUGH OF ENGLEWOOD CLIFFS

At the call of the Chairman, a Special Meeting of the Englewood Cliffs Planning Board will take place on **Monday, April 25, 2016, at 7:30 p.m.**, in the Council Chambers in the Municipal Building, **10 Kahn Terrace**, Englewood Cliffs, New Jersey.

The Agenda of the Meeting, to the extent known at this time, is as follows:

Adoption of Memorializing Resolution

Application #261K – L. G. Electronics U.S.A., Inc.

Preliminary and Final Site Plan Review and ancillary variance(s), including d(6) height variance for building height in excess of 35 feet; and design standard exceptions.
111 Sylvan Avenue, Block 207, Lot 6

The Agenda for this meeting will be posted at the Borough Hall, 482 Hudson Terrace, Englewood Cliffs, NJ.

Formal action may be taken.

In the discretion of the Chairman, matters not presently known may be added to the Agenda.
Caterina Scancarella, Planning Board Secretary

**PLANNING BOARD
BOROUGH OF ENGLEWOOD CLIFFS**

**IN THE MATTER OF THE APPLICATION OF :
ESTATE OF JOSEPHINE MAURO FOR A MAJOR : MEMORIALIZATION RESOLUTION
SUBDIVISION RELATING TO LOTS 1, 2 AND 3 : APPLICATION NO. 238K
IN BLOCK 406, COMMONLY DESCRIBED AS :
361, 365 AND 369 MAURO ROAD :**

WHEREAS, the **ESTATE OF JOSEPHINE MAURO** c/o Joseph Petrolino, Co-Executor, 75 Ormont Road, Chatham, NJ 07928 applied on or about July 17, 2014 to the Planning Board of the Borough of Englewood Cliffs for a major subdivision to relocate the lot lines of Lots 1, 2 and 3 in Block 406 to create proposed Lots 1, 2 and 3 as follows: Proposed Lot 1 - 11,321 square feet; Proposed Lot 2 - 8,782 square feet; and Proposed Lot 3 - 18,607 square feet; in the "R-B Residential Single-Family" zoning district; and

WHEREAS, although existing Lot 1 is not owned by applicant, the owner of Lot 1, **SHIRILI, LLC**, is consenting to this application; and

WHEREAS, public hearings were conducted on February 11, 2016 and March 30, 2016, upon proper notice certified by applicant's proof of service to property owners within a 200-foot radius of the subject property and proof of publication in an official newspaper of the Borough; and

ATES NUSSMAN RAPONE
ELLIS & FARHI, LLP
ATTORNEYS-AT-LAW
190 MOORE STREET
SUITE 306
HACKENSACK, N.J.
07601-7407

WHEREAS, applicant was represented by **Mark J. Sokolich, Esq.**, 1223 Anderson Avenue, Fort Lee, NJ 07024; and **Steven E. Taylor, Esq.**, of the Taylor Law Firm, LLC, 1 Bridge Plaza North, Suite 275, Fort Lee, NJ 07024, appeared on behalf of neighbors opposing the application; and

WHEREAS, interdepartmental communications and advisory reports of municipal departments and agencies were accepted as part of the record, as follows:

- Certification of Taxes Paid dated November 19, 2015 by **Joseph Iannaconi, Jr.**, Tax Collector/Treasurer, certifying payment of taxes through the 2nd quarter, 2014;
- Denial of Application letter of **Paul Renaud**, Zoning Officer, dated May 16, 2014, denying the zoning permit application for reasons stated therein; and
- Engineering review letter dated February 5, 2016 from the Board's consulting engineer at the time of commencement of this application, **Bernard N. Mirandi, P.E.**, of Boswell McClave Engineering, 330 Philips Avenue, South Hackensack, NJ 07606; and
- Engineering review letter dated March 30, 2016 of **Andrew R. Hipolit, P.E., P.P., C.M.E.**, of Maser Consulting, P.A., 400 Valley Road, Suite 304, Mount Arlington, NJ 07856, Borough and Board Engineer during the course of proceedings; and

WHEREAS, admitted into evidence were the following exhibits:

Exhibit A-10¹ – Cover Sheet of Major Subdivision Plan prepared by **Mark S. Martins, P.E., L.S.**, 55 Walnut Street, Suite 201, Norwood, NJ 07648, dated October 12, 2015;

Exhibit A-11 – Copy of Filed Map No. 574, dated September 15, 1961;

Exhibit A-12 – Sheet 2 of 5 entitled "Existing Conditions Map" prepared by **Mark S. Martins, P.E., L.S.**, dated August 5, 2015;

Exhibit A-13 – Sheet 3 of 5 entitled "Site and Subdivision Plan" prepared by **Mark S. Martins, P.E., L.S.**, dated November 12, 2015;

Exhibit A-14 – Sheet 4 of 5 entitled "Grading and Utilities Plan" prepared by **Mark S. Martins, P.E., L.S.**, dated November 12, 2015;

¹ This application commenced in 2015 but was discontinued in favor of a 2016 start with a reconstituted Planning Board. As a result, applicant chose to use Exhibit A-10 as its first Exhibit number.

Exhibit A-15 – Photo Board consisting of four photos;

Exhibit O-1 – Memorandum of **Nicholas J. Wunner, P.E., L.S.**, Wunner Engineering Associates, P.O. Box 303, Succasunna, NJ 07876, to **Steven Taylor, Esq.**, dated March 28, 2016;

Exhibit O-2 – Letter of **Scott Cullen**, Registered Consulting Arborist, American Society of Consulting Arborists, P.O. Box 31152, Greenwich, CT 06831, to **Dr. Hartmut M. Hanauske-Abel, M.D., Ph.D.** and **Dr. Bernadette M. Cracchiolo**, 368 Mauro Road, Englewood Cliffs, NJ 07632, dated May 14, 2015;

Exhibit O-3 – CD Rom of Power Point Presentation to Planning Board of Englewood Cliffs, entitled “The Situation in Mauro Road” dated February 11, 2016, prepared by **H.M. Hanauske-Abel, M.D., Ph.D.**;

Exhibit O-4 – Memorandum of **Nicholas J. Wunner, P.E., L.S.**, to **Steven Taylor, Esq.**, dated January 29, 2016;

Exhibit A-20² – Cover Sheet of Major Subdivision Plan prepared by **Mark S. Martins, P.E., L.S.**, dated October 12, 2015 with latest revision March 17, 2016;

Exhibit A-21 – Sheet 2 of 5 entitled “Boundary and Topographic Survey” of Major Subdivision Plan prepared by **Mark S. Martins, P.E., L.S.**, dated August 8, 2015 with latest revision March 17, 2016;

Exhibit A-22 – Sheet 3 of 5 entitled “Site Plan” prepared by **Mark S. Martins, P.E., L.S.**, dated October 12, 2015 with latest revision March 17, 2016;

Exhibit A-23 – Sheet 4 of 5 entitled “Grading and Utilities Plan” prepared by **Mark S. Martins, P.E., L.S.**, dated October 12, 2015 with latest revision March 17, 2016;

Exhibit O-5 – Figure 2 on Page 5 of **Exhibit O-2**; and

Exhibit O-6 - Presentation to Planning Board of Englewood Cliffs entitled “The Situation in Mauro Road 2006-2016”, dated March 30, 2016, prepared by **H.M. Hanauske-Abel, M.D., Ph.D.**;

WHEREAS, admitted into evidence without exhibit references were the following:

² Exhibit reference numbers A-16 through A-19 deliberately omitted.

- Application, dated July 14, 2014 with exhibits appended thereto;
- Drainage Calculations prepared by **Mark S. Martins, P.E., L.S.**, dated November 12, 2015 with latest revision March 18, 2016;
- Letter of **Lisa V. Mahle-Greco, P.E.**, Engineering Manager, Johnson Soils Company, 66 Glen Avenue, Glen Rock, NJ 07452, to **Joseph Petrolino**, dated February 29, 2016;
- Sheet 5 of 5 entitled "Soil Erosion Control Plan and Details" prepared by **Mark S. Martins, P.E., L.S.**, dated October 12, 2015 with latest revision March 17, 2016; and
- Map of Property prepared by **George J. Anderson, L.S.**, Bullseye Surveying, L.L.C., P.O. Box 430, Saddle Brook, NJ 07663, dated April 28, 2014; and

WHEREAS, testimony in support of the application was given by **Mark S. Martins, P.E., L.S.**; **Kenneth Ochab, P.P.**, K. Ochab Associates, 12-16 Fair Lawn Avenue, Fair Lawn, NJ 07410; and the Board's consulting engineer **Andrew R. Hipolit, P.E., P.P., C.M.E.**, Maser Consulting PA, 400 Valley Road, Suite 304, Mount Arlington, NJ 07856 questioned the witnesses on behalf of the Board and gave testimony; and the following persons testified in opposition to the application: **Nicholas J. Wunner, PE, LS**; **Scott Cullen**, Registered Consulting Arborist; **Jack Karamanoukian**, 372 Mauro Road; **Byung Han**, 366 Mauro Road; **H.M. Hanauske-Abel, M.D., Ph.D.**; and **Adonas Morfesis** of 26 John Street and **Olga Fishkin** of 364 Mauro Road questioned the witnesses, as well as **Steven E. Taylor, Esq.**, on behalf of neighbors in opposition to the application; and

WHEREAS, the Planning Board did consider the testimony and evidence presented, the following are the findings of fact and conclusions of the Board:

1. As shown on **Exhibit A-11**, Filed Map No. 574, dated September 15, 1961 perfected a three lot subdivision of the subject properties. In 1979, there was an attempt to relocate the lot line separating Lots 2 and 3 so as to accommodate within reconfigured Lot 3 the house that had been constructed with frontage on Toni Drive. The home that was constructed on the easterly

side of the tract (by or for the benefit of Josephine Mauro) encompassed two lots not one lot, with the macadam driveway and a portion of the house on the middle lot, Lot 2. See Map of Property drawn by George J. Anderson, L.S., Bullseye Surveying, L.L.C., dated April 28, 2014, showing the three lots with improvements before the 1979 subdivision. The 1979 subdivision proposed, and the current application similarly proposes, to realign the lot line to confine the house and improvements to one corner lot and create a middle lot as a conforming homesite for an additional single-family home, as also shown on Map of Property drawn by George J. Anderson, L.S. ("After Subdivision"). It changes the alignments and dimensions of the three lots but it does not create a third lot. The three lots preexisted.

2. However, that minor two-lot resubdivision in 1979 was not perfected pursuant to N.J.S.A. 40:55D-47 by filing a subdivision plat with the County pursuant to the Map Filing Law, N.J.S.A. 46:23-9.9 et seq. Notwithstanding that failure, the Borough amended the tax list and map to reflect the 1979 subdivision, and since 1979 three tax bills have been issued for the three lots realigned and demarcated by the 1979 subdivision. Applicant characterizes in its current application this effort as one "to administratively re-confirm the previously obtained subdivision otherwise curing this prior oversight".

3. The 1979 subdivision is a nullity. It expired when the applicant failed to file the approved plat with the County. It is not entitled to any deference by the Board.

4. Generally, when adjacent lots are owned by the same person or entity, it is appropriate to ask whether the lots merge into one lot and whether a subdivision needed to sell one of them. Until the decision in Loechner v. Campoli, 49 N.J. 504 (1967) it was understood that the sale of lots designated as separate lots on filed maps did not constitute a "subdivision" of land so long as existing lot lines were used. The merger doctrine was stated in broad terms, seemingly applying to all lots that were created prior to the adoption of planning controls under the Municipal Planning Act of 1953 and that were held in common ownership. Subsequent decisions and legislation have had the effect of limiting the merger doctrine, generally to contiguous undersized lots, fronting on the same street. Clearly, the Mauro home was constructed in disregard of the 1961 subdivision in that it encroaches on the middle lot. However, as illustrated by this subdivision application, enough of the undeveloped middle lot remains to support a homesite with conforming area. Also,

theoretically the corner lot and the middle lot front on different streets. Thus applying the logic of Loechner, the proposed subdivision is not of undersized lots fronting on the same street. Further, the Borough has not treated the lots as merged as it has continued to tax the lots separately. The Board therefore concludes that there is no merger of Lots 2 and 3.

5. The site is located in the R-B Residential, Single-Family zoning district. Existing Lots 1 and 3 currently contain single-family dwellings and related improvements while existing Lot 2 is currently vacant except for the macadam driveway and a portion of the house from existing Lot 3 that encroaches upon same.

6. The following are the pertinent zoning criteria for this application:

Description	Code Requirement	Proposed Lot 1	Proposed Lot 2	Proposed Lot 3
Minimum Lot Area	7,000 sf	11,321 sf	8,782 sf	18,607 sf
Minimum Lot Width	70 ft	80.73 ft	70.03 ft	135.62 ft
Minimum Front Yard	25 ft	27.94 ft	25 ft	18.64 ft (E)
Minimum Rear Yard	25 ft	46.29 ft	37.84 ft	18.1 ft (V)
Minimum One Side Yard	7 ft	14.2 ft	7 ft	16.55 ft
Minimum Both Side Yards	31.5% of lot width at setback line	30.75 ft	25.44 ft	36.63 ft
Minimum Corner Side Yard	15 ft	16.55 ft	N/A	20.08 ft
Maximum Building Coverage	27.68% / 30.22%/3,500 SF	23.4%	22.5%	4,025.1 SF (E)
Maximum Impervious Coverage	51%	37.3%	32.4%	34.8%
Maximum Rear Yard Coverage	60%	9.5%	10.8%	0%
Maximum Building Height -from average grade -from average curb -stories	30 ft 32 ft 2.5 stories	Existing to Remain	27.4 ft 32 ft 2.5 stories	Existing to Remain

Notes:

(V): Denotes variance required.

(E): Denotes existing non-conformity

Thus, the only variance necessitated by the proposed realignment is the 18.1 foot "rear yard" on Proposed Lot 3. A rear yard of 25 feet is required and 18.1 feet is proposed, requiring a 6.9-foot variance from the requirement of Code Subsection 30-6.1.

7. The Board concludes that the one new zoning deficiency as to Proposed Lot 3 is not problematical because its so-called "rear yard" is really a functional side yard, as shown on the Site Plan Exhibit A-22. The house functionally fronts on Mauro Road. Its technical fronting street as per Code Section 30-2³ is on its narrower adjacency to Toni Drive. As a functional sideyard, the setback of 18.1 feet exceeds the required side yard setback of 7 feet in the R-B Zone. Further, the homesite that would be impacted by this yard deficiency is presently undeveloped. Thus, a potential purchaser of Proposed Lot 2 would have fair warning of the proximity of its side yard to Lot 3. Applicant intends to sell Proposed Lot 2 as a separate homesite and there is nothing in the zoning ordinance that would preclude its development as a single-family homesite. To the extent a new house on Lot 2 would be placed upon the Lot with deficient yard set-backs or any other zoning deficiency, the developer would be required to obtain the necessary variances, on notice to surrounding property owners. But, for purposes of the subdivision creating Proposed Lot 2 per se, there is no zoning impediment.

8. The focus of the Board's attention, and neighborhood opposition to this application, was on stormwater management issues. The premise of opposition testimony was that the subdivision should be rejected because it will contribute to what is an existing, intolerable drainage problem in the area.

9. Applicant's expert testimony conclusively demonstrated that there will be stormwater management improvements to reduce the offsite flow. The calculations demonstrated that the project will reduce both the peak rate and volume of runoff from the site. The requirement is that the development not increase it. What is being offered is a bonus. There is no stormwater management on Lot 3. There is no stormwater management on Lot 2, albeit a significant stand of trees that will be removed when, as and if a home is constructed – and there was testimony of the value of mature trees to capture and retain stormwater. Bottom line, the improvements being offered will not ameliorate what is an apparent drainage problem in the area. What, then, can be legally required of this applicant to ameliorate offsite conditions?

³ "Lot, frontage" shall mean the narrower side of the lot abutting a street, regardless of the location of the principal entrance of a building thereof. Where two (2) lot lines abutting streets are of equal width, the owner shall have a choice in designating which shall be the lot frontage.

10. A planning board has no authority to deny an application based on existing off-site conditions. Thus, in Dunkin' Donuts of N.J. v. Tp. of North Brunswick, 193 N.J. Super. 513, 515 (App. Div. 1984), the Appellate Division held that a planning board was without authority to deny site plan approval because of off-site traffic conditions stating that ". . . the authority to prohibit or limit uses generating traffic into already congested streets or streets with a high rate of accidents is an exercise of the zoning power vested in the municipal governing body." Similarly, in Tennis Club Assoc. v. Planning Bd., 262 N.J. Super. 422, 434-435 (App. Div. 1993), the court held that site plan approval could not be denied because of off-site traffic problems, pointing out those problems had existed for years; and in Lionel's Appliance Center, Inc. v. Citta, 156 N.J. Super. 257 (Law Div. 1978), the court traced the history of site plan review in New Jersey prior to and after the adoption of the Municipal Land Use Law and concluded at p. 268 that:

In light ... of the historical limitations of site plan review, it is improper to construe those provisions to mean that the planning board can deny a site plan because of an ****existing off-site condition***** at or near the site in question. (emphasis supplied)

The court went on to say, at p. 268, ". . . the planning board may deny a site plan application only if the ingress and egress proposed by the plan creates an unsafe and inefficient vehicular circulation." See also Stochel v. Planning Bd. of Edison, 348 N.J. Super. 636, 641-642 (Law Div. 2000), indicating that the only consideration a land use board can give to off-site conditions is to require, as a condition of approval, a pro rata contribution of the costs of improvements made necessary by the project. See N.J.S.A. 40:55D-42. The court also held that a board could not deny approval on the basis that a proposed development made "too intensive" a use of the site as long as the project was a permitted use, did not exceed coverage, FAR or any bulk requirements.

11. The Board concludes that it is constrained by case law and will not impose on this applicant what it cannot impose. Instead, as a condition of approval, these three lots will be impressed with an obligation to contribute their fair share of any offsite drainage plan that is engineered by the Borough and paid for as a special assessment on properties similarly circumstanced.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Englewood Cliffs that the development application be approved, subject to the following conditions:

CONDITIONS SPECIFIC TO THE APPLICATION

A. The seepage pits on Proposed Lot 3 shall be installed and operable within nine (9) months of the date hereof.

B. Except as set forth in paragraph 23, applicant shall comply with all of the conditions set forth in the engineering review letter dated March 30, 2016 of Andrew R. Hipolit, P.E., P.P., C.M.E., and as site conditions may require, in the discretion of Mr. Hipolit with respect to stormwater management controls. Applicant has not conceded the requirement in paragraph 23 that it deed restrict any further subdivision of the resulting properties and the Board is not willing to impose that condition, on the understanding that any zoning deficiency will require further application and approval by this Board.

C. Engineering review letter dated February 5, 2016 of Bernard N. Mirandi, P.E., to the extent not covered in the review letter of Mr. Hipolit.

D. Proposed Lots 2 and 3 shall be impressed with an obligation to contribute their fair share of any offsite drainage plan that is engineered by the Borough and paid for as a special assessment on properties similarly circumstanced. To assure notice of this condition on successors in title to Lots 2 and 3, either this Resolution shall be recorded by applicant in the office of the Bergen County Clerk or a deed reciting this condition shall be recorded in the office of the Bergen County Clerk by the **Estate of Josephine Mauro**. The same cannot be required as to Lot 1, owned by **Shirili, LLC**. Although **Shirili, LLC** has consented to this application, it is not the applicant. Notwithstanding same, this Resolution is not intended to absolve **Shirili, LLC** and its successors in title should the Borough initiate a special assessment and include Lot 1 in the assessment.

GENERAL CONDITIONS

E. All representations made by applicant or its agents shall be deemed conditions of this approval and any misrepresentations by applicants contrary to the representations made before the Board shall be deemed a violation of this approval.

F. The action of the Planning Board in approving this application shall not relieve the applicants of responsibility for any damages caused by this project, nor does the Planning Board of the Borough of Englewood Cliffs, or its reviewing professionals and agencies, accept any responsibility for design of the proposed improvement or for any damages that may be caused by this development.

G. Applicant shall comply with all applicable federal, state, regional, county and local rules, regulations and requirements. In the event compliance with the requirements of any such governmental entity necessitates modifications to the Subdivision, applicant shall submit revised plans to the Zoning Officer and Construction Official for their review and approval. If deemed by him to be so substantial or different as to warrant further review by the Planning Board, such modification(s) shall be referred to the Planning Board for its formal review, and applicant shall be required to present same in compliance with the notice provisions of the Municipal Land Use Law.

H. This approval is subject to applicant obtaining a building permit and any other State, County or Borough approvals (including Borough Board of Health), if required.

I. All fees, costs, bonds and escrows shall be paid when due or becoming due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.

MOTION BY: MR. CHINMAN

SECONDED BY: MR. TROVATO

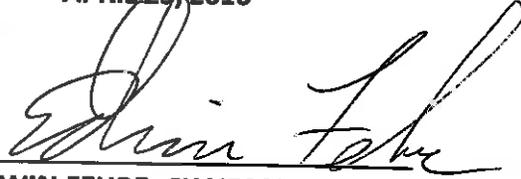
IN FAVOR: MR. CHINMAN, MR. TROVATO, MR. VILLARI, MR. KILMARTIN, MS. ROSENBERG, MR. KIM, MS. O'SHEA and MR. FEHRE

OPPOSED: COUNCILMAN PARK

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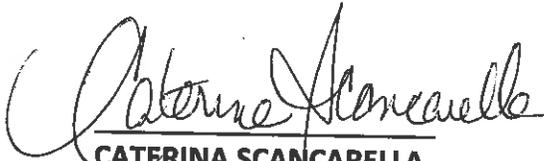
DATE APPLICATION APPROVED: MARCH 30, 2016

DATE RESOLUTION APPROVED: APRIL 25, 2016



**EDWIN FEHRE, CHAIRMAN
PLANNING BOARD**

Attest:



**CATERINA SCANCARELLA
PLANNING BOARD SECRETARY**

**PLANNING BOARD
BOROUGH OF ENGLEWOOD CLIFFS**

**IN THE MATTER OF THE APPLICATION OF LG ELECTRONICS :
U.S.A., INC, FOR PRELIMINARY AND FINAL SITE PLAN : MEMORIALIZATION RESOLUTION
REVIEW AND ANCILLARY VARIANCES RELATING TO LOT : APPLICATION NO. 261K
6 IN BLOCK 207, 111 SYLVAN AVENUE :**

WHEREAS, LG ELECTRONICS, U.S.A., INC. (the "Applicant"), with offices at 1000 Sylvan Avenue, Englewood Cliffs, NJ, applied on or about February 16, 2016 to the Planning Board of the Borough of Englewood Cliffs ("the Board") for preliminary and final site plan approval and ancillary variances to construct a 350,806 square foot (gross floor area) of office space with structured parking, in the "B-2A Limited Business Southeast Overlay" Zoning District; and

WHEREAS, public hearings were conducted on March 29, 2016 and April 11, 2016, upon proper notice certified by Applicant's proof of service to property owners within a 200-foot radius of the subject property and proof of publication in an official newspaper of the Borough¹; and

WHEREAS, Jason R. Tuvel, Esq., Gibbons PC, One Gateway Center, Newark, NJ 07102, represented applicant; and **Louis L. D'Arminio, Esq. and Kathryn Razin, Esq.,** of Price, Meese Shulman & D'Arminio, PC, 50 Tice Boulevard, Woodcliff Lake, NJ 07677 appeared on behalf of various conservation organizations in support of the application; and

¹ Applicant submitted proof that notification by mail or personal service at least ten days prior to the date set forth for the public hearing of all persons owning properties within 200 feet from the extreme limits of the subject premises as set forth on a certified list of said owners furnished to the Applicant by the Tax Assessor of the Borough has been completed in accordance with N.J.S.A. 40:55D-12, and to others statutorily entitled to receive such notice; and Applicant submitted proof that a copy of said notification has been published at least ten days prior to the date set forth for public hearing in the official newspaper of the Borough in accordance with N.J.S.A. 40:55D-12

WHEREAS, interdepartmental communications and advisory reports of municipal departments and agencies were received from:

- Memorandum from the Board's consulting engineer, **Richard E. Brown, PE, PP, CME**, of Carroll Engineering, 105 Raider Boulevard, Suite 206, Hillsborough, NJ 08844, dated March 24, 2016; and, as noted at the April 11, 2016 hearing, Mr. Brown also reviewed the engineering reports prepared by the Zoning Board of Adjustment's engineers in 2011, including: (i) letter from Boswell McClave Engineering dated April 26, 2011; (ii) letter from Rocciola Engineering dated April 30, 2011; (iii) memorandum from Boswell McClave Engineering dated May 4, 2011; and (iv) letter from Boswell McClave Engineering dated May 5, 2011;
- Memorandum from **Paul A. Phillips, P.P., A.I.C.P.**, of Phillips Preiss Grygiel, LLC, 33-41 Newark Street, Third Floor, Suite D, Hoboken, NJ 07030, dated April 11, 2016;
- Denial of Application letters of **Paul Renaud**, Zoning Officer, dated February 18, 2016 and March 14, 2016, denying the zoning permit application for reasons stated therein; and
- Memorandum from Police Chief **Michael Cioffi**, dated April 6, 2016; and
- Memorandum from Fire Chief **George Drimones** and Fire Official **Joseph Cardullo**, dated March 25, 2016; and

WHEREAS, admitted into evidence were the following documentary exhibits:

Exhibit A-1 – PowerPoint presentation of "Company Overview", consisting of 10 slides presented by **John I. Taylor**, Vice President of Public Affairs and Communications for LG Electronics USA, Inc.;

Exhibit A-2 – PowerPoint presentation entitled "LG Electronics USA, North American Headquarters, Site Approval Submission Hearing", consisting of 95 slides, prepared by HOK Architects, Inc., 1065 Avenue of the Americas, New York, NY 10018, dated March 29, 2016, and presented by **Kenneth H. Drucker, R.A.,;**

Exhibit A-3 – Model representing the new design prepared by HOK Architects, Inc.;

Exhibit A-4 – PowerPoint presentation entitled "LG Electronics USA, North American Headquarters, Site Approval Meeting", consisting of 6 slides, prepared and presented by **Patricia A. Ruskan, P.E.**, Paulus, Sokolowski and

Sartor ("PS&S"), LLC, 678 Mountain Boulevard Ext., P.O. Box 4039, Warren, NJ 07059, dated March 29, 2016;

Exhibit A-6² – Power Point presentation, consisting of 50 slides, presented by John McDonough, A.I.C.P., P.P., 101 Gibraltar Drive, Parsippany, NJ 07054, dated April 11, 2016; and

WHEREAS, admitted into evidence without exhibits references were the following:

- Application and Project Description and Variance Statement, dated February 16, 2016;
- Plans titled "Application For Preliminary and Final Site Plan, LG Electronics U.S.A., Inc., North American Headquarters, Block 207, Lot 6, Borough of Englewood Cliffs, Bergen County, New Jersey," prepared by Patricia A. Ruskan, P.E. of PS&S, dated February 9, 2016;
- Land Title Survey prepared by Control Point Associates, Inc., dated April 14, 2010;
- Partial Tree Survey (one sheet, TS-1) prepared by Francis C. Wecht, P.L.S. of PS&S, issued March 22, 2011 and last revised on February 8, 2016;
- Architectural Plans prepared by HOK Architects, Inc., dated February 9, 2016;
- On-Site Sewer Flow Analysis (2 pages) prepared by PS&S, dated February 9, 2016;
- Stormwater Management Report prepared by Patricia A. Ruskan, P.E., of PS&S, and dated February 2016;
- Traffic Impact Study prepared by Joseph Staigar, P.E. of Dynamic Traffic and dated February 12, 2016; and

WHEREAS, all materials and testimony submitted by the Applicant in connection with the application and during the public hearings deemed to be accepted as evidence and made part of the record.

WHEREAS, testimony in support of the application was given by John I. Taylor, Vice President of Public Affairs and Communications for LG Electronics U.S.A., Inc., who testified as to

² There was no Exhibit A-5 in evidence.

Applicant's goals and objectives for the proposed office complex; **Kenneth H. Drucker, R.A.**, a licensed architect in the State of New Jersey with HOK Architects, who was accepted by the Board as an expert in the field of architecture, and who testified as to the office complex's building configuration and design, LEED qualifications, and proposed landscaping design; **Patricia A. Ruskan, P.E.**, a licensed professional engineer in the State of New Jersey with PS&S, who was accepted by the Board as an expert in the field of engineering, and who testified as to the general site layout, lighting, drainage, landscaping, site plan details, and other site development issues; **Joseph Staigar, P.E., P.P.**, a licensed professional engineer in the State of New Jersey with Dynamic Traffic, LLC, 245 Main Street, Chester, NJ 07930, who was accepted by the Board as an expert in the field of traffic engineering, and who testified as to traffic volumes, parking configurations, access to and from the site, access design, configuration and design of curb cut and driveway widths, site circulation, and traffic impact on surrounding roadways; by **John McDonough, A.I.C.P., P.P.**, a licensed professional planner and landscape architect in the State of New Jersey with John McDonough Associates, LLC, who was accepted by the Board as an expert in the field of land use planning, and who testified as to the variance relief requested; and

WHEREAS, Paul A. Phillips, P.P., A.I.C.P., and Richard E. Brown, P.E., P.P., C.M.E., gave testimony, which was generally in support of the application and the Applicant indicated that it would comply with all requirements and comments received from these professionals; and

WHEREAS, the following persons questioned the witnesses or commented on the application: **Kevin Tremble**, 81 Westervelt Avenue, Tenafly, NJ; **David DiGregorio**, 160 Charlotte Place, Englewood Cliffs, NJ; **Hayley Carlock, Esq.**, Director of Environmental Advocacy,

Scenic Hudson, One Civic Center Plaza, Suite 200, Poughkeepsie, NY 12601; **Linda Babeuf**, Immediate Past President of New Jersey State Federation of Women's Clubs, 55 Labor Center Way, New Brunswick, NJ 08901; **Edward Goodell**, Executive Director, New York/New Jersey Trail Conference, 600 Ramapo Valley Road (Route 202), Mahwah, NJ 07430; **Frank Patti, Jr.**, President, Englewood Cliffs Board of Education, 143 Charlotte Place, Englewood Cliffs, NJ 07632; **Mark Izeman, Esq.**, President, New York Program and Senior Attorney, National Resource Defense Council, 40 West 20th Street, 11th Floor, New York, NY 10011; **Emile DeVito, Ph.D**, Manager of Science, New Jersey Conservation Foundation, 170 Longview Road, Far Hills, NJ 07931; **Larry Rockefeller**, President, American Conservation Association, 10 Rockefeller Plaza, 3d Floor, New York, NY 10020; **Carin Geiger**, Co-founder, Concerned Residents of Englewood Cliffs, 289 Alfred Street, Englewood Cliffs, NJ; and **Joseph Parisi**, 573 Floyd Street, Englewood Cliffs, NJ 07632; and

WHEREAS, the Board now wishes to memorialize its action of April 11, 2016 by adopting this Resolution in accordance with the requirements of N.J.S.A. 40:55D-10(g)(2), and the Board hereby makes the following findings of fact and conclusions of law based upon the record presented:

PROJECT DESCRIPTION

1. LG Electronics U.S.A., Inc. (the "Applicant") seeks to redevelop 111 Sylvan Avenue, otherwise known as Block 207, Lot 6 on the Borough's tax maps (the "Property"), in the Borough's "B-2A Limited Business Southeast Overlay" Zoning District, for the construction of a 350,806 square foot Class A, LEED Gold Certified, office complex. It will house the Applicant's North American headquarters. This application involves preliminary and final site plan approval with a height variance pursuant to N.J.S.A. 40:55D-70d(6) for heights in excess of 35

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feet, and multiple bulk and dimensional variances, as hereinafter set forth. The office use proposed by the Applicant for the Property is permitted in the Zone.

2. The project includes a 3-story "South Wing" constructed over a 1-story parking garage ("South Parking Garage"), a 4-story "North Wing," and a 3-level Parking Garage ("North Parking Garage") connected to the North Wing. A "Cube," the fulcrum of the structure, will link the North Wing and the South Wing. An outdoor plaza lies along the Sylvan Avenue frontage to the north of the South Wing, west of the North Wing and south of the North Parking Garage.



Slide 9 of PowerPoint presentation of Kenneth Drucker, R.A., collectively Exhibit A-2

3. The entirety of the building ("Building") would contain offices primarily for sales and marketing employees and would accommodate approximately 1,100 employees. The facility will not be used for manufacturing or research and development operations. There will be a Science Hall on the second floor of the Cube. The Science Hall will house a science and environmental learning center. Applicant will offer the space to groups of local school children visiting the Science Hall to learn about science, technology, the environment, sustainable living, and conservation. As confirmed by **Frank Patti, Jr.**, the President of the Englewood Cliffs Board of Education ("Board of Education"), the Board of Education adopted a resolution recognizing that the Science Hall and learning center will be a valuable asset to educators and students.

Level 2 Floor Plan



LG

Science Hall



LG

Slides 21 and 22 of PowerPoint presentation of Kenneth Drucker, R.A., collectively Exhibit A-2

4. The Property has substantial frontage, on three streets - approximately 2,000 feet of frontage along Sylvan Avenue, its westerly boundary; approximately 2,200 feet of frontage along Hudson Terrace, its easterly boundary, located between the subject property and the Palisades Interstate Parkway; and approximately 750 feet of frontage along Van Nostrand Avenue, its northerly boundary. As such, the Property possesses three front yards and three side yards. The side yards abut Van Nostrand Avenue and Sylvan Avenue on the southwestern corner of the Property. The Property has a varying depth which ranges from approximately 1,020 feet along its southerly boundary to approximately 240 feet at its northerly boundary.

5. Wetlands areas are located within the easterly portion of the tract and a large wooded area of approximately 3.5 acres is located in its northerly section ("North Woods"). There is also a change in grade from the Property's high point along Sylvan Avenue down to

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Hudson Terrace (measuring approximately 35 feet within the southerly portion of the tract and approximately 10 feet within its northerly portion).



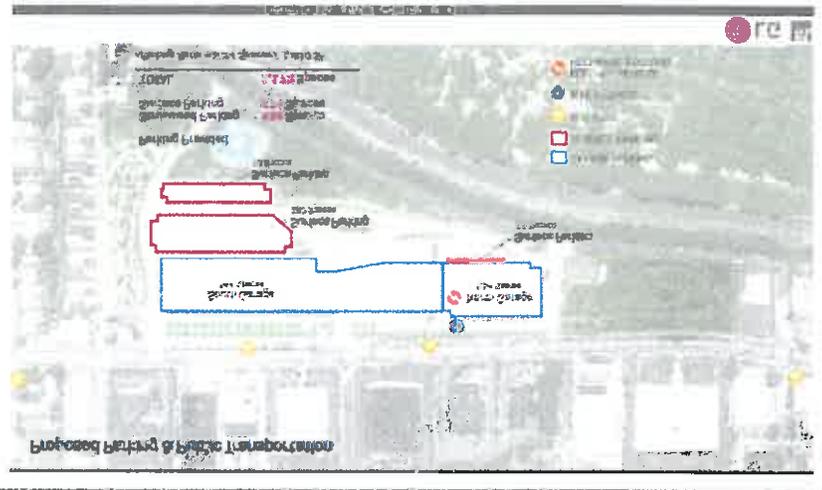
Slide 2 of PowerPoint presentation of Patricia A. Ruskan, P.E., collectively Exhibit A-4

6. Ingress and egress to the site would be provided via three curb cuts on Sylvan Avenue and two curb cuts on Hudson Terrace. The northern most curb cut on Sylvan Avenue would be right turn exit only. Three internal roadways would traverse the site. Road A is proposed to be an east-west roadway accessed from the southernmost curb cuts on Sylvan Avenue and Hudson Terrace. Road C is proposed to be an east-west roadway accessed from the northern most curb cuts on Sylvan Avenue and Hudson Terrace. Road B would run in a north-south direction connecting the other two roadways.



Slide 3 of PowerPoint presentation of Patricia A. Ruskan, P.E., collectively Exhibit A-4

7. A total of 274 surface parking spaces would be provided in two lots to the east of the South wing (253 total spaces), as well as a lot to the north of the North wing (21 spaces). The South and North Parking Garages would contain 898 spaces for a total of 1,172 onsite parking spaces. For the floor area proposed by Applicant, Code Section 30-10.1 ("Zoning Ordinance") requires 1,754 parking spaces.



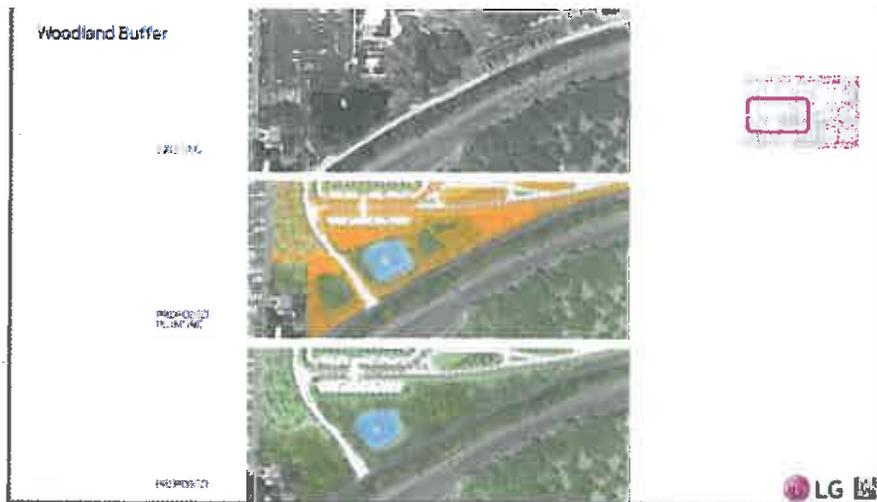
Slide 18 of PowerPoint presentation of Kenneth Drucker, R.A., collectively Exhibit A-2

8. Applicant seeks to achieve LEED Gold Certification from the U.S. Green Building Council ("USGBC") for the project. A gold designation is the second highest level (after platinum), and Applicant anticipates scoring at "high" gold level near the platinum threshold. Many components of Applicant's plans are tailored to achieving a LEED Gold rating or better. In addition to the green space improvements described below, the Building will be clad in a high-performance glass exterior wall system, complete with horizontal louvers that will reflect heat but not light, allowing sun light to penetrate deep into the narrow Building, thereby minimizing the amount of energy required for the structure. The glass will not be mirrored and will not result in glare or reflection of light to the detriment of any other properties. The wall system will feature shades connected to light sensors that will automatically adjust to provide shade as necessary, and will lower at twilight so that no light will emanate from the Building toward surrounding properties at night. Applicant also proposes photovoltaic arrays on the roof of the North Wing, South Wing, and North Parking Garage to provide from 5% to 10% of the Building's

power, in addition to utilizing low-emitting materials and high-efficiency technology and fixtures throughout the interior of the Building. Applicant will also provide electric vehicle recharge stations. Applicant will also comply with LEED standards pertaining to materials and recycling during the construction of the project. With its dedication to achieving a high LEED rating through the use of renewable energy sources, the project promotes purpose n. of N.J.S.A. 40:55D-2.

9. Applicant proposes to implement green space improvements, designed to create a park-like setting; increase landscaped areas; create buffers for the beautification of the Property and proper screening for the benefit of surrounding properties; conserve water; and reduce the volume of wastewater in accordance with LEED standards. These improvements include landscaping buffers on all sides of the development with a substantial approximately 125 foot landscaping buffer to the south between the Building and the residences on Van Nostrand Avenue ("Van Nostrand Buffer"). The Van Nostrand Buffer will replace existing surface parking that encroaches to within approximately 10 feet of the southern Property line, and will be denser than the buffer proposed by the Applicant in connection with the Prior Approval. More than 1,500 trees native to this region will be planted at heights ranging from 12-15 feet to 20-25 feet, and that will grow as tall as 80 feet. The buffers will properly screen neighboring properties from lights and activities on the site. In total, the Applicant proposes more than 60,000 plantings for the Property. The Applicant also proposes green roofs for the top of the North Wing and the South Wing. The Applicant does not propose to disturb the North Woods, and the Applicant will not fill or encroach on the Property's wetlands areas with the proposed development. A basketball court enclosed by a 12' high black chain link fence is proposed to the northeast of the North Parking Garage adjacent to the protected wetland areas, and a 4' wide pedestrian trail is proposed to extend around the Property.

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Slide 46 of PowerPoint presentation of Kenneth Drucker, R.A., collectively Exhibit A-2

THE SITE AND SURROUNDING PROPERTIES

10. The Property is in close proximity to the Palisades Cliffs and Palisades Interstate Park abutting the Hudson River, and is approximately one mile north of the George Washington Bridge. The landscape is unmarked by man-made structures above the tree line. The Palisades Interstate Park has been designated a National Historic Landmark.

11. The Property was previously developed with a two-story office and distribution facility consisting of approximately 412,000 square foot three-story office and distribution facility with approximately 1,047 surface parking spaces. The facility was originally constructed and occupied by Prentice-Hall in 1953, the first major corporate tenant in the Borough of Englewood Cliffs. Later, a check-processing subsidiary of Citigroup occupied the Property until its closure in 2011. The hybrid office/distribution configuration of the building, which was customized for Prentice-Hall, was a unique layout which reached the end of its useful life and was demolished in and around 2014. Applicant is the owner; its ownership is not a contract contingency.

12. The Property is now vacant and underutilized, improved with: large expanses of surface pavement, some of which abuts the Property lines; lighting; a chain link fence; a detention basin that serves the Van Nostrand residential neighborhood to the south; and other minor remaining site improvements from the previous development. The Property also

contains five (5) existing wetlands and wetlands transitions areas totaling 3.12 acres, significant rock croppings, and the undeveloped North Woods to the north.

PRIOR APPLICATION, APPROVAL, AND ENSUING LITIGATION

13. In 2012, the Englewood Cliffs Zoning Board of Adjustment (ZBA) granted a “d(6)” height variance, bulk variances and site plan approval to Applicant for the development of a similar use of the Property but in a different structural configuration (“Prior Approval”). The structural components totaled 493,167 square feet. Three proposed structures exceeded Englewood Cliffs’ 35-foot maximum height limitation, as follows: the height of the main building (which was divided into a north and south wing) was 143.8 feet; a four-level garage was 48.8 feet; and a building situated between the north and south wings was slightly higher than 35 feet. The Property at that time was zoned B-2 (Limited Business).

14. Several parties instituted legal challenges to the Prior Approval.³ Objectors claimed that the project would visually and negatively impact the nearby Palisades Interstate Park and the overall scenic corridor of the Palisades Interstate Parkway, as well as visually affect the Palisades Cliffs and the Park’s heritage.

15. The Prior Approval was upheld by the Superior Court of New Jersey, Law Division, Bergen County in 2013. By a published decision on October 21, 2015, Jacoby v. Zoning Bd. of Adjustment of Borough of Englewood Cliffs, 442 N.J. Super. 450 (App. Div. 2015) (“Jacoby”), the d(6) height variance, and only the d(6) height variance, was overturned by the New Jersey Appellate Division (“Appellate Division”). The matter was remanded for further hearings in the

³ Margo Moss, Jakob Franke, Carol Jacoby, and Marcia Davis appealed as residents in the community, as did the New Jersey State Federation of Women’s Clubs and Scenic Hudson, Inc. The Appellate Division granted amici status to numerous objectors to the granted height variance, including the State of New York; New York State Senator Jeffrey D. Klein; United States Representative Eliot L. Engel; New York State Senator Adriano Espaillat; New York State Assemblyman Jeffrey Dinowitz; New York City Councilman Andrew Cohen; New Jersey Conservation Foundation; Natural Resources Defense Council; Coalition to Protect the Palisades Cliffs; Fort Tryon Trust; National Trust for Historic Preservation; New Jersey Sierra Club; New York/New Jersey Baykeeper; New York—New Jersey Trail Conference; Palisades Park Conservancy; Preservation League of New York State; Regional Plan Association; Mayor Paul H. Tomasko of Alpine; Mayor Peter Rustin of Tenafly; Mayor Sophie Heymann of Closter; and Mayor Paul Hoelscher of Harrington Park. Amici status was also granted to the County of Bergen, Kathleen Donovan, as Executive, and Bergen County Board of Chosen Freeholders, who supported the height variance.

event that Applicant intended to pursue the height variance previously granted in the Prior Approval in light of the new standard announced in the decision.⁴ The Appellate Division left undisturbed preliminary and final site plan approval, together with all bulk variances and design exceptions granted in the Prior Approval.

16. Applicant has chosen to present the within application in the alternative. First, the Applicant has filed the application as a wholly new application seeking grant of the height variance and bulk variances as supported by the evidence presented in connection with the application, despite the fact that the Appellate Division only overturned the Prior Approval's height variance and did not disturb many of the variances now sought when granted in the Prior Approval. In the alternative, the Applicant has filed the application seeking the grant of four new variances and the height variance, in addition to seeking the express affirmance by the Board of the variances previously left undisturbed by the Appellate Division in the Prior Approval.

B-2A OVERLAY ZONE

17. After the 2012 Prior Approval and subsequent to the opposing parties instituting their legal challenge, the Planning Board asked its planning consultant at the time, Burgis Associates, to study the potential rezoning of properties located to the east of Sylvan Avenue within the southerly portion of the B-2 district to allow taller buildings in light of the Prior Approval by the ZBA. This resulted in the adoption of Ordinance No. 12-20, creating a "B-2A Over-lay" district which encompassed the subject property and others in the vicinity. Allowable heights varied, depending upon the size of the properties. A maximum of 6 stories was permitted for properties larger than 5 acres; and 8 stories on tracts larger than 25 acres. Parking garages with a maximum height of four stories or 60 feet were permitted on tracts greater than 20 acres; for parcels at least 5 acres a maximum height of three stories and 40 feet

⁴ That new standard is that a land use board is required to address the historic and scenic importance of a unique location when considering whether proposed height variance can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance. In the case at bar, the ZBA was obliged to consider more than just the effect of the decision on its own municipality; it must take into account the region, including, in this case, view sheds and site vistas across the Hudson River in the State of New York.

is permitted for parking garages. Table 1 illustrates the zoning criteria of the B-2A Overlay district.

Table 1: Bulk, Height and Other Requirements for the B-2A Overlay Zone

Regulation	Overlay Standard No. 1	Overlay Standard No. 2
Min./Max. Lot Area	Min: > 5 acres Max: 25 acres	Min: >25 acres
Min. Lot Width	250 feet	500 feet
Min. Front Yard	60 feet	60 feet
Min. Side Yard	60 feet	100 feet
Min. Rear Yard	22.5% of lot depth	25% of lot depth
Min. Corner Lot Setback to Street	75 feet	100 feet
Max. Lot Coverage	22.5%	20%
Max. Impervious Coverage	40%	35%
Max. Building Height	6 stories/90 feet	8 stories/150 feet

Additionally, a 100 foot buffer is required on B-2A properties abutting "residential lots."

ORDINANCE 2014-11

18. In August 2014, Englewood Cliffs adopted Ordinance 2014-11, amending its Zoning Ordinance to prohibit the construction of any building in excess of 35 feet in height in any zoning district within the Borough. It effectively nullified the building heights permitted under the B-2A Overlay zoning. The B-2A Overlay zone was not, however, rescinded.

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THE SETTLEMENT AGREEMENT

19. With the Jacoby appeal pending in the Appellate Division, Applicant entered into a settlement agreement with Scenic Hudson, Inc., New Jersey State Federation of Women's Clubs, Margo Moss, Jakob Franke, the Natural Resources Defense Council, Inc., the New Jersey Conservation Foundation, and the New York-New Jersey Trail Conference (the "Settlement Agreement"). Neither the Borough, nor its ZBA or Planning Board, participated in the settlement negotiations. The Settlement Agreement, dated June 17, 2015, provides standards for development on the Property, and, in particular, a reduction in the height of the North Wing to 4 stories and 69 feet.

20. As confirmed by representatives of Scenic Hudson, the New Jersey State Federation of Women's Clubs, the New York/New Jersey Trail Conference, the Natural Resources Defense Council, the New Jersey Conservation Foundation, and the American Conservation Association at the April 11, 2016 hearing, the Applicant's proposed development complies with the terms of the Settlement Agreement and demonstrates the Applicant's dedication to corporate responsibility and environmental preservation.

21. Representatives of parties to the Settlement Agreement spoke in favor of the application. **Hayley Carlock, Esq.**, Director of Environmental Advocacy for Scenic Hudson, testified that the Applicant's proposed design, including the proposed height, would not negatively impact the Palisades Park (alternatively "the Palisades"), and that the proposed Building would integrate with the environment not only of Englewood Cliffs, but within the larger regional environment including the Hudson River and nearby New York State. **Linda Babeuf**, the immediate past President of the New Jersey State Federation of Women's Clubs, commended the Applicant for its landscaping, screening, and lighting design, and urged the Board to grant the relief sought by the Applicant. **Edward Goodell**, the Executive Director of the New York/New Jersey Trail Conference, testified that the Applicant's plans satisfy the Trail Conference's expectations and endorsed the Applicant's application. **Mark Izeman, Esq.**, a representative of the Natural Resource Defense Council, offered the Council's strong support for the application and testified that the Applicant accounted for the potential impact of the proposed Building on the Palisades and its view shed. **Emile DeVito, Ph.D**, Manager of Science

For the New Jersey Conservation Foundation, offered the Foundation's support for the application, testified that the proposed plan would not have an impact on the historic Palisades, and commended the Applicant for accounting for the Property's natural features in its design. Larry Rockefeller, on behalf of the American Conservation Association, testified that the Applicant's development would benefit the local economy and was designed with respect for the need to protect Palisades Park and its historic views.

MASTER PLAN AMENDMENT

22. Subsequent to the Settlement Agreement being finalized, the Borough retained Phillips Preiss Grygiel LLC ("PPG") to determine whether the terms of the Settlement Agreement could or should be reconciled with the Borough's Master Plan in an amendment to the Master Plan's Land Use Plan Element, and to what extent those terms should apply to other properties along the Sylvan Avenue corridor. PPG's effort resulted in the "Amendment to The Land Use Element Of The Borough Of Englewood Cliffs Master Plan Creating A New B-5 Corporate Business Zone Classification For Block 207, Lot 6" (the "Master Plan Amendment" of "Amendment"). It was the subject of public hearings by the Planning Board and adopted and memorialized by the Planning Board on March 30, 2016.

23. Specifically, the Master Plan Amendment set forth the planning rationales in support of a new zoning classification for the Property, which is intended to encourage modern corporate office development. The Amendment recommended that the governing body consider a zoning ordinance amendment to create a new district entitled "B-5 Corporate Business" zone limited to the boundaries of the Property, Lot 6 in Block 207. It also recommended that the B-2A Overlay zone district be rescinded in its entirety.

24. The permitted uses in the new B-5 Business zone would be the same as in the current B-2 zone (i.e., business offices, professional offices, governmental and corporate offices, laboratory and research facilities and houses of worship). Additionally, accessory parking structures would be permitted subject to certain height restrictions. Freestanding office buildings would also be allowed.

25. The permitted building heights would vary depending upon location within the limits of the Property so as to be in concert with and respect the existing tree line of the

Palisades. Accordingly, the maximum building height would be 70 feet within a specific portion of the Property. Lower (and varying) allowable building heights would be mandated for the balance of the Property. In other words, permissible building heights would be tied to a series of required setbacks as measured from property lines. The required buffer to the R-B1 zone would be 125 feet. This would further mitigate the potential for detrimental impacts on the residential properties located along Van Nostrand Avenue, as would allowing additional height only beyond a prescribed distance from the R-B1 zone. The Master Plan Amendment also recommended that other appropriate design standards be employed as necessary to insure that any new development was sensitive to the Sylvan Avenue streetscape, residential properties to the south, and the Palisades parklands to the east. It was further recommended that consideration be given to relaxing the current office parking requirement in the context of a single user corporate office facility.

26. The Applicant's instant application wholly complies with the specifications for the B-5 Zone in the Master Plan Amendment.

VARIANCES REQUESTED

27. The applicable zoning requirements are provided in Table 2 of the Memorandum of Paul A. Phillips, P.P., A.I.C.P., dated April 11, 2016, with a comparison to the Applicant's proposal.

ANALYSIS - THE "d(6)" HEIGHT VARIANCE

28. Applicant is seeking a "d(6)" height variance. Pursuant to N.J.S.A. 40:55D-70(d)(6), height variances seeking to exceed the permitted height by 10 feet or 10% of the maximum height permitted in the district may be granted upon a showing that satisfies the positive and negative criteria of the Municipal Land Use Law.

29. As to the positive criteria, Applicant must provide "specials reasons" justifying grant of the variance. The court held in Grasso v. Borough of Spring Lake, 375 N.J. Super. 41, 48 (App. Div. 2004) that an applicant seeking a d(6) variance must establish "special reasons" by:

- Showing "hardship" such that the height restriction in effect prohibits utilization of the property for a conforming structure. In other words, the property for which the variance is sought cannot reasonably

accommodate a structure that conforms to, or only slightly exceeds, the height permitted by the ordinance; or

- Establishing that the proposed height variance would not “offend any purposes of the height restriction” and “would nonetheless be consistent with the surrounding neighborhood.” In other words, that the special reasons necessary to justify a height variance must be tailored to the purpose for imposing the height restrictions in the zoning ordinance.

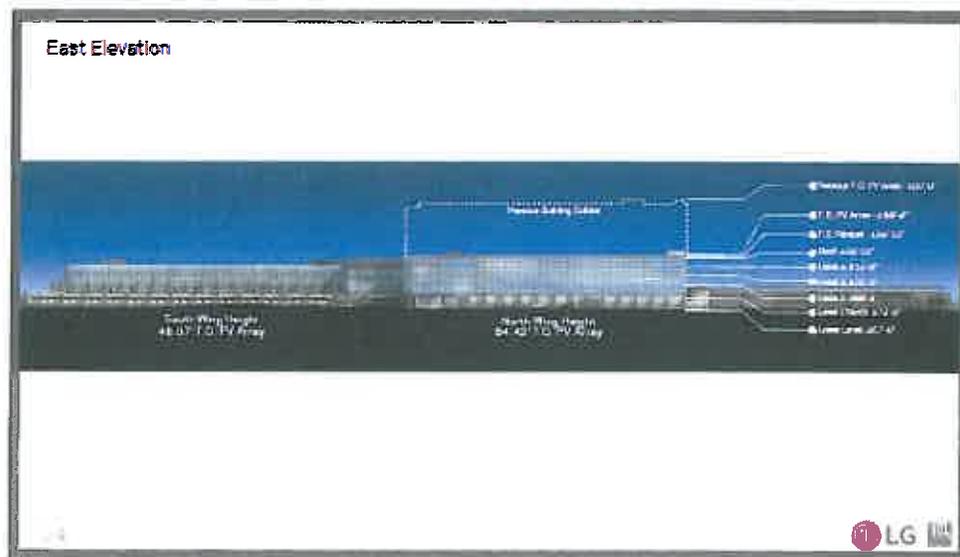
In Jacoby v. Zoning Bd. of Adjustment of Englewood Cliffs, the Appellate Division held that “[w]here a structure substantially exceeds the local height restriction, in determining whether the height of a building would be ‘consistent with the ‘surrounding neighborhood,’ a zoning board is obligated to consider the impact that the structure would have on more than the municipality itself or the immediate vicinity of the structure.” The Court stated that because the proposed structure is in “close proximity to the historic Palisades Cliffs and can be seen well beyond the immediate vicinity or municipality, establishing principals of zoning law direct that ‘surrounding neighborhood’ means all reasonable visual vantage points.”

30. The proposed height will advance twelve purposes of zoning as set forth in N.J.S.A. 40:55D-2, including: (i) purpose a., because the proposal will combat undesirable office sprawl and result in a compact, attractive business campus; (ii) purpose c., because the landscaping belt around the taller and subsequently narrower structure provides for increased light, air and open space; (iii) purpose d., for the reasons set forth in ¶ 32 herein; (iv) purpose e., because the Property will adequately accommodate the density of development proposed and the Applicant will preserve valuable environmental features throughout the site; (v) purpose g., because the Property is an appropriate location for the proposed height by virtue of its surrounding context, including the nearby building masses, land forms, and the substantial proposed greenery that will offset any visible impact associated with the additional height; (vi) purpose h., because encapsulating the office space in a narrower but taller structure allows for safer and more efficient circulation and access; (vii) purpose i., because the Building’s architecture and the landscape architecture, combined with the balance and proportionality achieved by the height, results in positive aesthetic interest and the beautification of the site and surrounding streetscape; (viii) purpose j., because the taller and narrower building will avoid office sprawl

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and the Applicant's 14 point study noted below establishes that it will preserve the views from the historic Palisades; (ix) purpose k., because the Building's height reduces its overall footprint, allowing the Applicant to situate the entire development on this singular Property in a large, planned commercial development; (x) purpose m, because the height of the building allows for the most efficient use of the Property's acreage; (xi) purpose n, because the Applicant is proposing photovoltaic arrays to produce energy in addition to green roofs; and, (xii) purpose p., because the proposed Building height enables the Applicant to propose a design alternative to traditional office design that will be a beautiful and well-integrated development.

31. As to the negative criteria of the statute, Applicant's site plans and architectural drawings incorporate the terms and conditions of the Settlement Agreement, and reflect the requirements of the B-2A Overlay zone which was enacted following the ZBA grant of the Prior Approval and during the subsequent appeal period. This Application substantially reduced the building heights (by more than half) from the Prior Approval as illustrated below from the PowerPoint presentation of Applicant's architect Kenneth Drucker, R.A., collectively **Exhibit A-2**.

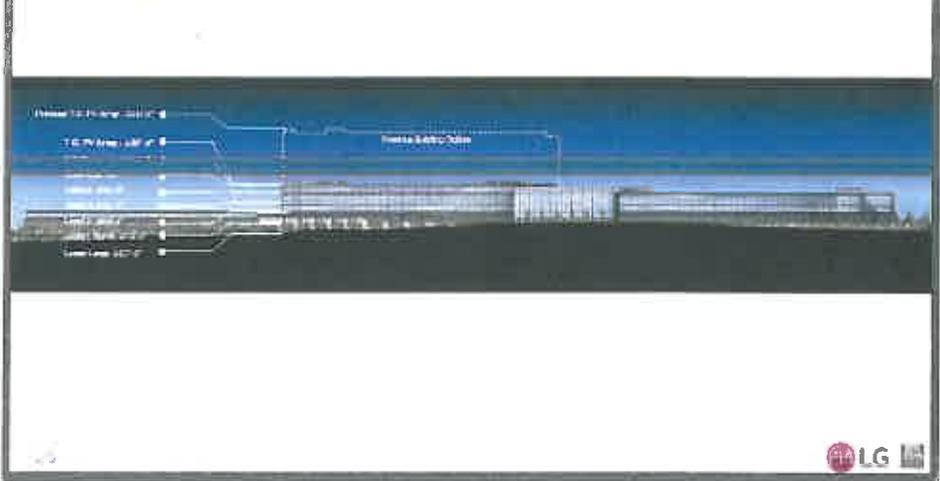


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Enlarged East Elevation



West Elevation



Enlarged West Elevation



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32. The tallest portion of the Building, the North Wing, will be situated farthest away from nearby residences on Van Nostrand Avenue to the south, minimizing the height's impact on these surrounding properties. In addition, Applicant has shown that it studied all reasonable visual vantage points in connection with the proposed height of the Building. Applicant analyzed the development's potential impact on 14 points of study, including within the Borough, in New Jersey, and across the Hudson River in New York. The Applicant's points of study, identified on PowerPoint Slide 69 reproduced below, accounted for the historic Palisades Interstate Park, and the study established that the height of the Building will not result in any substantial detrimental visual impact to any of these surrounding visual vantage points. Applicant studied 14 visual vantage points in winter, providing the "worst case" scenario in its analyses because of the absence of leaf cover, and the studies at each of the visual vantage points revealed:

i. **Mid-Block on Van Nostrand Ave.:** Building will be masked by landscaping and the streetscape, and will not result in a substantial visual detriment from this vantage point.

ii. **Southwest Site Corner at Van Nostrand Ave.:** Building will be obscured by foliage, will not be overbearing in the context of the existing skyline, and will not result in a substantial negative visual impact from this vantage point.

iii. **Straight Shot from Middlesex Ave.:** Building's visual impact will be blended and softened by the surrounding streetscape elements. The nearest residential uses from this vantage point are more than 800 feet away, and various other commercial development divides those uses from the Property. The Building's height will not produce a substantial visual detriment from this vantage point.

iv. **Northwest Site Corner at Charlotte Pl.:** The Building will not be visible from this vantage point whatsoever. It will be masked by the surrounding landscape.

v. **St. Michael's Villa:** The Building will be substantially hidden by trees at this vantage point, resulting in no substantial visual impact.

vi. **Sunoco Gas Station:** The Building will blend into the existing skyline and will not create a new skyline. The Building will not result in a substantial visual impact from this vantage point.

vii. **Palisades Interstate Parkway South:** The Building will blend in with the existing skyline and be substantially obscured by vegetation, resulting in no substantial visual impact from this vantage point.

viii. **Centerline of George Washington Bridge:** The Building will entirely blend with the existing skyline established by the trees, resulting in no substantial detrimental impact.

ix. **Little Red Lighthouse:** The Building will not be visible from this vantage point whatsoever.

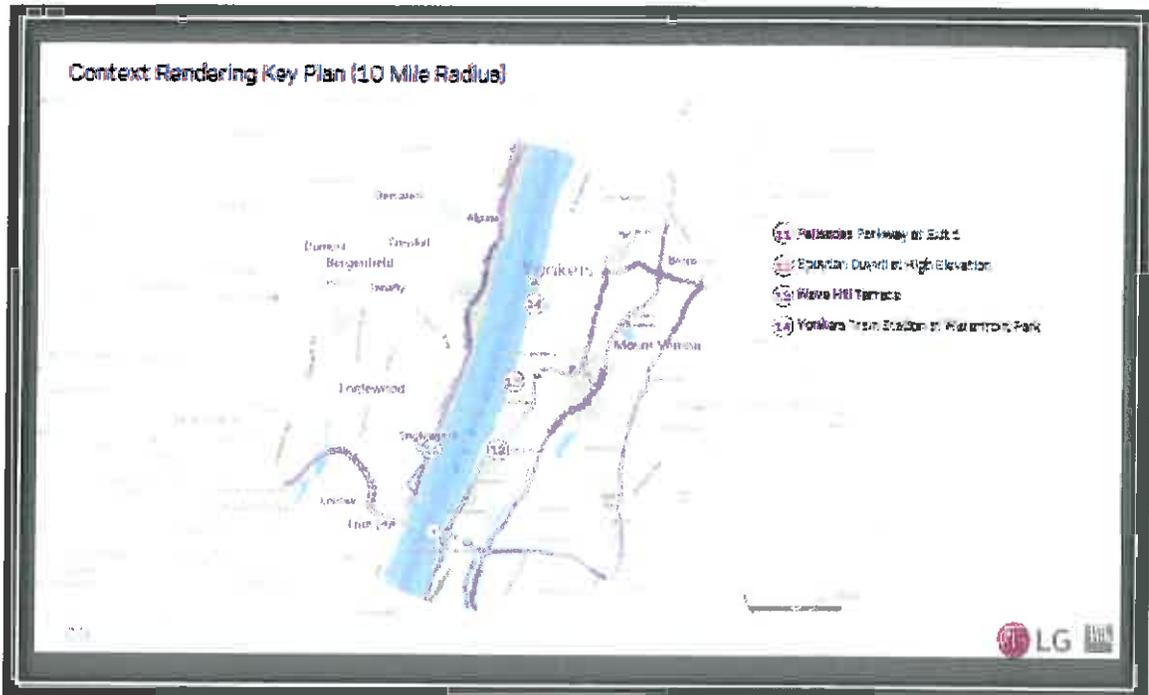
x. **Cloisters Terrace:** The Building will entirely blend with the existing skyline established by the trees, resulting in no substantial detrimental visual impact.

xi. **Palisades Interstate Parkway, Exit 1:** The Building will not be visible from this vantage point whatsoever.

xii. **Spuyten Duyvil at High Elevation:** The Building will not be visible from this vantage point whatsoever.

xiii. **Wave Hill Terrace:** The Building will not be visible from this vantage point whatsoever.

xiv. **Yonkers Train Station a/k/a Waterfront Park:** The Building will not be visible from this vantage point whatsoever.



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33. Applicant's PowerPoint presentation included comparisons of the elevations in the Prior Approval and as now proposed. Two of fourteen are shown here. Although these two relate to the Cube, both the North Wing and South Wing elevations are reduced in height.



LG 14



LG 14



LG 14



LG 14

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34. The proposed height of the Building will not substantially impair the intent or purpose of the Ordinance or Borough's zone plan. The height will further multiple goals of the Borough's Master Plan, the 2009 Reexamination of the Master Plan, and the 2016 Master Plan Amendment, including: Creation of an attractive gateway in the southern portion of the Borough; promotion of cutting-edge architecture; provision of a viable corporate setting; increase of open space and buffers; creation of environmental and aesthetic benefits without creation of detrimental impacts on the surrounding area; protection of established neighborhoods; maintenance and enhancement of the established residential and commercial characters of the Borough; preservation of the environment; appropriate use of all lands; and, improvement of the Borough's overall business area. The proposed height of the Building complies with the maximum height proposed for this Property under the Master Plan Amendment, which is 70 feet.

ANALYSIS – THE “c” BULK AND DIMENSIONAL VARIANCES

35. Bulk variances, or “c” variances, may be justified pursuant to N.J.S.A. 40:55D-70(c) by satisfaction of one of two standards. Pursuant to N.J.S.A. 40:55D-70(c)(1), an applicant may justify a variance by showing narrowness, shallowness or shape of a specific piece of property, or the exceptional topographical conditions or physical features uniquely affecting a specific piece of property or the structures lawfully existing thereon. Alternatively, pursuant to N.J.S.A. 40:55D-70(c)(2), an applicant may justify grant of a variance by showing that the benefits of granting the variance outweigh any detriments. Under either framework, an applicant must also establish that the variance can be granted without substantial detriment to the public good and that such grant will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

36. The proposed 12' fence enclosing the basketball court will be situated near the North Woods. The basketball court and fence will be located at the corner of Hudson Terrace and Internal Road C on the Property, which provides vehicles with direct access to the North Parking Garage. The proposed fence will reduce the potential safety hazard of having players running after loose balls near these roadways, therefore reducing unnecessary pedestrian-car conflicts both on- and off-site and enhancing safety in this portion of the Property. The fence

height will promote purposes a. and g. of N.J.S.A. 40:55D-2, and will not result in a negative impact on surrounding properties, particularly because the fence will be situated to the north, away from residential properties on Van Nostrand Avenue to the south. The fence height will similarly not constitute a substantial impairment to the zoning plan or Ordinance.

37. As detailed by Applicant's traffic engineering consultant, Joseph Staigar, P.E., P.P., and as substantiated in his Traffic Impact Study, the proposed parking configuration, comprised of 582 spaces fewer than required by Ordinance, will be more than sufficient to serve the proposed corporate campus and will not result in spillover onto nearby roadways in the Borough, particularly in light of the fact that a substantial portion of the Building's square footage will be comprised of common areas and because the Applicant will implement transit management programs, thereby decreasing the number of vehicles parking on the site. Furthermore, the Applicant testified that its employees are not all on the site at any one time, because some employees telecommute or work off-site. The proposed number of parking spaces will not result in negative impact on the surrounding area, substantial detriment to the public good, or substantial impairment of the zoning plan and Ordinance. The proposed number of parking spaces is appropriate for the Applicant's use when compared to recognized standards established by the Institute of Transportation Engineers (ITE) and the Urban Land Institute (ULI). Providing the number of parking spaces required by the Ordinance, which contains a substantially higher standard compared to ITE and ULI, would result in large numbers of spaces which would not be used, thereby detracting from the goal of reducing impervious coverage. Moreover, the relief request is substantially less than that granted as part of the Prior Approval and left undisturbed by the Law Division and the Appellate Division. The benefits of the deviation substantially outweigh any detriments. The proposed number of parking spaces will advance purposes a., c., and h. of N.J.S.A. 40:55D-2, and the benefits created by this deviation from the Ordinance will substantially outweigh any detriments.

38. Prohibiting the Applicant from situating parking and loading in the Property's three front yards would constitute a legitimate practical difficulty and unnecessary hardship given the site's shape and three frontages resulting in three front yards upon the Property, as confirmed by the written zoning determination of Zoning Officer Paul Renaud dated March 14, 2016. This

renders it virtually impossible to situate the parking in a compliant manner—i.e., not in a front yard. The intrusions associated with this parking and loading will not be significant. The proposed parking will be substantially set back from Hudson Terrace, and only minimally encroach into the Van Nostrand Avenue front yard from which it will also be appropriately set back. This Property historically has a long-standing association with parking in the front yard, and the parking will be adequately screened by landscaping around the perimeter of the site. The loading areas will be situated away from nearby residential zones and are to be substantially screened from public view, particularly since the proposed loading will be situated largely inside the Building. Multiple benefits will be derived from allowing the Applicant to position parking and loading in the front yards, including the creation of safe and efficient on-site circulation, particularly that of delivery vehicles. The Applicant's proposed locations for parking and loading in the front yards will thus further purposes a., c., and h. of N.J.S.A. 40:55D-2, without substantial detriment to the surrounding neighborhood or the public good.

39. The proposed driveway widths and corresponding curb cuts, which are wider than permitted by the Ordinance, are necessary to achieve a safe and efficient geometry that will adequately accommodate the Borough's largest firetruck and the tractor trailer vehicles that will make deliveries to the Property approximately four times per year. Wider curb cuts are necessary to accommodate the turning movements of these vehicles and will achieve optimal ingress to and egress from the Property, thereby enhancing the free-flow of traffic on Sylvan Avenue and Hudson Terrace. The wider driveways will facilitate vehicle movements on-site. These deviations from the Ordinance will not result in detrimental impact to the surrounding roadways or properties. The proposed driveway and curb cut widths will further purposes a. and h. of N.J.S.A. 40:55D-2, and given the large size of the Property, will not result in negative impact to the surrounding properties or be a substantial impairment to the zoning plan or Ordinance, particularly because these widths will satisfying the planning intent of achieving safe, efficient, and adequate circulation on and around the Property.

40. The proposed 13' clearance height for the South Parking Garage is a minor deviation from the Ordinance. The deviation is sought for two loading berths. The proposed clearance height will be sufficient to allow emergency vehicles to enter the garage, will

accommodate the Applicant's purposes on the Property, and is safe and efficient for this particular development. The proposed clearance height will further purposes a. and i. of N.J.S.A. 40:55D-2, and will not result in a substantial detriment to the public good or substantial impairment to the zone plan or Ordinance because the deviation relates only to this specific Property and is a unique condition.

41. The side yard setback variance sought by the Applicant constitutes a minimal deviation from the Ordinance and a benefit over what presently exists on the site from the Previous Development. In the Previous Development, pavement extended up to the Property line in the southwestern corner of the site where the 'notch' is cut into the Property by the PNC Bank lot. Although the Applicant will require a variance for the setback in this area of the Property, the Applicant proposes to provide substantial landscaping at this Property line, screening the PNC Bank property from impact. In the Prior Application, this variance was not required because the Property at that time was zoned B-2, but the layout and configuration of the development has not changed; instead, the required setback has changed due to the enactment of the B-2A Overlay Zone. This minor deviation will therefore further purposes a. and i. of N.J.S.A. 40:55D-2, and will not result in substantial detriment to the public good or surrounding area, especially because the PNC Bank will be the sensitive receptor in this regard and will receive better treatment under the Applicant's proposal than it has historically from this site. In addition, this will not substantially impair the zone plan or Ordinance, and this setback actually compiles with the new master plan requirements.

42. The Applicant's proposed lot coverage and impervious coverage are necessary to effectuate this beneficial project. The proposed building coverage matches that which was approved and existed on the Property in the Previous Development. As noted in the testimony of Board Planner Paul Phillips, the Ordinance's lot and impervious coverage requirements for this Property were developed with a taller permissible maximum building height in mind for this site. Also, in the Prior Application, this variance was not required because the Property at that time was zoned B-2, but the layout and configuration of the development has not changed; instead, the coverage requirements have changed due to the enactment of the B-2A Overlay Zone. The proposed lot and impervious coverage will not result in negative impacts on the

surrounding neighborhood or public good, such as drainage issues because the Applicant's proposed drainage plans and landscaping mitigation will eliminate such potential detrimental impacts. Importantly, the proposed lot and impervious coverage will not result in negative impact to the Property's natural resources. The Applicant will not fill or encroach on the Property's 5 existing wetlands areas. The proposed lot coverage and impervious coverage will further purposes a., g., h., i., and m. of N.J.S.A. 40:55D-2. The proposed coverages are consistent with the new Master Plan Amendment, and will not substantially impair the zone plan or Ordinance in the Borough.

43. The Board finds that the Applicant's proposed development will not result in a substantial detriment to the public good, including no negative impacts in terms of traffic, stormwater, intrusiveness, noise, light, or glare. All of the bulk variance relief sought by the Applicant is consistent with the specifications set forth in the Master Plan Amendment.

Site Plan Considerations

44. **Stormwater Management.** The Applicant proposes a comprehensive stormwater management system which includes an aerated retention pond, substantial green space improvements, a collection system, and three drainage areas which collectively will address stormwater runoff on the site and will satisfy water quality standards. The proposed stormwater management plan satisfies the Borough's stormwater ordinance and the New Jersey Department of Environmental Protection's stormwater regulations. Applicant's proposed stormwater management plan constitutes a substantial improvement to the existing conditions on the Property, which include no formal stormwater management. Applicant's proposed stormwater management system will not result in negative impacts to surrounding properties.

45. **On-site Traffic Management.** There are currently 12 vehicular access points to the Property: 6 access points along Sylvan Avenue; and 6 access points along Hudson Terrace. Applicant proposes to reduce the number of access points to 5 total access points, with 3 driveway access points along Sylvan Avenue, and 2 driveway access points along Hudson Terrace. Along Sylvan Avenue, Applicant proposes (i) a southernmost driveway, which is and

will remain signalized; (ii) a center driveway situated across Sylvan Avenue from Middlesex Avenue, with modification to the existing signal at the intersection; and (iii) a northernmost driveway providing for egress only onto northbound Sylvan Avenue. The New Jersey Department of Transportation issued a permit for these 3 driveways in connection with the Prior Approval, and design for these access points has not changed since that time. Along Hudson Terrace, Applicant proposes (i) a northern driveway; and (ii) to relocate the existing southern driveway from its existing location to 160 feet to the north, further away from the nearby residential neighborhood to the south. All driveways, except the egress-only northernmost drive, will be widened to accommodate one lane of ingress traffic, and two lanes of egress traffic. This reduction in driveways and access points constitutes a major traffic safety improvement.

46. Reducing the number of access points on the Property will formalize traffic ingress and egress in a safer and more efficient manner than presently exists on the site. All of the Property's driveways and intersections surrounding the Property will function at acceptable levels of service. Moderately lower grades of levels of service will only impact the Property's on-site driveways at their intersections with Sylvan Avenue and Middlesex Avenue, so as not to impact the high levels of service on those public thoroughfares. These driveways will also provide for efficient and complete on-site circulation, and the Property is properly buffered so as to prevent headlight glare from impacting nearby properties.

NOW, THEREFORE, BE IT RESOLVED, that:

I. The application for preliminary and final major site plan approval and variance relief is hereby **GRANTED AS FOLLOWS:**

1. Pursuant to § 30-6.1 of the Ordinance, the maximum permitted height in the B-2A Zone is 35 feet. A variance is granted for a North Wing having a height of 64.42 feet as determined from the applicable frontage on Sylvan Avenue, and a South Wing having a height of 48.07 feet.

2. Pursuant to § 30-10.3 of the Ordinance, a minimum clearance height of 15 feet is required for loading spaces and loading areas. A variance is granted for a clearance height of 13 feet for the South Parking Garage and a clearance height of 13.5 ft for the north loading area.
3. Pursuant to Schedule A, Table 2 of the Ordinance, a side yard setback of 100 feet is required. A variance is granted for a side yard setback of 62.61 feet in the southwestern corner of the Property for the South Wing.
4. Pursuant to § 30-6.1 of the Ordinance, a maximum (building) lot coverage of 20% is permitted. Variances are granted for a lot coverage of 22.4%, equal to the Previous Development's lot coverage.
5. Pursuant to § 30-6.1 of the Ordinance, a maximum impervious coverage of 35% is permitted. A variance is granted for an impervious coverage of 44.8%, a reduction from the Previous Development's impervious coverage of 57.5%.

And the Planning Board expressly affirms the variances previously granted in connection with the Prior Approval that were upheld or undisturbed by the Appellate Division, to wit:

6. Pursuant to § 30-7.4 of the Ordinance, the maximum permitted fence height is 6 feet. Applicant proposes a fence of a height of 12 feet to surround the proposed athletic court. The ZBA granted this variance in 2012 and it was undisturbed by the Appellate Division's decision.
7. Pursuant to § 30-10.1 of the Ordinance, a minimum of 1,754 parking spaces are required for the proposed use and development. Applicant proposes 1,172 parking spaces. The ZBA granted a variance for a greater deviation from the Ordinance in 2012 and it was upheld by the Appellate Division's decision.
8. Pursuant to § 30-10.1i of the Ordinance, parking in a front yard is prohibited. Applicant proposes to situate parking in the Property's Hudson Terrace and Van Nostrand Avenue front yards. The ZBA granted this variance in 2012 and it was undisturbed by the Appellate Division.
9. Pursuant to § 10.2f of the Ordinance, loading in a front yard is prohibited. Applicant proposes to situate loading in the Property's Sylvan Avenue and Hudson Terrace front yards. The ZBA granted this variance in 2012 and it was undisturbed by the Appellate Division's decision.

10. Pursuant to § 30-10.3b of the Ordinance, loading in a front yard is prohibited. Applicant proposes to situate loading in the Property's Sylvan Avenue and Hudson Terrace front yards. The ZBA granted this variance in 2012 and it was undisturbed by the Appellate Division's decision.
11. Pursuant to § 10.2/ of the Ordinance, a maximum driveway width of 30 feet, and a maximum curb cut width of 60 feet, are permitted. Applicant proposes: a driveway width of 44 feet and a corresponding curb cut of a width of 103.62 feet for the southernmost driveway on Sylvan Avenue; and a driveway width of 40 feet for the center driveway on Sylvan Avenue with an associated curb cut width of 121 feet; a driveway width of 39 feet for the southern driveway on Hudson Terrace with a corresponding curb cut width of 108.56 feet; and a driveway width of 38 feet for the northern driveway on Hudson Terrace with a corresponding curb cut maximum width of 128.8 feet. The ZBA granted this variance in 2012 and it was undisturbed by the Appellate Division's decision.

II. Alternatively, in the event the variances granted in the Prior Approval are not deemed to have been affirmed or undisturbed by the Appellate Division, the application for preliminary and final major site plan approval and variance relief is **GRANTED AS FOLLOWS** based solely on the evidence presented in the instant application:

1. Pursuant to § 30-6.1 of the Ordinance, the maximum permitted height in the B-2A Zone is 35 feet. The Applicant proposes a North Wing having a height of 64.42 feet as determined from the applicable frontage on Sylvan Avenue, and a South Wing having a height of 48.07 feet.
2. Pursuant to § 30-10.3 of the Ordinance, a minimum clearance height of 15 feet is required for loading spaces and loading areas. A variance is granted for a clearance height of 13 feet for the South Parking Garage and a clearance height of 13.5 ft for the north loading area.
3. Pursuant to Schedule A, Table 2 of the Ordinance, a side yard setback of 100 feet is required. A variance is granted for a side yard setback of 62.61 feet in the southwestern corner of the Property for the South Wing.
4. Pursuant to § 30-6.1 of the Ordinance, a maximum lot coverage of 20% is permitted. Variances are granted for a lot coverage of 22.4%, equal to the Previous Development's lot coverage.
5. Pursuant to § 30-6.1 of the Ordinance, a maximum impervious coverage of 35% is permitted. A variance is granted for an impervious coverage of 44.8%, a reduction from the Previous Development's impervious coverage of 57.5%.

6. Pursuant to § 30-7.4 of the Ordinance, the maximum permitted fence height is 6 feet. Applicant proposes a fence of a height of 12 feet to surround the proposed athletic court.
7. Pursuant to § 30-10.1 of the Ordinance, a minimum of 1,754 parking spaces are required for the proposed use and development. Applicant proposes 1,172 parking spaces.
8. Pursuant to § 30-10.1i of the Ordinance, parking in a front yard is prohibited. Applicant proposes to situate parking in the Property's Hudson Terrace and Van Nostrand Avenue front yards.
9. Pursuant to § 10.2f of the Ordinance, loading in a front yard is prohibited. Applicant proposes to situate loading in the Property's Sylvan Avenue and Hudson Terrace front yards.
10. Pursuant to § 30-10.3b of the Ordinance, loading in a front yard is prohibited. Applicant proposes to situate loading in the Property's Sylvan Avenue and Hudson Terrace front yards.
11. Pursuant to § 10.2/ of the Ordinance, a maximum driveway width of 30 feet, and a maximum curb cut width of 60 feet, are permitted. Applicant proposes: a driveway width of 44 feet and a corresponding curb cut of a width of 103.62 feet for the southernmost driveway on Sylvan Avenue; and a driveway width of 40 feet for the center driveway on Sylvan Avenue with an associated curb cut width of 121 feet; a driveway width of 39 feet for the southern driveway on Hudson Terrace with a corresponding curb cut width of 108.56 feet; and a driveway width of 38 feet for the northern driveway on Hudson Terrace with a corresponding curb cut maximum width of 128.8 feet.

III. In either of the foregoing alternatives to this Board's approvals, they are conditioned as follows:

CONDITIONS SPECIFIC TO THE APPLICATION

- A. Applicant shall comply with all requirements and comments received from the Borough Fire Chief and the Borough Fire Official in connection with the instant application.
- B. Applicant shall enter into a Developer's Agreement with the Planning Board and the Borough, which reasonably secures Applicant's performance, maintains improvements to the Property consistent with statutory allowances for performance and maintenance guarantees,

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and which reasonably regulates the construction phase in the public interest, as determined by the Construction Official.

C. Any minor variation in the approved plans, as determined by the Construction Official of the Borough, may be allowed in his discretion, if it is predicated unforeseen conditions in the field and does not exacerbate any of the variances herein granted.

GENERAL CONDITIONS

D. All representations made by applicant or its agents shall be deemed conditions of this approval and any misrepresentations by applicants contrary to the representations made before the Board shall be deemed a violation of this approval.

E. The action of the Planning Board in approving this application shall not relieve the applicants of responsibility for any damages caused by this project, nor does the Planning Board, or its reviewing professionals and agencies, accept any responsibility for design of the proposed improvement or for any damages that may be caused by this development.

F. Applicant shall comply with all applicable federal, state, regional, county and local rules, regulations and requirements. In the event compliance with the requirements of any such governmental entity necessitates modifications to the Subdivision, Applicant shall submit revised plans to the Zoning Officer and Construction Official for their review and approval. If deemed by him to be so substantial or different as to warrant further review by the Planning Board, such modification(s) shall be referred to the Planning Board for its formal review, and applicant shall be required to present same in compliance with the notice provisions of the Municipal Land Use Law.

G. This approval is subject to Applicant obtaining a building permit and any other State, County or Borough approvals (including Borough Board of Health), if required.

H. All fees, costs, bonds and escrows shall be paid when due or becoming due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.

MOTION BY: MR. TROVATO

SECONDED BY: MR. KIM

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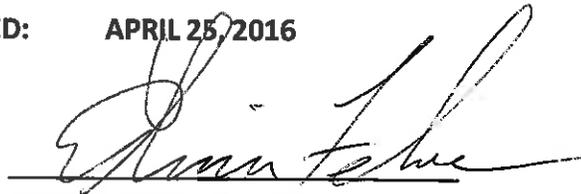
IN FAVOR: MR. TROVATO, MR. KIM, MR. VILLARI, MR. KILMARTIN, MRS. O'SHEA, MR. CHINMAN and MR. FEHRE

OPPOSED: NONE

RECUSED: MS. ROSENBERG
MR. PORRINO

DATE APPLICATION APPROVED: APRIL 11, 2016

DATE RESOLUTION APPROVED: APRIL 25, 2016



**EDWIN FEHRE, CHAIRMAN
PLANNING BOARD**



**CATHY SCANCARELLA
PLANNING BOARD SECRETARY**

Attest:

ATES NUSSMAN RAPONE
ELLIS & FARHI, LLP
ATTORNEYS-AT-LAW
190 MOORE STREET
SUITE 306
HACKENSACK, N.J.
07601-7407

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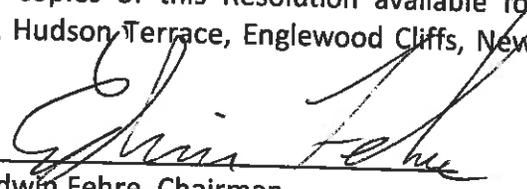
**Planning Board of the Borough of Englewood Cliffs
Resolution Appointing Planning Consulting Services**

WHEREAS, the Planning Board of the Borough of Englewood Cliffs, County of Bergen and State of New Jersey, will require the professional services of a planner on an as-needed basis for the remainder of the calendar year **2016**, which shall include but not be limited to the following: Application reviews, with the planner's services charged to applicants' escrow deposits; attendance at meetings of the Planning Board on an as-needed basis, with time charged to applicants' escrow accounts; general planning consultancy, to the extent not contracted to other planning professionals; and

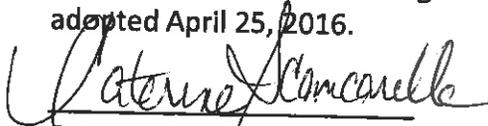
WHEREAS, this appointment is within the statutory authority of the Planning Board pursuant to N.J.S.A. 40:55D-24;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Englewood Cliffs, County of Bergen, and State of New Jersey, as follows:

1. Eileen Banyra, P.P. of Maser Consulting, P.A. is hereby appointed as planning consultant to the Planning Board of the Borough of Englewood Cliffs for the remainder of the calendar year **2016** and at the rates that are appended hereto and made a part hereof.
2. The Chairman and Land Use Administrator are authorized to sign this resolution of appointment, in accordance with the following terms and conditions:
 - A. Term: A period not to exceed December 31, 2016.
 - B. Services: Professional planning services, as above enumerated.
3. The Land Use Administrator, in accordance with the provisions of N.J.S.A. 40A:11-5 (1)(a)(i), is directed to publish a notice once in The Bergen Record stating the nature, duration, service and amount (to the extent known) of this contract.
4. The Land Use Administrator shall make copies of this Resolution available for public inspection at the Municipal Building, 482 Hudson Terrace, Englewood Cliffs, New Jersey, during regular business hours.


Edwin Fehre, Chairman
Planning Board

I hereby certify that this is a true copy of the Resolution appointing Eileen Banyra, P.P. of Maser Consulting, P.A. as Planning Consultant to the Englewood Cliffs Planning Board, Bergen County, adopted April 25, 2016.


Caterina Scancarella
Land Use Administrator

EILEEN BANYRA, PP, AICP, CSBA

Director of Planning Services, Northern New Jersey

EXPERIENCE

Ms. Banyra's career in community planning spans over 25 years with an expertise focused on the creative integration of design and best land development practices with sustainable planning solutions from a holistic viewpoint. Her comprehensive experience with rural, urban, local, and global communities includes planning for industrial, commercial, residential, and campus development project types.

Ms. Banyra has served as the planning expert to municipalities including the cities of Hoboken and Summit, Borough of Madison, and Fredon and Pequannock Townships, providing staff reports on applications submitted to the Planning and Zoning Boards; redevelopment investigations and plans; preparation of master plans and their elements; grant preparation; and greenway, open space, and park projects.

Ms. Banyra's public service includes having served as Planning Director for the Princeton Regional Planning Board and Township of West Milford where she supervised staff and managed the operations of those departments. She has experience working with planning, zoning, environmental, and historic preservation boards and commissions as well as community-based organizations. Ms. Banyra also advocates regenerative practices, and has prepared development ordinances to promote and incentivize "green" buildings, multi-modal transportation and other creative land use practices. She has been recognized as an expert witness before the Superior Court in New Jersey, as well as in over 65 jurisdictions throughout New Jersey.

PROJECTS

**Neumann Leathers Factory Redevelopment Plan
City of Hoboken, Hudson County, NJ**

Prepared the Area in Need of Rehabilitation Investigation and the redevelopment plan for a former leather tannery in the City dating back to the 19th century and currently occupied by a variety of small business tenants and artisans. The project area had been previously designated as an area in need of rehabilitation where the designation was challenged in court and sustained. The goals of the plan were to preserve and re-purpose as much of the historically significant buildings as possible, while creating public open space to invite neighborhood interaction with the businesses and artists there. Infill of the existing surface parking area was done to incentivize the property owner to participate in the plan. Complete project services included redevelopment planning, neighborhood design, and infrastructure and traffic impact analyses.

EDUCATION

- M.A. City and Regional Planning, Rutgers University
- B.A., William Paterson University

PROFESSIONAL REGISTRATIONS

- Professional Planner (PP) New Jersey
- American Institute of Certified Planners
- Certified Sustainable Building Advisor

PROFESSIONAL AFFILIATIONS

- American Planning Association, NJ and NY – Member
- Former Rutgers University Bloustein Alumni Council
- Former Member Legislative Committee (Environmental Chair) NJ American Planning Association
- Former Trustee Association of New Jersey Environmental Commissions (ANJEC)
- Member – U.S. Composting Council

CURRENT APPOINTMENTS

- City of Hoboken, Zoning Board Planner
- Fredon Township, Township Planner, Planning and Zoning Board Planner



**Planning and Zoning Board Planner
City of Hoboken, Hudson County, NJ**

Currently working as a consulting planner for the City. Has represented Hoboken in a variety of capacities serving as the City, Planning Board or Zoning Board planner since 2001. Work has included but not limited to development review of over 400 projects (mixed-use, residential, commercial, industrial) for a variety of complexities from single lot variances to 500-unit mixed-use PUD's, written zoning ordinance, zone changes, preparation of the 2002 and 2010 reexamination reports, conducted redevelopment investigations and prepared their resulting plans. Ms. Banyra has pioneered the promotion and implementation of sustainable practices in the planning documents she has prepared and before the Boards.

Pequannock Township, Morris County, NJ

Currently serving as Planning Consultant and Planning and Zoning Board Planner.

Fredon Township, Sussex County, NJ

Current serving as Planning Consultant and Planning and Zoning Board Planner.

City Planner

City of Summit, Union County, NJ

Previously represented the City in all capacities, for over three years. Served as the Planner for the Planning and Zoning Boards as well as advised City Council. Assisted in the development of the City's Sustainable Action Plan, Implemented zoning and planning practices focused on creatively integrating design and best land development practices with sustainable planning to develop solutions to benefit the community.

Borough of Madison, Morris County, NJ

Special consultant for litigation, and previously served as Planning Consultant.

Princeton, Mercer County, NJ

Previous served as Planning Director for the Regional Planning Board.

Township of West Milford, Passaic County, NJ

Previously served as Planning Director for the Regional Planning Board.





**2016 RATE SCHEDULE
BOROUGH OF ENGLEWOOD CLIFFS, BERGEN COUNTY, NJ
RATES ARE EFFECTIVE THROUGH DECEMBER 31, 2016**

Our professionals provide consulting services in the following disciplines at the hourly rate listed below:

Engineering Services

- Civil
- Construction Administration
- Municipal Services
- Structural
- Traffic and Transportation
- Wastewater Management
- Water Services

Other Technical Services

- Environmental
- Regulatory Compliance
- Grants
- GIS
- Recreation and Landscape Design
- Planning
- Surveying

TECHNICAL STAFF RATES

BILLING TITLES	HOURLY RATES
Project Professional	165.00
Technical Director	160.00
Project Manager	155.00
Senior Project Specialist	150.00
Senior Technical Professional	145.00
Project Specialist	140.00
Senior Technical Specialist	135.00
Technical Professional	130.00
Senior Specialist	125.00
Technical Specialist	115.00
Specialist	105.00
Senior Data Technician	95.00
Senior Technical Assistant	85.00
Technical Assistant	75.00
Data Technician	65.00
Survey Crew – 2 Man	200.00
Survey Crew – 1 Man	170.00
Expert	225.00
Sr. LSRP	210.00
LSRP	180.00

REIMBURSABLE EXPENSES

General Expenses	Cost + 20%
Travel (Hotel, Airfare, Meals)	Cost
Sub-Consultants/Sub-Contractors	Cost + 20%
Mileage Reimbursement*	0.56 / Per Mile
Plotting	3.50/Each
Computer Mylars / Color Plots	45.00/Each
Photo Copies	0.10/Each
Color Photo Copies	1.50/Each
Document Binding	3.00/Each
Compact Disk CD/DVD	75.00/Each
Exhibit Lamination (24"x36" or larger)	Cost + 20%

* Mileage reimbursement subject to change based upon IRS standard mileage rate