

Superior Court of New Jersey Appellate Division

Docket No. A-000259-13T1

CAROL JACOBY,

CIVIL ACTION

Plaintiff/Appellant,

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

v.

DOCKET NO. A-000259-13T1

BOARD OF ADJUSTMENT OF THE
BOROUGH OF ENGLEWOOD CLIFFS
AND LG ELECTRONICS USA, INC.

DOCKET NOS:

BER-L-2301-12

BER-L-2373-12

Defendants/Respondents.

SAT BELOW:

ALEXANDER H. CARVER, III. JSC

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PROPOSED AMICUS CURIAE BRIEF FOR THE STATE OF NEW YORK

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MARCIA DAVIS,

Plaintiff/Appellant,

v.

DOCKET NO: A-000404-13T1

BOARD OF ADJUSTMENT OF THE
BOROUGH OF ENGLEWOOD CLIFFS
AND LG ELECTRONICS USA, INC.,

Defendants/Respondents.

NEW JERSEY STATE FEDERATION
OF WOMEN'S CLUBS, SCENIC
HUDSON, INC., MARGO MOSS,
JAKOB FRANKE, JOHN DOES 1-10,
and ABC ENTITIES 1-10,

Plaintiffs/Appellants,

v.

DOCKET NO: A-000007-13T1

BOARD OF ADJUSTMENT OF THE
BOROUGH OF ENGLEWOOD CLIFFS
AND LG ELECTRONICS USA, INC.

Defendants/Respondents.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	3
STATEMENT OF FACTS.....	4
A. New York and New Jersey Jointly Create the Palisades Interstate Park.....	4
B. Municipal Zoning Restrictions Further Protect the Palisades.....	7
C. Proceedings Before the Board.....	9
1. LG’s Application for a Height Variance	9
2. Hearings Before the Board	9
3. The Board’s Decision	13
D. The Trial Court’s Order.....	14
THE BOARD ERRED IN GRANTING A SUBSTANTIAL HEIGHT VARIANCE WITHOUT CONSIDERING THE VARIANCE’S NEGATIVE IMPACT ON THE PALISADES INTERSTATE PARK.....	15
CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Duffcon Concrete Prods., Inc. v. Cresskill</i> , 1 N.J. 509 (1949).....	16
<i>Grubbs v. Slothower</i> , 389 N.J. Super. 377 (Super. Ct. App. Div. 2007).....	18
<i>Howell Prop., Inc. v. Township of Brick</i> , 347 N.J. Super. 573 (Super. Ct. App. Div. 2002).....	16
<i>Quinton v. Edison Park Dev. Corp.</i> , 59 N.J. 571 (1971).....	16
<i>S. Burlington County N.A.A.C.P. v. Township of Mount Laurel</i> , 92 N.J. 158 (1983).....	15, 16
 State Statutes	
1900 N.J. Laws 163.....	5
N.J. Stat.	
§ 40:55D-2.....	15
§ 40:55D-70.....	15
Ch. 170, 1900, N.Y. Laws 380	5
 Miscellaneous Authorities	
Borough of Alpine, N.J. Rev. Gen. Ordinances, Ch. 220: Zoning, Attachment 1 (2013)	8
Borough of Englewood Cliffs, N.J., Rev. Gen. Ordinances, Ch. XXX Zoning, Schedule A (subsection 30.6.1) (2012)	7
Borough of Tenafly, N.J. Rev. Gen. Ordinances, Ch. XXXV, art. VIII, Zoning Regulations, Schedule B (2013)	8
Brendan T. Byrne, <i>et al.</i> , <i>The Threat to the Palisades</i> , N.Y. Times (Mar. 24, 2014).....	18
Letter from William C. Bolger, National Historic Landmarks Program Manager, to Edwin Fehre, Chairman, Borough of Englewood Cliffs Planning Board (December 23, 2013) <i>available at</i> http://www/ protectthepalisades.org/news	8

TABLE OF AUTHORITIES (cont'd)

Cases	Page(s)
Minutes, <i>Meeting of the Commissioners of the Palisades Interstate Park</i> , August 1, 1935.....	6
New Jersey Clean Energy Program, <i>Pay for Performance - New Construction</i> , <i>available at</i> http://www.njcleanenergy.com/commercial- industrial/programs/pay-performance/new-construction/new-construction ...	10-11
Palisades Interstate Park Comm’n, <i>60 Years of Park Cooperation</i> (1960).....	5, 6
Palisades Interstate Park Comm’n, <i>History, “National Landmark.”</i> <i>available at</i> http://www.njpalisades.org/history.html#landmark	7
Palisades Interstate Park Comm’n, <i>History, The Riverfront</i> <i>available at http://www.njpalisades.org/ history.html#riverfront</i>	4, 5
Palisades Interstate Park Comm’n, <i>History, The Summit</i> <i>available at http://www.njpalisades.org/history.html#summit</i>	6
Palisades Interstate Park Comm’n, <i>Welcome to the Palisades Interstate Park in New Jersey</i> <i>available at</i> http://www.njpalisades.org/	4
Palisades Interstate Park Commission, <i>PIPC Resolution for LG Tower</i> (Mar. 4, 2014) <i>available at</i> http://www.palisadesparksconservancy.org/news/207/	18
State of New York, <i>Messages from the Governors</i> , at 123-24, vol. X, 1899-1906 (ed. Charles Z. Lincoln)	5

PRELIMINARY STATEMENT

For more than a century, the States of New York and New Jersey have worked in tandem and invested significant resources to protect the scenic beauty of the Palisades cliffs for the benefit and enjoyment of the citizens of both States. The Palisades are a line of steep cliffs stretching for over fifteen miles along the lower Hudson River in New Jersey and New York. In 1900, New York and New Jersey jointly created the Palisades Interstate Park, which includes and protects twelve miles of cliffs located in New Jersey extending northwards from the George Washington Bridge. New York contributed significant funds to acquire the parklands with the express purpose of preserving the dramatic, unspoiled vista and view of the Palisades cliffs from the New York side of the Hudson River. Zoning and land-use restrictions imposed by local municipalities in New Jersey bordering the Palisades Interstate Park have prevented construction of buildings that would intrude upon and ruin the natural beauty and unbroken vista of the Palisades. As a result, no buildings currently extend above the tree-line for 12 miles north of the George Washington Bridge.

In this case, however, the Zoning Board of the Borough of Englewood Cliffs (Board) approved a proposal by respondent LG Electronics, Inc. to construct an eight-story office corporate-headquarters building—four times higher than preexisting municipal height restrictions—that will tower above the tree-line and be highly visible in every season from the George Washington Bridge and the eastern shore of the Hudson River. The planned office tower will despoil vistas protected for

decades, yet the Board in granting LG a significant height variance, failed even to consider—let alone weigh—the negative impact of the planned building on the Palisades Interstate Park and the majestic views of the Palisades cliffs. Nor did the Board consider why a low-rise design, complying with existing height restrictions, could not accomplish LG’s environmental goals without interfering with the important regional and historic values of the cliffs.

The State of New York submits this brief as proposed *amicus curiae* to explain why this Court should reverse and remand the matter to the Board for proper consideration of the substantial negative impact of LG’s requested height variance on the Palisades Interstate Park. Because of New York’s unique role in jointly creating and maintaining the Palisades Interstate Park in conjunction with New Jersey, New York has a special interest in preserving the sweeping natural vistas of the Palisades protected by the Park. See *infra*, at __. New York committed to jointly protecting the Palisades precisely because it is a major vantage point for viewing the Palisades’ wooded summit, which can be seen from northern Manhattan, the Bronx, and southern Westchester County. New York thus has a strong interest in preserving the scenic beauty of the Palisades, not only for its own residents, but also for all those who visit viewpoints in New York that look out over the cliffs—including the Cloisters Museum, Fort Tryon Park, Riverside Park, and the Henry Hudson Parkway.

Allowing development without considering the public interest in preserving the natural beauty of the Palisades would set a dangerous precedent. It would fatally undermine the purpose of the Palisades Interstate Park—and the joint

efforts of New York and New Jersey to preserve the Palisades—if local zoning boards could grant variances without considering the public interest in protecting the Palisades’ scenic beauty, and without requiring parties to demonstrate that they have a compelling reason for impairing the public’s view and enjoyment of the Palisades that cannot be addressed through an alternate building design.

PROCEDURAL HISTORY

This appeal seeks review of the Superior Court’s decision upholding the Board’s grant of a substantial height variance to LG. In 2011, LG applied to the Board for a height and other bulk variances to allow construction of a building complex that includes a 143-foot office tower, a four-story parking garage, and another three-story building. (PJa140-148.) The Board held public hearings over six days regarding LG’s application. (PJa704.) In November 2011, the Board voted to approve the substantial height variance, a decision it memorialized in a February 13, 2012 resolution. (PJa701.)

In March 2012, plaintiffs-appellants Carol Jacoby and Marcia Davis challenged the Board’s determinations by filing actions in lieu of prerogative writs. (PJa733, 743.) The trial court later granted leave to intervene to plaintiffs-appellants the New Jersey State Federation of Women’s Clubs, Scenic Hudson, Inc., Margo Moss, and Jakob Franke. (PJa993-995.) On August 9, 2013, Superior Court (Carver, III, J.) issued an opinion and order upholding the Board’s decision. (PJa3-19.) Plaintiffs filed notices of appeal from the trial court’s order. (PJa20, 30, 36.)

STATEMENT OF FACTS

A. New York and New Jersey Jointly Create the Palisades Interstate Park

The Palisades are important to the citizens of both New York and New Jersey, as well as to all those who visit these two States to enjoy the cliffs. The Palisades Interstate Park in New Jersey is part of more than 100,000 acres of parklands and historic sites in New York and New Jersey that are managed by the Palisades Interstate Park Commission. (Plaintiffs' Joint Appendix (PJa) 636); *see* Palisades Interstate Park Comm'n, *Welcome to the Palisades Interstate Park in New Jersey*.¹ Extending for about twelve miles, the Palisades Interstate Park in New Jersey encompasses 2,500 acres of wild shorefront, uplands, and dramatic cliffs along the Hudson River. (PJa638.) The majority of the park stretches north of the George Washington Bridge in New Jersey, and the ridgeline of the cliffs in this portion of the park remains unbroken by any buildings.² (*See* 6T156-14 to 156-17.)

From its inception, the purpose of the Park was to protect the scenic view and vista of the Palisades for the public. New York and New Jersey together created the Palisades Interstate Park more than a century ago to protect the cliffs and to preserve the views of the cliffs from New York. (PJa638.) From across the Hudson River, millions of New Yorkers could see the majestic cliffs being destroyed by unrestrained quarrying in the mid-nineteenth century. *See* Palisades Interstate

¹ Available at <http://www.njpalisades.org/>.

² There is one historic brick building—Saint Michael's Church—that sits on the cliffs and does not rise above the tree-line. (*See* PJa559, 1087.)

Park Comm'n, *History, The Riverfront*.³ New Yorkers responded to this devastation by beginning the first concerted efforts to preserve the Palisades from ruin. *Id.* As Theodore Roosevelt, New York's then-governor, explained: because "[t]he Palisades . . . form one of the most striking and beautiful features in nature in the entire country," which can "best be observed from" New York, their "marring and ruin should be a source not merely of regret, but of shame for our people." State of New York, *Messages from the Governors*, at 123-24, Volume X, 1899-1906 (ed. Charles Z. Lincoln).

In 1900, New York and New Jersey heeded this warning and acted together to create the Palisades Interstate Park. Each State enacted legislation that created a Palisades Interstate Park Commission and tasked it with "preserving the scenic beauty of the Palisades" by selecting and appropriating lands along the Hudson River for the park. Ch. 170, 1900, N.Y. Laws 380, 381; 1900 N.J. Laws 163, 164. Each State also contributed funds to acquire the necessary parklands, with New York contributing over \$400,000—or over \$9 million today when adjusted for inflation—and New Jersey appropriating \$50,000 in the first two years of the Commission. Palisades Interstate Park Comm'n, *60 Years of Park Cooperation*, 19-20 (1960). The Commission obtained more than twelve miles of Hudson River shorefront and cliffs that retained "much of their original wild" character. *Id.* at 20. This joint effort to preserve the Palisades is the "most notable example in the United States of interstate cooperation for the conservation" of this country's scenic beauty. *Id.* at 15.

³ Available at <http://www.njpalisades.org/history.html#riverfront>.

In 1933, to preserve the view of the Palisades summit and to create a scenic highway providing access to the park, John D. Rockefeller Jr. offered to donate seven-hundred acres of land atop the cliffs to the Palisades Interstate Park. (PJa638); *see also 60 Years of Park Cooperation, supra*, at 51. Rockefeller conditioned this donation on removal of all man-made structures that were visible from across the river, *see Palisades Interstate Park Comm’n, History, The Summit*,⁴ and on the Commission promising that no structure would thereafter be built at “a height that . . . would make it visible from the proposed Henry Hudson Bridge . . . or from [a certain elevation] on the easterly side of the Hudson River,” *see Minutes, Meeting of the Commissioners of the Palisades Interstate Park*, August 1, 1935. The Palisades Interstate Park Commissioners accepted these conditions, *id.*, thereby preventing disruptive building on the western portion of the cliff summit and securing a pristine view of the Palisades’ skyline north of the George Washington Bridge (PJa638). Rockefeller’s goal of building a scenic parkway along the top of the cliffs was also full realized in 1961 with the completion of the Palisades Interstate Parkway. (PJa638.) The parkway runs for over forty miles from New Jersey into New York , providing access to and beautiful views of the Palisades Interstate Park “not only [for] residents in the New York metropolitan area, but [for] countless visitors from other states and other lands.” (PJa639.) Both New York and New

⁴ Available at <http://www.njpalisades.org/history.html#summit>.

Jersey have designated the parkway as “a state scenic byway . . . because of its outstanding historic and scenic character.” (PJa636.)

The federal government long ago recognized that the majestic view of the Palisades as seen from New York is an irreplaceable feature of our country’s natural landscape. Congress designated the Palisades Interstate Park as a National Historic Landmark and as a National Natural Landmark in 1965 and 1983, respectively, in large part because the park’s creation “represents an unusual effort by two states, New Jersey and New York, to preserve the scenic beauty of the cliffs on the lower western side of the Hudson River.” Palisades Interstate Park Comm’n, *History, “National Landmark.”*⁵

B. Municipal Zoning Restrictions Further Protect the Palisades

In addition to joint-state and federal recognition and protection of the Palisades, zoning and land-use requirements, including height restrictions, imposed by municipalities in New Jersey neighboring and benefitting from the Palisades Interstate Park have also prevented construction from despoiling the Palisades cliffs. Specifically, Englewood Cliffs’ zoning ordinance restricts building height to thirty feet in residential districts, thirty-five feet in business districts, and seventy feet in ten acres of land zoned for institutions. Borough of Englewood Cliffs, N.J., Rev. Gen. Ordinances, Ch. XXX Zoning, Schedule A (subsection 30.6.1) (2012).

⁵ Available at <http://www.njpalisades.org/history.html#landmark>.

Similarly, Tenafly, which is located north of Englewood Cliffs, limits the height of buildings to thirty feet or two-and-a-half stories in residential districts and forty feet or three stories in commercial districts. Borough of Tenafly, N.J. Rev. Gen. Ordinances, Ch. XXXV, art. VIII, Zoning Regulations, Schedule B (2013). Alpine, located north of Tenafly, has limited building height to thirty-five feet. Borough of Alpine, N.J. Rev. Gen. Ordinances, Ch. 220: Zoning, Attachment 1 (2013).

These height restrictions have preserved the majestic views of the Palisades' summit from the eastern side of the Hudson River for decades. As the United States Department of the Interior recently observed, the lack of "intrusive development" in the municipalities located behind the Palisades Interstate Park "has allowed the view of the cliffs and the wooded ridge to remain" intact. Letter from William C. Bolger, National Historic Landmarks Program Manager, to Edwin Fehre, Chairman, Borough of Englewood Cliffs Planning Board (December 23, 2013).⁶ Until now, Englewood Cliffs, Tenafly, and Alpine have not granted any height variances that would permit construction of a building tall enough to substantially diminish the beauty of the Palisades Interstate Park skyline.

⁶ *Available at* <http://www/protectthepalisades.org/news>.

C. Proceedings Before the Board

1. LG's Application for a Height Variance

In 2011, LG applied to the Board proposing to build a 143-foot tower as part of a larger complex of buildings one-quarter of a mile west from the Palisades Interstate Park. (PJa148.) The district where LG proposed to build this tower complex is zoned for business with a height restriction of thirty-five feet or two stories. (PJa148.) Prior to LG purchasing the site, it was used as the corporate headquarters for Prentice Hall and was composed of two-story buildings that did not impair the scenic view of the Palisades. (See PJa6, 148.) LG sought to substantially change the site by constructing an eight-foot high-rise tower, a four-story parking garage, and another three-story building. (PJa6, 148.) To avoid the borough's zoning regulations, LG requested a variance that would allow it to build a tower four times higher than the current height restriction. (PJa148.)

2. Hearings Before the Board

The Board held hearings over six days regarding LG's proposed building and requested zoning variances, including its request for a height variance four times above Englewood Cliffs' thirty-five-foot height restriction. The Board did not inquire about the height variance's impact on the regional and historic values of the Palisades despite ample testimony regarding the Palisades Interstate Park and the majestic views of the cliff summit from New York. Moreover, LG failed to explain whether it could have mitigated the effect of its building on the public welfare by using a lower, longer building, admitting that it had not seriously considered other design options.

Much of the testimony presented by LG focused exclusively on the impact of the complex on its own business and on the immediate areas of the building site and surrounding local neighborhoods. For example, LG's counsel testified that LG wants to build a high tower to benefit the "operations of [its] businesses" and because of the site conditions. (1T31-11 to 31-18.) The project's architect, Kenneth Drucker, explained that the tall construction aimed to provide more daylight for the building's occupants, thereby boosting employee happiness and retention. (1T66-7 to 66-20; 2T95-3 to 95-4.) He also testified that the height would reduce the complex's environmental footprint on the building site (1T60-11 to 60-14), allow for larger landscape buffers (1T65-19 to 65-24), and promote energy efficiency (1T66-25 to 67-4). Other witnesses remarked on how the building's height would provide all LG employees with views outside. (*See* 1T25-5 to 25-8 (stating that the building site has "one of the most magnificent views in Bergen County"); 4T27-18 to 28-14 (stating that the height allowed "everybody who works in the building [to] have direct views out").)

LG witnesses also emphasized their belief that using a tall tower would help the building achieve a Leadership in Energy & Environmental Design (LEED) certification. (*See* 1T31-11 to 31-23, 1T85-20 to 86-4, 2T93-1 to 93-9, 4T28-5 to 28-14.) LEED certification is based on a privately administered rating system that measures the environmental sustainability of various building features. (4T10-10 to 10-20.) Companies that utilize such energy-saving features in new construction may be eligible for New Jersey tax incentives. *See* New Jersey Clean Energy Program,

*Pay for Performance - New Construction.*⁷ But LG witnesses also admitted that LEED status could be obtained without constructing a 143-foot tower. (See 2T93-10 to 93-15, 2T95-17 to 96-1) Indeed, the project's architect testified that the building could have been wider without losing its environmental features (2T93-10 to 93-15) and that using a lower structure "would not disqualify" the building from LEED certification (2T95-20 to 96-1). However, the possibility of utilizing such a lower structure was apparently not considered by LG. (See 2T56-6 to 57-2, 4T44-8 to 44-11.)

LG witnesses confirmed that the office tower would be built at the edge of the Palisades Interstate Park (1T25-5 to 25-8) and that the building would rise at least three stories above the tree-line on the Palisades' summit (5T69-5 to 69-18). A photographic rendering submitted by LG displayed how the iconic views of the Palisades from the eastern side of the Hudson River will be marred by the building. (PJa559.) Several LG witnesses testified that the project had been structured to minimize the building's visibility to residents living to the south of the property (see 1T66-1 to 66-6, 1T78-11 to 78-17, 2T33-12 to 33-20), without discussing the tower's impact on the views of the Palisades from anywhere else.

No member of the Board inquired of any LG witness about the effect of an eight-story building on the views of the Palisades and its forested summit or about the park's status as a National Historic Landmark. However, Kevin Tremble, a member of the

⁷ See also New Jersey Clean Energy Program, *Pay for Performance - New Construction*, available at <http://www.njcleanenergy.com/commercial-industrial/programs/pay-performance/new-construction/new-construction>.

Citizen's Advisory Council of the Palisades Interstate Park (Citizen's Council), raised questions about the tower's impact on the sweeping views of the Palisades cliffs. Tremble asked LG's planner, Joseph Burgess, how he could possibly conclude that a building rising high above the Palisades tree-line is consistent "with a state and regional interstate resource that's been protected for over 100 years." (6T102-3 to 102-8.) Burgess answered simply that "planning is a balance of competing interests" and that Tremble was focusing on one factor. (6T102-9 to 103-4.) When later shown the photograph of the LG building breaking the Palisades skyline and asked whether the building's impact on the regional values of the park had affected his thinking about the project, Burgess answered: "Not in any significant way." (6T104-12 to 105-1.)

Tremble and several other witnesses warned the Board about the building's negative impact on the Palisades Interstate Park. Daniel Chazin, the Secretary of the Citizen's Council, testified that the park was created both to protect the land atop the Palisades and to "preserve the views of the cliffs from the river and from New York." (6T156-18 to 156-23.) He further testified that the LG building would be the only structure rising above the cliff ridgeline north of the George Washington Bridge. (6T156-13 to 156-17.) The Executive Director of the Palisades Interstate Park Commission, James Hall, testified that the Commission has "concerns about the height of the building with its visual impact on the park, the scenic corridor, the scenic by-way corridor of the parkway, as well [as its] national register listing." (5T75-11 to 75-15.) Hall had earlier written a letter to the Board stating that the

project's visual impact on views from the Palisades Interstate Parkway, which is located in the park on the west side of the Hudson River, appeared to be limited and could "potentially be screened and / or mitigated." (PJa549.) But he then testified that there would be "significant impacts from the building" on views from the parkway (5T74-21 to 74-24), and that the Commission could not say with any assurance that mitigation of these impacts would take place (5T75-16 to 75-21). Neither Hall's letter nor his testimony addressed the impact of the LG building on views of the Palisades from the eastern shore of the Hudson River. Tremble asked the Board to consider the park's value to the citizens of "the greater region" (5T53-12 to 53-21) and emphasized that the Board should not let local concerns dominate over the park's status as a regional resource in need of protection (6T163-10 to 163-18).

3. The Board's Decision

The Board issued a resolution memorializing its approval of the height variance as well as other requested bulk variances. (PJa701-728.) The Board focused exclusively on factors affecting the immediate building site and local community. The Board emphasized that the building's proposed "height enables substantially more landscape amenity and buffer features for nearby residents," a local feature that the Board believed alone justify[d] the height variance." (PJa714.) The Board also concluded that the tower's height would advance the purposes of zoning because "adequate light air and open space are preserved, and a desirable visual environment and the public welfare [are] promoted." (PJa714.) But the Board's only justifications for finding that the height variance did not substantially impair the

public good were as follows: the landscaping will “shield the height from residences” (PJa717); the tower will “not cast a shadow on adjacent properties” (PJa717); and “the tall building is situated within a large, well landscaped lot” (PJa717).

Despite the detailed testimony and evidence regarding the proposed building’s negative impacts on the Palisades Interstate Park, none of the Board’s twenty-one factual findings address or even mention the Palisades. (PJa714-722.) Although the Board mentioned in passing some of the Palisades-related evidence in reviewing the background of the hearing process (PJa713), the Board did not assess whether the tower would negatively affect the majestic views of the cliffs from the eastern side of the Hudson River or any other aspect of the park.

D. The Trial Court’s Order

The trial court determined that the Board’s grant of the height and bulk variances was not arbitrary, unreasonable, or capricious. (PJa3-19.) The court reiterated the Board’s findings that the height of the eight-story building would increase the landscape buffer “for nearby residents,” protect environmentally sensitive areas located on the building site, and provide adequate light, air, and a desirable visual environment. (PJa17.) The court also noted that the landscape buffer eliminated any “negative visual impact to the surrounding properties” and that the building site had previously been used for a corporate headquarters. (PJa17.) In reviewing the Board’s analysis, the court did not address the Board’s failure to discuss the impact of the height variance on the pristine views of the Palisades. Indeed, the court’s decision does not mention the Palisades even once.

ARGUMENT

THE BOARD ERRED IN GRANTING A SUBSTANTIAL HEIGHT VARIANCE WITHOUT CONSIDERING THE VARIANCE'S NEGATIVE IMPACT ON THE PALISADES INTERSTATE PARK

New Jersey has long required that municipalities make zoning decisions with regard to their impact on the larger region and the general public good. This obligation to consider important regional and historic resources includes weighing whether LG's request to build a 143-foot tower will negatively affect the Palisades Interstate Park, a historic and scenic area listed in Englewood Cliffs' own zoning plan. But the Board utterly failed to consider the Palisades in granting LG a substantial height variance, instead focusing entirely on local matters.

The MLUL reflects New Jersey's long-standing policy that municipalities consider regional interests and the general public welfare in making zoning decisions rather than focusing solely on local concerns. *See* N.J. Stat. § 40:55D-2(d), (j); *see also S. Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 92 N.J. 158, 236 (1983). This basic legal principle is enshrined in the MLUL's purpose of ensuring "that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole," N.J. Stat. § 40:55D-2(d), as well as in its prohibition against the Board granting LG's requested variance unless LG proves that the variance will not substantially impair "the public good" or the intent and purposes of the borough's zone plan, *see id.* § 40:55D-70(d)(6).

Courts in New Jersey have also long emphasized that municipalities must make zoning decisions “in accordance with regional considerations.” *Mount Laurel*, 92 N.J. at 238. As the New Jersey Supreme Court long ago explained:

What may be the most appropriate use of any particular property depends not only on all the conditions, physical, economic and social, prevailing within the municipality and its needs, present and reasonably prospective, but also on the nature of the entire region in which the municipality is located and the use to which the land in that region has been or may be put most advantageously.

Duffcon Concrete Prods., Inc. v. Cresskill, 1 N.J. 509, 513 (1949); see also *Quinton v. Edison Park Dev. Corp.*, 59 N.J. 571, 578 (1971) (“Our cases have long recognized the duty of municipal officials to look beyond municipal lines in the discharge of their zoning responsibilities.”). A contrary rule that allowed each town to issue zoning ordinances or variances without any consideration of their regional or state-wide impact would severely undermine the very purpose of zoning in the first place and result in chaos. See *Howell Prop., Inc. v. Township of Brick*, 347 N.J. Super. 573, 582-83 (Super. Ct. App. Div. 2002). The importance of the Palisades to the history and scenic beauty of the region falls squarely within this obligation to consider the public welfare in making zoning decisions.

Indeed, Englewood Cliffs’ own zoning plan sets forth its duty to make land-use decisions that conserve and protect the historic and scenic importance of the Palisades for the public-at-large. According to the Englewood Cliffs Master Zoning Plan, the “major objectives of land development in” the borough include promoting and protecting “historic sites and districts” and “parks, recreation and other open space areas.” (PJa1126-1127; see also PJa999-1000.) The very first listing on the

Master Plan’s inventory of historic sites is the more than 365 acres of the Palisades Interstate Park that are located within Englewood Cliffs (PJa1090; *see also* PJa1053), the presence of which makes “[o]pen space [] the second major land use” in the borough after residential use. (PJa1050.) Because Englewood Cliffs’ residents receive substantial benefits from the park, including “a large expanse of open green space” and various recreational activities, the borough should take extra care to preserve the park for others. Moreover, the Master Plan explicitly acknowledges the park’s status as a National Historic Landmark (PJa1090), a designation it earned in significant part based on the sweeping views of the cliffs from the eastern shore of the Hudson River. That majestic view is just as integral to the history and enjoyment of the Palisades as the physical parkland.

Contrary to its obligations, the Board focused exclusively on local factors and failed even to consider the height variance’s impact on the Palisades Interstate Park. The Board’s decision to grant the variance rested entirely on the variance’s effect on the building site and immediately surrounding neighborhoods. For example, the Board emphasized that building vertically rather than horizontally preserved wetlands on the project site, allowed for increased landscaping, and helped achieve LEED certification. (PJa714-715.) The Board similarly noted that local residents would not be negatively affected by the building’s visibility or shadow. (PJa717.) By contrast, the Board did not issue *any* findings regarding the Palisades, despite ample record evidence demonstrating that LG’s building will rise at least three stories above the cliff ridgeline and be clearly visible from across the

Hudson River. Having failed to decide whether the height variance will negatively affect the Palisades at all, the Board could not and did not consider whether the requested height increase will “have a more detrimental [e]ffect” on the historic and scenic values of the park “than construction of the project in a manner consistent with the zone’s restrictions.” *See Grubbs v. Slothower*, 389 N.J. Super. 377, 390 (Super. Ct. App. Div. 2007). This complete lack of analysis of the regional impact of the variance is particularly troubling because the Board heard evidence that LG could have utilized a longer, lower building without jeopardizing its goal to obtain LEED certification.

Indeed, if Englewood Cliffs can issue substantial height variances based solely on municipal considerations, other boroughs may soon follow suit. Boroughs that have long maintained height restrictions that protect the unbroken ridgeline of the Palisades—such as Tenafly and Alpine—could begin granting variances without even considering their effect on the iconic Palisades skyline. Indeed, four former New Jersey governors have recently expressed precisely this concern, warning that the Board’s decision in this case will “set an unfortunate precedent for the construction of more high-rises along the ancient cliffs.” Brendan T. Byrne, *et al.*, *The Threat to the Palisades*, N.Y. Times (Mar. 24, 2014). The Palisades Interstate Park Commission has likewise issued a resolution concluding that LG’s proposed building creates “a precedent inconsistent” with the Commission’s mission “and the public trust to preserve the scenic beauty of the Palisades.” Palisades Interstate

Park Commission, *PIPC Resolution for LG Tower*, (Mar. 4, 2014).⁸ Such myopic zoning decisions would undermine New Jersey's long-standing requirement that its municipalities take a broad view of the impact of their zoning decisions. The Board should not be permitted to grant a substantial height variance without at least considering the potential impact of its decision on the unique regional and interstate asset of the Palisades Interstate Park.

⁸ Available at <http://www.palisadesparksconservancy.org/news/207/>.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's determination and remand these proceedings to the Board for proper consideration of the negative impact of the requested height variance on the Palisades Interstate Park.

Respectfully submitted,

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