

Mr. Gallagher offered the following Resolution and moved on its adoption:

R2
2/7/08

**RESOLUTION DENYING USE AND BULK VARIANCES
FOR GEORGE E. HALL (OPPORTUNITY KNOCKS)
410 NAVESINK AVENUE**

WHEREAS, the applicant, GEORGE E. HALL, individually and as trustee of Opportunity Knocks, is the owner of property known as 410 Navesink Avenue (State Highway 36), Highlands, New Jersey (Block 116, Lots 12 and 13); and

WHEREAS, the applicant filed an application for a use variance and associated bulk variances, for site plan approval, and for other relief to construct a "boxing training center/school for use by non-profit organization"; and

WHEREAS, all jurisdictional requirements have been met, and proper notice has been given pursuant to the Municipal Land Use Law and Borough Ordinances, and the Board has jurisdiction to hear this application; and

WHEREAS, the Board considered the application at public hearings held on June 7, 2007, September 6, 2007, and January 3, 2008; and

WHEREAS, the Board heard the testimony of the following witnesses for the applicant: DOUGLAS KATICH, attorney and trustee of Opportunity Knocks; JOHN MARTINEZ, Engineer; and ANDREW JANIW, Planner; and

WHEREAS, the Board heard numerous questions from the public, directed to the applicant's witnesses, and additionally heard the testimony of the following objectors: ELBERT GALLAGHER; BRYAN COBB; and CONNOR JENNINGS, all nearby residents; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (3 pages)
- A-2 Zoning permit application with bulk requirements chart
- A-3 Bulk and area requirements (revised—new zone 5/1/07)
- A-4 Site plan review application form (3 pages)
- A-5 Use variance and site plan drawings by Steven Atkins, P.E. dated 7/5/06 (2 pages)
- A-6 Statement of operations
- A-7 Exhibit A-5 on board, in color (site plan)
- A-8 5 photos on board, zoning map and interior floor plan
- A-9 Floor plan
- A-10 Blowup of aerial photo on Exhibit A-8
- A-11 Site plan with turning movements of van, done by computer

WHEREAS, the Board also marked the following exhibits into evidence:

- B-1 1/7/99 Use variance resolution to Frank Sala
- B-2 3/4/99 Final site plan approval to Sala
- B-3 Review letter by Jamie Sunyak, Board Planner, dated 5/1/07

WHEREAS, the Board had input and testimony from JAMIE SUNYAK, Board Planner; and from Board Engineers JOSEPH MAY and FRANCIS MULLAN; and

WHEREAS, the Board has jurisdiction to hear this matter pursuant to N.J.S.A. 40:55D-70(d); and

WHEREAS, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. The property previously housed an exotic automobile showroom. The current owner, the applicant, now uses it for his own office, which includes a personal boxing ring.

2. The property is in a split zone, the bulk of the property being in the HO (Highway Oriented) Zone and a smaller (25-foot wide) portion being in the R-2.03 Zone. By ordinance, all permitted uses in the B-1 Zone are also permitted in the HO Zone.

3. One of the permitted uses in the HO (and B-1) Zone is "health and fitness establishments; athletic clubs only on lots fronting on Route 36 in the Highway Oriented Business Zone District".

4. The proposed use by the applicant does not fall in any other possible category of

permitted use in the B-1 Zone. Accordingly, the Board heard testimony in order to determine whether the proposed use met the permitted use of "health and fitness establishments; athletic clubs only on lots fronting on Route 36 in the Highway Oriented Business Zone District".

5. The exhibit which drew the most attention from the Board and the public was Exhibit A-6 entitled "OPPORTUNITY KNOCKS---*STATEMENT OF OPERATIONS*", which document was submitted with the applicant's variance application and appeared to have been well thought out and took time to prepare. It states, in pertinent part:

"The goals of Opportunity Knocks, a non-profit organization, are to help facilitate, encourage and improve the quality of life for the "at-risk" young people and to give "at-risk" children the opportunity to learn teamwork, sportsmanship, leadership and to have fun and get fit doing it. Opportunity Knocks will be a community wide effort in combating the problems in our community involving our youth, such as school drop-outs, illiteracy, unemployment, teenage pregnancy, drug and alcohol use/abuse, juvenile delinquency, just to name a few... Also, Opportunity Knocks will assist our law enforcement agencies by aiding in the rehabilitation of juvenile delinquents, youth felons, and

juveniles who are serious habitual offenders.” (emphasis added)

6. The testimony of DOUGLAS KATICH, an attorney and a trustee of OPPORTUNITY KNOCKS, differed substantially from the Statement of Operations provided (Exhibit A-6). Contrary to the types of youth who would be served by the applicant under its Statement of Operations, MR. KATICH testified that many of these member-targeted youth would not be involved in the boxing program. He and other applicant witnesses, as well as the applicant's attorney, spent much of their time trying to convince the Board that they weren't going to do what their application and Statement of Operations said they would do. The Board requested an amended Statement of Operations if the programs were to differ from what was testified to, but, notably, the Statement of Operations was never changed or amended, despite several indications during the hearings that they would do so.

7. The Board was quite conflicted between the written word and the testimony of MR. KATICH, as a result of which the Board requested, at the end of the second night of

hearings, that the applicant produce MR. HALL so that, rather than having other persons speak for MR. HALL as to his vision and intentions, the Board could hear directly from the owner. The applicant agreed to produce MR. HALL and, up until literally minutes before the third night of hearings began, had expected to hear from MR. HALL. MR. HALL, however, did not appear. The applicant requested to proceed to conclusion without him.

8. The Board could not square the testimony of MR. KATICH with the Statement of Operations supplied. As a consequence, the Board did not find MR. KATICH'S testimony credible as to the goals and intentions of the applicant, as stated in its Statement of Operations.

9. There was a paucity of testimony offered by the applicant to set forth facts surrounding the application. Though the applicant's attorney made numerous statements on the record as to his understanding and the applicant's intentions, as did the planner and engineer, no witness was able to state with certainty exactly what the intentions and

vision of the applicant were. The only exception to that was MR. KATICH, whose testimony as to the intention and visions of the applicant was rejected by the Board as not being credible, especially in light of the Statement of Operations submitted.

10. No testimony was provided by the applicant regarding the need for a boxing facility of the type proposed in the application. No similar use elsewhere in the county or any nearby county was cited by the applicant, so the Board did not have a similar use to compare with.

11. No testimony was provided by the applicant to substantiate any clinical benefit that boxing helps youth and others to "turn around". No testimony was provided by the applicant as to why this particular site was chosen, given its location on a major highway, which limited parking, and proximity to a nearby elementary school.

12. The existing premises are not set up for the type of operation proposed by the applicant. The existing premises are simply space. The applicant presented a situation as

to owning space and trying to decide what to do with it. Normal facilities for boxing, such as changing rooms, different sex bathrooms, showers, etc. were not proposed to be included, even though the plan was to have as many as ten youth (male and female) come each day for approximately four hours to box.

13. The proposed location is inappropriate for a facility of this kind, being so close (approximately 460 feet) to the public elementary school.

14. Based primarily on the Statement of Operations submitted by the applicant, as well as the testimony as to the number of youth who would be at the site each day and the uncertainty of the selection process in finding youth to participate, the Board finds that the proposed use is not consistent with an athletic club. Rather, as Exhibit A-6 states, this was a proposal for a school, albeit boxing, to rehabilitate "juvenile delinquents, youth felons, and juveniles who are serious habitual offenders."

15. The applicant's planner testified that, because the property is a split zone, a

hardship has been caused to the applicant in not being able to use the entire property for the permitted use on the HO-portion of the lot. This argument presumes that the proposed use is an athletic club. Since the Board has found that the proposed use is not an athletic club, the Board need not reach the issue of claimed hardship because of the property being in a split zone. This, therefore, is a pure use variance application.

16. The applicant agreed that the proposed use is not an inherently beneficial use.

17. Since the applicant seeks a use variance, it must prove, under Medici, that the property is particularly suited to the proposed use. Though the applicant's planner so testified, the Board rejects that testimony as not being credible. The applicant did not provide testimony as to why all of the other permitted uses in the zone would not be particularly suited to this site. The site is small, and the proposal lacks provisions for the basic elements a facility like this one should have (see #12). The Board felt that

there was no empirical data that was presented warranting the need for this type of use, nor data presented on whether this type of facility is successful.

18. The Board heard testimony regarding the turning radius of vans that would deliver and retrieve the boxing students. When questioned by the Board, the applicant's expert did not know if certain types of vehicles would be required for transporting youth from area schools to the boxing facilities, as opposed to a conventional passenger van. A passenger van would have to come into the property, pull into its designated space, then back up and do a K-turn in order to exit the property. The Board was particularly concerned with the safety of that movement when youth between the ages of 8 and 16 would be on site, and did not feel the applicant convinced the Board these movements could be safely accomplished, nor that much time and effort was spent by the applicant researching the suitability for the site.

19. Concern was also expressed that, because of the size of the van needed to transport as many as ten boxing students at one

time, the vehicle would not be able to exit the property onto Route 36 westbound (the only exit) without going into the passing lane. The Board also did not feel that there was sufficient parking on site to accommodate parents of boxing students who may wish to view them, in exhibition or otherwise.

20. No testimony was provided from the police department, any local school official or any member of the clergy regarding the need for such a facility or the benefits to the youth or the community, though any or all of this testimony would have been readily available if those persons were in agreement with the proposed use.

21. Because of the lack of factual testimony as to what would actually occur on the premises, the Borough and the property's neighbors would be placed in the position of wondering what is going on and who is going to be there, since the evidence produced at the hearing was so vague.

22. The Board was of a mind that, after submitting the Statement of Operations and going through the first two nights of hearing,

the applicant determined that it was applying for something that was not permitted by ordinance and would likely not be permitted by the Board; so, the applicant then began characterizing its application as being one for an athletic club in order to have it come within the list of permitted uses in the B-1 (and HO) Zone. Simply stating that it is an athletic club does not make it an athletic club, and the Board finds that this proposal is not for an athletic club.

23. The change in description by the applicant appears to have been designed to bootstrap its prior application and testimony, which attempts the Board finds disingenuous.

24. Though the motives of MR. HALL may be genuine and admirable, the actual operation and his vision as to how the facility would operate were questions that were not answered before the Board, despite numerous questions by both the Board and the public. These deficiencies would have been easily resolved if the owner, MR. HALL, appeared in response to the Board's request to answer those specific questions. His failure to appear is a further

indication of the vagueness with which this application was processed and highlights the Board's inability to determine exactly what the applicant proposed to do.

25. There were numerous objectors who appeared at the hearing, only three of whom testified. Many of the other objectors asked questions; and, by the tone and framing of those questions, made it apparent, if not specific, that they were opposed to the application. The thrust of their objections was primarily directed to the Statement of Operations (A-6) provided to the Board by the applicant.

26. No special reasons were provided by the applicant to the Board which would meet the positive criteria an applicant must prove when seeking a use variance under N.J.S.A. 40:55D-70(d). To the extent that the applicant's planner made generalized reference to the purposes of zoning in the Municipal Land Use Law, the Board finds such references to be far too generalized and not specific as to any benefits the proposed use would provide to meet the purposes of zoning.

27. For the reasons set forth earlier herein regarding the uncertainty of the use, the inconsistencies in the testimony provided, the unsuitable nature of the site, the vehicular traffic problems, and the proximity of the types of users sought by the applicant to the nearby grammar school, the Board finds that the proposed use would actually cause a substantial detriment to the public good. As a result, the applicant did not satisfy the negative criteria of the statute.

28. The Board further finds that if it were to have approved the proposed use, such approval would violate the purpose of the zone plan and zoning ordinance, and impair the intent of the Master Plan of the Borough of Highlands.

WHEREAS, the application was heard by the Board on the meeting dates set forth earlier in this resolution, and this resolution shall memorialize the Board's action taken at its meeting on January 3, 2008;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of GEORGE E. HALL, individually and as trustee of OPPORTUNITY KNOCKS, for a use variance, bulk variances and site plan

approval to construct/establish a rehabilitative boxing school for "at risk" youth at 410 Navesink Avenue (Block 16, Lots 12 and 13), in Highlands, New Jersey is denied.

Seconded by Ms. Ryan and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Gallagher, Mr. Mullen

NAYES: None

ABSTAIN: None

DATE: February 8, 2008

CAROLYN CUMMINS, BOARD SECRETARY

I hereby certify this to be a true copy of the Resolution adopted by the Governing Body of the Borough of Highlands on February 8, 2008.

BOARD SECRETARY