

26-008

**RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK
VARIANCE RELIEF TO JAMES DECKER TO PERMIT THE
CONSTRUCTION OF A TWO AND ONE-HALF STORY SINGLE-
FAMILY RESIDENCE ON LOT 40 IN BLOCK 10**

Approved: June 24, 2026

Memorialized: August 26, 2026

WHEREAS, James Decker (the "Applicant") is the owner of Lot 40 in Block 10 ("Property") as noted on the Tax Map for the Borough of Mount Arlington with a street address of 123 McGregor Avenue; and

WHEREAS, the Applicant submitted an Application for Development with the Borough of Mount Arlington Land Use Board ("Board"), on or about March 31, 2026, seeking use and bulk variance relief to demolish an existing single-family dwelling and detached garage on the Property and construct a two and one-half story dwelling with a 2-car garage; and

WHEREAS, the Applicant requires bulk variance relief from the zoning limitations set forth in the RA-15 zone district relating to maximum impervious coverage whereas 35% (or 2710.94 square feet) is permitted, 55.5% (4294 square feet) exists, and 51.9% (4021 square feet) is proposed; minimum front yard setback whereas 35 feet is required, .8 feet exists, and 30 feet is proposed; minimum side yard setback (combined) whereas 25 feet is required, 20.3 feet exists and 16.5 feet is proposed. The Applicant also requires "D(4)" use variance relief pursuant to N.J.S.A. 40:55D-70d(4) whereas Ordinance 17-29 permits a maximum floor area ratio ("FAR") of 28%; 25.1% exists and 40% is proposed. In addition, the Property has pre-existing nonconforming conditions related to lot area and minimum lot width. The Applicant is not proposing to change these nonconforming conditions; and

WHEREAS, the Applicant included with his application eight (8) sheets of a variance plan entitled, "Individual Lot Grading Plan with Variances, Lot 40, Block 10, Borough of Mount Arlington, Morris County, New Jersey," prepared by Boswell Engineering, Inc., dated January 20, 2026, and revised through March 5, 2026; two (2) sheets of Architectural Building Elevations and Floorplans entitled, "Proposed Residence: Decker Residence, 123 McGregor Avenue, Mt. Arlington, N.J. 07950, Lot 40, Block 10," prepared by Arturo G. Palombo, AIA, dated January 28, 2026, and revised through March 4, 2026; and one (1) sheet of a Property Survey entitled, "Tax Lot 40 – Block 10, 123 McGregor Avenue, Borough of Mt. Arlington, Morris County, New Jersey," prepared by Lakeland Surveying, dated November 24, 2025, and revised through February 2, 2026; and

WHEREAS, the Applicant submitted with his Application the appropriate fees and escrow deposit; and

WHEREAS, the Application was deemed administratively complete by the Board's Engineer on or about June 12, 2026, and a public hearing was subsequently scheduled and held on June 24, 2026, notice being required. The Applicant was represented by Bernd E. Hefe, Esq. at all times; and

WHEREAS, the Board Engineer, David A. Clark, P.E., issued a report regarding the Application dated June 12, 2026;

WHEREAS, the Board's Planner, Jessica C. Caldwell, P.P., also issued a report, dated June 14, 2026; and

WHEREAS, at the conclusion of the public hearing on July 24, 2026, the Board rendered a decision on the Application in accordance with the requirements set forth in N.J.S.A. 40:55D-10(g);

WHEREAS, the Board received as part of the hearing process the following testimony and documentary evidence:

Mr. Decker testified initially. He advised the Board that he bought the Property in November of 2025. He admitted that he bought it for the location and not the home that was on it. He said that the home was in poor condition and needed to be razed.

Mr. Symonds, the Applicant's civil engineer, was called next. He described the Property and the home currently on it. He indicated that the existing structure was in bad condition. He explained that the Applicant proposed to remove the existing home and the detached garage which was located along McGregor Avenue. The new residence was to be built more in the interior of the lot with a garage below. He stated that the work would take place within already disturbed and improved areas of the Property and there would be no further disturbance of steep-slope areas. Mr. Symonds said that through the use of pervious pavers and removal of existing coverage, the maximum coverage on the Property would be reduced although one tree would be removed. He also explained that the Applicant was proposing some storm water controls.

Arturo Palumbo testified as the Applicant's licensed architect. He described the existing residence as being in "disrepair." Mr. Palumbo said that the Applicant wanted to build his "forever" home on the Property. He opined that the design of the proposed home was simple. He stated that it would be 2 stories with a 2-car garage and a partial basement. Mr. Palumbo explained that access into the home would be via a front door located on the north side of the home. He noted that on the first floor there would be a bedroom, kitchen, bathroom and dining room. On the second floor, he explained there would be a master bedroom and bath along with 2 bedrooms, each with their own bathroom. He presented Exhibit A-1 which was the floor plan for the proposed basement area. It included a family room, storage and a mechanical room.

John McDonough, P.P. testified after Mr. Palumbo. He was accepted as an expert

in the field of professional planning. He stated that the proposal was to demolish the existing home and replace it with a 2 and one-half story home with a 2-car garage. He agreed that the proposal required a use variance because the proposed FAR for the new dwelling was to be .40 and the RA-15 zone only allowed .28. He added further that bulk variance relief would be needed for maximum impervious coverage with 51.9% proposed and 35% allowed; the minimum front yard setback with 30 feet proposed and 35 feet required; and the combined minimum side yard setback with 16.5 feet proposed and 25 feet required.

Mr. McDonough presented Exhibit A-2, which was a 3-page document that included an aerial map of the area immediately around the Property and 2 aerial photographs taken by drones. He opined that the proposed house was ordinarily sized, but the Property was exceptionally undersized. He believed that if one were to adhere to the maximum FAR, the home would only be one story. In his estimation, the proposed dwelling was not oversized given the limitations of the Property.

Regarding the floor area ratio, Mr. McDonough explained that the Applicant did not need to demonstrate that the Property was particularly suited for the proposed dwelling. He said that the Applicant had to show that the Property could accommodate the proposed dwelling. He opined that it could and the proposal advances several purposes of the New Jersey Municipal Land Use Law (MLUL). He stated that the demolition of a dilapidated 86-year-old home and replacing it with a modest contemporary house would promote the general welfare which is purpose a of the MLUL. He also thought that the house would improve the aesthetics of the Property as per purpose (i). Finally, he thought that the proposal would represent a more efficient use of the Property in accordance with purpose (m).

Mr. McDonough opined that the bulk variance relief could be justified under either the c(1) or c(2) analysis. He contended that under the c(2) approach the purposes of zoning offered in support of the D(4) use variance also supported the bulk variances requested. In addition, he further testified that the narrowness of the Property and its topography imposed peculiar and exceptional practical difficulties for the Applicant to construct a home in a conforming manner which satisfies the c(1) standard.

Mr. McDonough discussed the negative criteria as it pertained to both the use and bulk variance relief. He believed that the proposal would not be a substantial detriment to the public good, because the home was permitted in the zone and was consistent with the look of the other dwellings in the neighborhood. He also believed that the storm water controls being proposed helped advance the public good. He thought it would foster the Master Plan goal of maintaining residential communities, especially around Lake Hopatcong. The dwelling would preserve the residential character of the Borough.

Board members questioned the Applicant and his professionals about the existing dock and its future use. The Applicant said that he did not intend to run utilities to the dock, except for electric. He agreed that it would not be used to live in. When asked about the report from the Lake Hopatcong Commission, the Applicant agreed to not use fertilizers adverse to the lake and would vegetate all disturbed areas.

The matter was opened to the public, but no one was present.

WHEREAS, the Board after hearing the testimony delivered and the documentary evidence provided, made the following finds a fact and in conclusion of law:

1. The Applicant is seeking use and bulk variance relief to demolish an existing single-family dwelling and detached garage and construct a two and one-half story single-family dwelling with a 2-car garage.
2. Specifically, the Applicant requires bulk variance relief from the zoning limitations set forth in the RA-15 zone district requires relating to maximum impervious coverage whereas 35% (or 2710.94 square feet) is permitted, 55.5% (4294 square feet) exists, and 51.9% (4021 square feet) is proposed; minimum front yard setback whereas 35 feet is required, .8 feet exists, and 30 feet is proposed; and minimum side yard setback (combined) whereas 25 feet is required, 20.3 feet exists and 16.5 feet is proposed. The Applicant also requires "D(4)" use variance relief pursuant to N.J.S.A. 40:55D-70d(4) whereas Ordinance 17-29 permits a maximum FAR of 28%; 25.1% exists and 40% is proposed. In addition, the Property has pre-existing nonconforming conditions related to lot area and minimum lot width which he is not exacerbating.
3. The Board finds that the use variance is warranted under N.J.S.A. 40:55D-70d(4). The Board believes that the Property can accommodate the proposed dwelling. The home will not look out of place with other residences in the immediate neighborhood. The Applicant's decision to implement storm water management controls as part of the construction and to reduce impervious coverage also serves the general welfare. The Applicant's adherence to the recommendations to the Lake Hopatcong Commission also advance the purposes of the MLUL. In short, the Board agrees with the Applicant's planner that the proposal fosters purposes a, i, and m of the MLUL.
4. The Board further finds that the bulk variance relief is warranted under either the c(1) or c(2) analysis. As per N.J.S.A. 40: 55D-70(c)(1), a bulk variance is justified when there is a hardship confronting the developer because of the exceptional narrowness, shallowness, shape or exceptional topographic conditions of the property that present the applicant with an extraordinary and exceptional hardship to develop in a conforming manner. The Board finds that the Property is impacted by extraordinary and exceptional circumstances, notably the narrowness of the lot and the topography which uniquely impact development and impose a peculiar and exceptional difficulty on the Applicant's effort to build a conforming dwelling.
5. As per N.J.S.A. 40:55D-70(c)(2) a variance is permitted when one of the purposes of the MLUL would be advanced from a deviation from the bulk requirements and the benefits from the variance outweigh any the detriment to the public good. Importantly, the benefit must benefit the community and serve

as a better zoning alternative for the property. Here, the Board believes that the bulk variance relief is justified on the same basis as the D(4) variance because it promotes purposes a, i, and m of the MLUL.

6. The Board believes that the Applicant has satisfied the negative criteria for both the use and bulk variances requested. The negative criteria consist of two parts. One, it must be shown that the use will not be a substantial detriment to the public good. Two, it must be demonstrated that the use will not substantially impair the intent and the purpose of the municipality's master plan or its zoning ordinances. The Applicant's proposal would not be a substantial detriment to the public good, because the proposed dwelling will enhance the aesthetics of the neighborhood and will not appear out-of-character with other homes in the vicinity. The inclusion of storm water management controls will ensure that the project does not have a substantial impact on other homes in the neighborhood or Lake Hopatcong. The Board also finds that the elimination of the detached garage that is currently on McGregor Avenue will also make access to and from the home safer and reduce the likelihood of cars backing into the road. The proposal is also not a substantial impairment to the Borough's zoning ordinances because the use will remain residential, which is permitted in the RA-15 zone. The Board also finds that the proposal is not a substantial detriment to the Master Plan because it will promote the Master Plan goal of maintaining residential communities and enhancing storm water protections for Lake Hopatcong. For these reasons, the Board finds that the Applicant has satisfied the negative criteria and is entitled to the use and bulk variance relief sought.

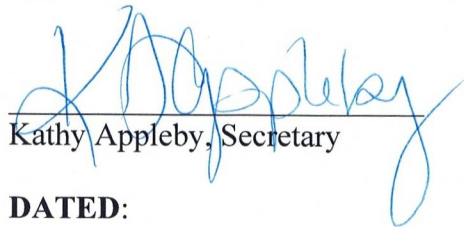
NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Mt. Arlington, County of Morris, State of New Jersey does hereby approve the grant of the use and bulk variance relief as more particularly described on the plan entitled, "Individual Lot Grading Plan with Variances, Lot 40, Block 10, Borough of Mount Arlington, Morris County, New Jersey," prepared by Boswell Engineering, Inc., dated January 20, 2026, and revised through March 5, 2026; two (2) sheets of Architectural Building Elevations and Floorplans entitled, "Proposed Residence: Decker Residence, 123 McGregor Avenue, Mt. Arlington, N.J. 07950, Lot 40, Block 10," prepared by Arturo G. Palombo, AIA, dated January 28, 2026, and revised through March 4, 2026; and one (1) sheet of a Property Survey entitled, "Tax Lot 40 – Block 10, 123 McGregor Avenue, Borough of Mt. Arlington, Morris County, New Jersey," prepared by Lakeland Surveying, dated November 24, 2025, and revised through February 2, 2026, subject to the following conditions:

1. The Applicants shall comply with the technical comments and recommendations set forth in the report prepared by Board engineer, David A. Clark, P.E., dated June 12, 2026 and the report from Jessica C. Caldwell, P.P., dated June 14, 2026.
2. Prior to the issuance of a building permit for the dwelling, the Applicant shall present to the Board engineer for his review and approval a stormwater maintenance plan. The care and maintenance of the agreed-to stormwater control techniques shall be incorporated in a manual that shall be recorded

against the Property in a deed restriction to be reviewed and approved by the Board attorney. The deed restriction shall further include a prohibition on the use of fertilizers at the Property as per the recommendation from the Lake Hopatcong Commission.

3. The Applicant agrees that he shall not use the dock as a residence and that the dock shall only be serviced by electricity and no other utilities.
4. The Applicant shall comply with and adhere to rules, regulations or ordinances of the Borough of Mt. Arlington applicable to the proposed development, including but not limited to Section 17-94 of the Borough's Land Development Ordinances that governs the payment of residential development fees.
5. The Board's approval is conditional upon approvals required by the Application from all outside Governmental Agencies exercising jurisdiction over the development of the property.
6. The Applicant shall further amend its plans as per the representations made at the public hearings and the comments from the Board Planner, Board Secretary, and Board Members.
7. No construction permits of any type shall be issued by the Construction Code Official of the Borough of Mt. Arlington until all Board escrow fees have been paid, a Resolution of Approval has been memorialized and appropriately signed by the Board, and the Construction Code Official has received final plans appropriately signed by the Board Chairman, Board Secretary, and Board Engineer.
8. Pursuant to the provisions of N.J.S.A. 40:55D-39 and 55D-65, the Applicant shall provide proof that no taxes or assessments for local improvements are due on the Property.
9. A drainage easement, dedicated to the Borough, should be provided for the reconstructed channel within the confines of the property in this application.
10. Retaining walls greater than four feet in height will require an engineered design during the construction permit submission.
11. Any significant modifications to the architectural plans presented and approved by the Board shall require resubmission to the Land Use Board.
12. The Secretary of the Board shall file a copy of this Resolution with all governmental bodies as shall be deemed necessary and appropriate.

ATTEST:


Kathy Appleby, Secretary

DATED:

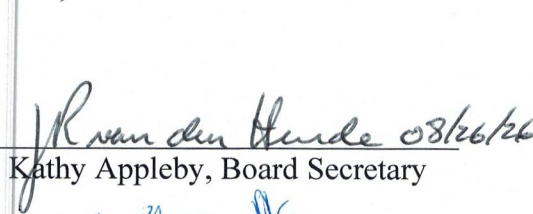
BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

By: _____, Chairman

THE VOTE:

IN FAVOR: 5
OPPOSED: 0
ABSTENTIONS: 0

I hereby certify that the above is a true copy of the Resolution adopted by the Borough of Mount Arlington Land Use Board at its meeting on August 26, 2026.

 08/26/26 - Chairman
Kathy Appleby, Board Secretary
