

26-002

**RESOLUTION OF MEMORIALIZATION ACCEPTING A SETTLEMENT TO
CONCLUDE LITIGATION AND GRANT APPLICANT A USE VARIANCE TO
PERMIT DWELLING ON LOT 23, BLOCK 39 TO CONTINUE TO BE OCCUPIED AS
A TWO-FAMILY DWELLING**

Approved: December 17, 2025
Memorialized: January 28, 2026

WHEREAS, Travis James (“Applicant”) is the owner of Lot 23 in Block 39 as noted on Tax Map for the Borough of Mount Arlington and having a street address of 20 Oak Street (“Property”); and

WHEREAS, on or about November 1, the Applicant filed a Zoning Permit application with the Zoning Officer for the Borough of Mount Arlington seeking a permit confirming that the pre-existing dwelling located on the Property could continue to be used as a lawful two-family dwelling; and

WHEREAS, on or about November 8, 2024, the Zoning Officer denied the zoning permit, finding that she could not grant an approval that the dwelling was a lawful pre-existing two-family dwelling and that the Applicant would require use variance approval from the Borough’s Land Use Board (“Board”); and

WHEREAS, on or about November 13, 2024, the Applicant by and through his attorney, Robert J. Greenbaum, submitted a Notice of Appeal of the Zoning Officer’s determination by through his attorney. The Notice included copies of the Applicant’s Zoning Permit Application, Letter dated August 28, 2006, from then Zoning Officer, various Applications for Certificates of Habitability and the Certificates issues, Email Exchange dated October 23, 2015 between then Zoning Officer and the Applicant, and Applications for Certificates of Registration and Certificates issued to Applicant; and

WHEREAS, the Board scheduled a public hearing for the appeal on December 18, 2024;

WHEREAS, prior to the public hearing the Applicant amended his Application to further include a request a use variance to allow the dwelling to be use a two-family dwelling in the event that the Board denied the Appeal; and

WHEREAS, the Board heard both the appeal and the use variance request at the public hearing; and

WHEREAS, the Board after the public hearing concluded on December 18, 2024, rejected the Applicant's appeal and denied his request for a use variance; and

WHEREAS, the Board adopted a Resolution on January 22, 2025 memorializing its decisions; and

WHEREAS, on or about March 17, 2025, the Applicant filed a Complaint in Lieu of Prerogative Writ against the Board in the Superior Court of New Jersey, Law Division, Morris County, challenging the Board's denial of the appeal and his request for use variance relief to allow the dwelling on the Property to be used as a two-family home; and

WHEREAS, in his Complaint the Applicant argued that the Borough of Mt. Arlington was equitably estopped from denying him a zoning permit to use his Property as a two-family dwelling given the prior actions and decisions of its employees and officials; and

WHEREAS, the Board filed an Answer to said complaint on , 2025, denying all of the Applicant's allegations; and

WHEREAS, the Court conducted several case management conferences at which time it became apparent that the facts supported a finding of equitable estoppel, but that the Borough would need to be named a party to the lawsuit; and

WHEREAS, the Board also believed that the facts would also justify the issuance of a use variance; and

WHEREAS, the Applicant and the Board determined that it would be in the parties' best interests to amicably resolve the matter; and

WHEREAS, prior to the Court making a determination on the appeal, the parties negotiated and agreed to the terms of a tentative Settlement Agreement, wherein the Applicant agreed to make application to the Board for a use variance to allow the dwelling on the Property to be used a two-family home; and

WHEREAS, the Settlement Agreement provided that should the Board approve such application, and if there were no appeals overturning said application, Applicant would agree to accept certain conditions and implement same; and

WHEREAS, the terms and conditions of the tentative Settlement Agreement were agreed to by the Board and contemplated holding a public hearing as required pursuant to the matter of Whispering Woods at Bamm Hollow v. Middletown Planning Bd., 220 N.J. Super. 161; and

WHEREAS, the Applicant did make application to the Board for use variance relief consistent with the provisions of the proposed Settlement Agreement; and

WHEREAS, the application was deemed complete and a public hearing was scheduled for December 17, 2025; and

WHEREAS, a public hearing before the Board was held on that date for which the Applicant provided the required notices; and

WHEREAS, the Applicant appeared by and through his attorney Daniel A. Benkendorf, Esq. and

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

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

The Applicant first testified that he was aware of the terms and conditions of the proposed Settlement Agreement and consented to same.

The Applicant next presented Matthew Flynn, P.P., who testified in support of the use variance. Mr. Flynn first detailed the history of the Property and the Applicant's ownership. He noted that the Property is zoned RA-7.5 which allows single-family homes and is adjacent to the RPRD zone which also allows residential uses at a much higher density. He indicated that the Property is larger than others in the immediate vicinity.

Mr. Flynn stated that prior to the purchase, the Applicant had performed due diligence to confirm that the dwelling was a permitted two-family rental property. Mr. Flynn referenced the letter the Applicant received from the Zoning Officer dated August 28, 2006, wherein the Zoning Officer found that the Property was a "legal and registered two family structure" and that the "structure complies with existing zoning regulations ...". Mr. Flynn also spoke of a second zoning officer's decision in 2015 that was consistent with the earlier decision that the Applicant received. He stated that the Applicant also had obtained multiple landlord registration statements indicating that the Property was a two-family dwelling.

According to Mr. Flynn, the long-standing use of the Property as a two-family home strongly suggested that the Property was particularly suited for the use. He believed that the use for the past 20 years demonstrated site suitability. He also testified that the use promoted several

purposes of zoning. He cited Purpose a which advocates for the promotion of the general welfare. He maintained that Purpose g which seeks to promote a variety of uses was met by offering a multi-family use at this property. He also opined that Purpose i which seeks to promote a desirable visual impact, was satisfied, particularly with the additional landscaping and screening proposed.

Mr. Flynn also testified that the use would not be a substantial detriment to the public good, because the dwelling has been used as a two-family for so many years and had been integrated into the neighborhood. He also believed that it would not be a substantial detriment to Borough's Master Plan which calls for the preservation of neighborhoods.

The hearing was then opened for questions from the public. Nancy Absalon who lives at 15 Oak Street asked if there were two mailboxes, two water or electric meters, or two garbage or recycling cans. She also questioned how the Property was taxed. She was advised that the number of meters or garbage cans was not dispositive on the question as to the status of the dwelling. She was also told that the Property was taxed appropriately to reflect the multi-family use.

The matter was then closed to the public.

WHEREAS, the Board after hearing the testimony and documentary evidence provided, made the following findings of fact and conclusions of law:

1. The Board finds that the Applicant purchased the Property in 2006. It further concludes that prior to the purchase, the Applicant was advised in writing by the Borough Zoning Officer that the dwelling could be lawfully used as a two-family structure. After his purchase, the Board finds that ten Certificates of Habitability were issued to the Applicant indicating that the dwelling was lawfully being used as a two-family structure. The Board also finds that in 2015, a different Zoning Officer again confirmed in writing that the dwelling was a lawful two-family structure.
2. The Board finds that these facts may support a finding of equitable estoppel, but it does not have the jurisdiction to rule on such that issues. However, the Board does believe that these facts support the grant of a use variance.
3. The Board finds that the history surrounding the use of the Property as a multi-family home and its long-standing inclusion in the neighborhood makes the Property

particularly suited for the use, especially with the additional landscaping and the screening proposed by the Applicant as part of the Settlement Agreement. The Board finds that with these modifications the use will advance purposes a, i and g of the Municipal Land Use Law.

4. The Board finds that there is no substantial detriment to the public good. The Property is part of the fabric of the neighborhood. There has not been any evidence produced to demonstrate that the use has been a substantial detriment to the public good. The agreed-to conditions in the Settlement Agreement will further enhance the Property's compatibility with other homes in the immediate vicinity. The Board also finds that the Property is a residential use which is the type of use contemplated in the RA-7.5 zone. The conditions will also help promote one of the goals of the Borough's Master Plan which is to preserve residential neighborhoods.
5. For these reasons, the Board finds that the Applicant is entitled to use variance relief allowing the dwelling on the Property to be used as a two-family structure.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Mt. Arlington, County of Morris, State of New Jersey that the Application filed by Travis James seeking a use variance to allow an existing dwelling on Lot 23 in Block 39 as noted on Tax Map for the Borough of Mount Arlington and having a street address of 20 Oak Street, continue to be used as a two-family residence subject to the following terms and conditions:

1. The Applicant will agree to the terms and conditions set forth in the Settlement Plan found in the attached Settlement Agreement. Specifically, the Board finds that the following conditions are most critical to its approval:
 - a. Within 60 days of the adoption full execution of the Settlement Agreement, the Applicant shall execute and record a deed restriction on the subject property indicating that if the Applicant or any subsequent owner in title shall abandon the multi-family use of the property by converting the structure into a single-family residence, the multi-family use shall be deemed abandoned and no further land use rights to multi-family residential shall be existing. The Applicant shall have the Board attorney review and approve the deed before filing.

- b. On or before July 1, 2026, the Applicant shall provide arborvitae screening on the lot 23 side of the property line and arborvitae screening along the southern neighbor's white privacy fence. Applicant shall provide in the deed restriction that if the arborvitae screening dies or is destroyed, they shall be replanted.
 - c. On or before July 1, 2026, Applicant shall construct an enclosure of the garbage can area with at least a 4' foot high privacy fence. If the current location of the garbage can area encroaches into the side yard setback, it shall be relocated to the rear or opposite side of home. The Applicant will apply for and obtain any permits needed from the Borough before constructing said fence.
 - d. On or before July 1, 2026, Applicant shall install a solid privacy fence in place of previous wire mesh fence to screen the rear yard from parking area. The Applicant will apply for an obtain any permits needed from the Borough before proceeding with said fence.
 - e. In addition to the above-mentioned conditions, on or before July 1, 2026, Applicant shall comply with all plantings and improvements outlined in the document titled "Property Line Planting" by Farmside Landscape & Design, dated September 11, 2025.
2. 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.
 3. 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.
 4. Application from all outside Governmental Agencies, exercising jurisdiction over the development of the property, including the NJ Department of Environmental Protection for the permits needed for the dock and boathouse and to abandon the private well on the Property.

