



**Application Hearing**

**Filip Kristani**

44 Parkway  
Block 62, Lot 4

**Calendar #2023-11**

**Variance Application**

Minimum Front Yard Setback (25' minimum required vs. 19.5' proposed)

Maximum Lot Coverage (30% maximum permitted vs. 30.8% proposed)

Filip Kristani was present and Board Attorney Kara Kaczynski reminded him that he remained under oath. Board Attorney Kaczynski marked Board Engineer Greg Polyniak's 1/23/24 revised review as Exhibit PB-2. Board Engineer Polyniak summarized what has transpired since the previous hearing on 12/7/23. He explained that his office and Board Attorney Kaczynski reviewed the Borough ordinance §209-25 and determined that an additional variance was required since the front porch/portico roof is considered part of the building area and contributed to the lot coverage calculation (30% maximum permitted vs. 30.8% proposed/existing). He reminded the Board that the front yard setback variance for the portico (25' minimum required vs. 19.5' proposed/existing) remains in effect. Board Attorney Kaczynski confirmed that Mr. Kristani agreed with Board Engineer Polyniak's review. Board Engineer Polyniak noted that are several outstanding comments from his 1/23/24 revised review (Exhibit PB-2) specifically the location of the HVAC system concrete pad, driveway turning templates, curb cut width dimension and confirmation that the sanitary sewer is in good working order via a video of the lateral scope. Board Attorney Kaczynski requested additional information regarding the curb cut width. Board Engineer Polyniak explained that the engineering site plan listed the curb cut as 18' but the architectural drawing listed the curb cut at 20'. He added that 18' maximum curb cut is permitted and 20' would not be compliant. Mr. Kristani agreed to comments listed by Board Engineer Polyniak and reminded the Board that at the 12/7/23 hearing, he testified that the curb cut was 18' with a 1.5' slope on each side bringing the total width to 21'-3". Board Engineer Polyniak replied that the 18' without the flare on each side is compliant and asked that the architectural drawing be updated to reflect the 18' curb cut. Mr. Kristani agreed to the request.

Board Attorney Kaczynski invited Mr. Kristani to address the Board and he agreed that there are two variances being sought for the front yard setback and the lot coverage. He stated that the plans that were submitted to the Building Department omitting those two calculations was a misunderstanding.

Board Attorney Kaczynski invited members of the public to ask questions of Mr. Kristani. Jeff Isaacs of 624 Palmer Avenue asked why Mr. Kristani removed the two balconies but left the large portico. Mr. Kristani does not recall the original plan with the two balconies. Mr. Isaacs asked if the proposed deck has been removed from the plan, if the driveway was included in the coverage calculation and if the trees that were removed will be replaced. Mr. Kristani answered that he would do what is on the plans that the Board approves. He added that he will plant trees and landscape the property. Mr. Isaacs asked the Board if landscape is part of the coverage calculation and Board Attorney Kaczynski replied that landscape does not count towards the coverage calculation. Mr. Issacs said that he thinks that his neighbors have given up which was why they were not in attendance.

Board Attorney Kaczynski invited the public to comment on the application. Jeff Issacs of 624 Palmer Avenue recalled that the first application began in 2022 and the property has been under construction for two years. He said that the home resembled an apartment building with a 4-car garage and does not fit in with the neighborhood. From the previous hearing, he believes that the Board does not require a rear

yard setback variance for the proposed deck nor the rear entry from the garage. He also acknowledged that the driveway does not violate the side yard setback. He said that the neighborhood is mostly Cape Cod and Colonial style homes but the property directly to the east is Contemporary. He said that the Applicant's home is bigger than all the houses in the neighborhood. He added that his view from his window used to be trees but now it is a big box. Mr. Issacs referenced the Building Department stop-work order on the exterior but he observed Mr. Kristani working on the portico two weeks prior to this hearing. He stated that the previous application before the Board included several variances and the application was withdrawn. He questioned why the portico exceeding the setback was not caught sooner. He believes that there is a height deviation as well.

Gentiana Kristani is the applicant's spouse and was sworn in. She stated that she and her husband have lived in Maywood for 20 years and 33 years, respectively. She emphasized that they could have built their house somewhere else but chose Maywood. She disputed Mr. Issacs statement regarding the time of day that construction begins at the property. She accused Mr. Issacs of lying and spitting on the property. Board Attorney Kaczynski advised that public comment needs to be related to the application. Mrs. Kristani said that there are no problems with the other neighbors and only Mr. Issacs complains. She explained that they comply on building height. She stated that the house does not block the light onto Mr. Issacs property.

Jeff Issacs of 624 Palmer Avenue refuted Mrs. Kristani's claim that he has lied. He referenced police reports being on record.

Henry M. Latch, III is the Applicant's architect and was sworn in, qualified and accepted. He repeated the two variances being sought; front yard setback and lot coverage. He considers the front porch an integral part of the home. He feels that the home is in character with the neighborhood and cited the contemporary dwelling next door. He stated that the home is not detrimental to the neighborhood. He explained that the 0.8% coverage non-conformity translates to 65 square feet. Board Attorney Kaczynski asked if Mr. Latch investigated how to remove the 65 square feet overage to eliminate the variance. He answered that the portico and rear stairs from the garage were the only options but both were necessary for access. He said that the coverage non-conformity was minimal.

Board Attorney Kaczynski invited the Board to ask questions of Mr. Latch. Douglas Herrick noted that the front and rear access points were necessary but asked for confirmation that the portico roof was also necessary. Mr. Latch agreed that the removal of the portico roof would bring the dwelling into compliance but the Applicant would lose the functionality of a covered entrance. He provided an example of having to rush down wearing a towel after a shower to let guests enter or receive a package delivery because the entry was not covered. Mr. Herrick asked about the construction plans that were provided to the Building Department that did not include the portico front setback dimensions. Mr. Latch answered that he does not know what happened but when he submits plans in other towns, the Zoning Official would reject it if it is not in compliance with the municipal ordinance. Cynthia Petersen requested clarification on the portico distance from the front property line and Mr. Latch confirmed that the distance is 19'-6" or 19.5'. She asked him to provide testimony on the proposed landscaping. Mr. Latch deferred to Mr. Kristani. Mr. Kristani said there is an existing fence along the rear property line. He said there will be a fence along the side yards that starts at 6' in the rear and drops to 3' about 15' or 20' before the sidewalk. Board Attorney Kaczynski suggested that the landscape plan be submitted to Board Engineer Polyniak's satisfaction as a condition of approval. Harry Hillenius questioned why Mr. Latch submitted the construction plans to the Building Department that included a front yard setback deviation. Mr. Latch replied that he did not realize that there was oversight with his calculation. Doug

Herrick stated that the reason that the Building Department did not see Mr. Latch's oversight was because the portico dimensions were not included on the site plan submitted to them. Mr. Latch acknowledged that he would need to go back and review his drawings. Secretary Gary Neumann inquired if the portico could be redesigned so that it could be compliant. Mr. Latch answered that Mr. Kristani could remove the portico roof to comply but does not want to. Board Attorney Kaczynski believes that the portico roof removal would remove the front yard setback variance but the lot coverage variance would remain. Mr. Kristani suggested cutting the portico roof back by 5.5' but would have a problem with supporting the roof. Rick DeHeer referenced Mr. Latch's testimony that the portico roof would offer protection from the weather for guests entering the home. Mr. DeHeer believes that the portico roof would not provide protection from the weather due to its height. He has a porch that is much lower and his experience is that it does not protect from rain and snow. Mr. Latch agreed with Mr. DeHeer but feels that the portico roof should remain due to aesthetics. John Gargagliano reviewed the construction plans that were submitted to Building Department and the portico dimensions to the front yard setback were omitted. He then cited the minutes from the Maywood Planning Board 7/1/21 meeting:

Mr. Kristani agreed to eliminate the deck to remove the rear yard setback variance. He agreed to take away the balconies to remove the front yard setback variance. He offered to make the garage 3-car instead of 4-car. He can make the side yard setback 4' from 1.6' proposed (5' minimum required).

Mr. Gargagliano reminded Mr. Kristani that he had proposed balconies which he agreed to remove to avoid the front yard setback deviation. Mr. Gargagliano noted that the plans depict a 4-car garage. Mr. Latch stated that he was not the architect for the 2021 application. Mr. Kristani injected that the 2021 plans were scrapped but he kept a continuous conversation with the Planning Board and Building Department. He said that he submitted new plans to the Building Department that were approved.

Board Attorney Kaczynski explained that this is a new application and the Board must decide if Mr. Kristani has proven that he is entitled to receive the two variances. She then asked for clarification of the variances from Board Engineer Polyniak if the portico roof were to be removed. Board Engineer Polyniak stated that the coverage variance would not be needed if the portico roof was removed but the oversized landing would still violate the front yard setback. He said that the Board would need to determine if the Applicant's proposal of the 2-1/2 story portico with a balcony would be suitable for the neighborhood and if the benefits of the project outweigh the detriments. Chairperson Panny confirmed that the dwelling is 2-1/2 stories which is permitted. Board Engineer Polyniak reminded the Board to determine if the portico/balcony is something that they would see in the neighborhood. Board Attorney Kaczynski inquired what the perceived benefits would be. Mr. Latch answered that the portico breaks up the front wall making the visual impact less linear and improves the overall look of the dwelling. Board Engineer Polyniak suggested that the Board may consider a smaller portico/balcony which could also break up the façade. Harry Hillenius proposed moving the portico back to within the setback. John Gargagliano referred to the site plans elevations page. He offered a suggestion for the Applicant to remove the portico and lower the "Juliet" balcony to provide coverage over the front door. He has a 7' roof on his 4' deep porch and the weather still blows on his front windows.

Board Attorney Kaczynski invited the public to ask questions of Mr. Latch but no one came forward. She asked Mr. Latch or Mr. Kristani if there was any more testimony planned. Mr. Latch stated that he would like to "see the home built as constructed". He repeated his earlier statement that requested variances were not that large.

Mr. Issacs of 624 Palmer Avenue asked what would happen to the existing sliding glass doors that if Mr. Kristani lowers the “Juliet” balcony. Board Attorney Kaczynski thought that Mr. Kristani was removing the “Juliet” balcony. Mr. Kristani corrected her explaining that the “Juliet” balcony is already built. Mr. Issacs thought that the 7/1/21 meeting minutes indicated that the “Juliet” balcony would be removed. Board Attorney Kaczynski reminded him that the Board was considering the current plans and not what was proposed in 2021. She said that the relocation of sliding doors would be up to the Applicant and his architect.

Harry Hillenius made a motion to close the public session and Douglas Herrick seconded the motion. All eligible members voted in favor of the motion. Board Attorney Kaczynski advised that the Board deliberation could begin. Farhana Hassan Choudhury inquired if the Board can grant a variance based on aesthetics. Board Attorney Kaczynski reference Board Engineer Polyniak’s earlier assessment that the Board would need to determine if the aesthetic benefit of the 2-1/2 story portico outweigh the detriment that it may cause. She then asked Board Engineer Polyniak to outline the “C” variance criteria. He explained that the Applicant is not requesting hardship for a C(1) variance but would be seeking a flexible/C(2) variance. As such, he stated that the Board would be assessing site suitability specifically if the portico/balcony is suitable for the property and the neighborhood. Regarding the negative criteria, he recommended that the Board consider if the benefits of granting the variances outweigh the detriments. He suggested that one of the benefits might be aesthetics since the portico/balcony does break up the face of the home instead of being a flat wall. He provided alternatives such as lowering the portico or reducing the size that may bring it more in conformity with the rest of the neighborhood. He said that the Board should compare the detriments of the portico to the property, neighborhood, zoning ordinance and zone plan.

Ms. Choudhury inquired what does the term neighborhood represent. Board Engineer Polyniak replied that you may consider the entire zone or the visible block area to be the neighborhood. Board Attorney Kaczynski noted that for a use D variance, the area in consideration would be larger typically than a bulk C variance as you would consider impacts on a larger area such as traffic as an example. She then asked for the Board’s feedback on the application. Board Engineer Polyniak advised that should the Board recommend reducing the size of the portico, they may want to consider reviewing the revised plan prior to voting. Board Attorney Kaczynski agreed and suggested that the Board may vote and include a condition of approval that the revised plan meet Board Engineer Polyniak’s satisfaction similar to the condition for the landscape plan. Chairperson Panny asked for a summary of the agreed upon conditions of approval. She recalled that Board Engineer Polyniak had requested the location of the HVAC system concrete pad, driveway turning templates and confirmation that the sanitary sewer is in good working order via a video of the lateral scope. She believes that the 2-1/2 story portico height should be lowered and liked Mr. Gargagliano’s suggestion. Mr. Gargagliano suggested that the portico be lowered would minimize the visual impact. Mr. Hillenius does not like how the portico protrudes into the setback. He suspects that the design and the omission on the construction plans were done intentionally. He stated that the lot is oversized and the house is humongous. Ms. Choudhury agreed with Mr. Gargagliano suggestion. Mr. DeHeer described the dwelling as impressive but feels that it does not fit the neighborhood given the size. Chairperson Panny believes that that the dwelling is the largest structure in the neighborhood and does not feel that it fits the neighborhood. She admitted that the Applicant is permitted to build to that size if it meets Borough code. Board Attorney Kaczynski clarified that the property owners are permitted to build as large as they want if the structure complies with the Borough code and noted that this dwelling does not comply. Councilperson Ryan Ullman thanked Board Engineer Polyniak for his explanation of the variance criteria. He agreed with the other Board members that spoke about how the dwelling does not fit in the neighborhood and was in favor of Mr.

Gargagliano's suggestion. Ms. Choudhury asked if Mr. Gargagliano's suggestion would bring the dwelling into compliance and Board Attorney Kaczynski does not believe that the portico roof could comply. Mr. Gargagliano repeated his suggestion attempting to clarify any Board member questions. Board Engineer Polyniak explained that the Applicant has a coverage issue but the portico could extend 2' from the building to stay within the front yard setback. He added that the landing is oversized and extends into the front yard setback. There was additional discussion but the recording is not clear. Board Engineer Polyniak noted that the dimensions of the balcony to the property line are not provided but looks like it extends into the front yard setback. He suggested removing the balcony and placing a railing across the sliding door so the Applicant would treat it like a window. He added that he has not observed a balcony where a person would sit in their front yard in this neighborhood. Harry Hillenius suggested that an 18" balcony would comply with Borough code and Board Engineer Polyniak agreed. Secretary Neumann said that lowering the portico roof may negatively impact the scale. Ms. Petersen repeated Mr. Gargagliano suggestion to remove the portico entirely and lower the balcony to act a partial cover of the landing. She added that when she first saw the construction, she thought that the dwelling was a duplex due to the size. She agreed with the other members statements that the dwelling does not fit in the neighborhood.

Board Attorney Kaczynski requested that Board Engineer Polyniak provide a rough calculation for the balcony as the resolution would require a not to exceed size number. He reviewed the plans and said that the second-floor balcony is 4'-4" deep and 11'-6" wide, approximately 46 square feet. When asked by Board Attorney Kaczynski, Board Engineer Polyniak calculated the distance from the edge of the balcony to the front yard setback as 23'-2". Board Attorney Kaczynski summarized that the balcony would need a front yard setback variance of 1'-10".

Board Attorney Kaczynski asked if any other Board members wished to comment on the application. Douglas Herrick said that he had sympathy for Mr. Kristani and his neighbors. He said that similar to Mr. Hillenius, he has a problem with how dimensions were omitted from the construction plans that were submitted to the Building Department. He said that if the house was built in compliance with the Borough code, blocking Mr. Issacs view should have no bearing. He would like the dwelling to comply with the Borough code. Secretary Neumann asked Mr. Kristani if he could bring the dwelling into compliance and still achieve the architectural style that he intended. Mr. Kristani replied that the town asked him to scale back the portico to bring it into compliance but he wanted to pursue the variance anticipating that the Board would kindly approve it. He stated that he does not understand the point of a variance application if he does not get approval. He said that the Board should have told him immediately to scale it back. Board Attorney Kaczynski interjected that he could always choose to bring the project into compliance which is why he withdrew his 2021 application. She further explained that he made the choice to file the application and await the Board decision. She emphasized that only the Board has jurisdiction to grant the variances requested and no one can predict the Board's decision. He agreed and said that he withdrew the 2021 application and chose to redesign the property to comply. He said that all the dimensions other than the portico were included and approved. Board Attorney Kaczynski reminded him that the omission of the portico dimensions was the reason that he required a variance. He said that it was not his fault. He added that the portico was already built. He stated that most the homes in Maywood have porticos. Board Attorney Kaczynski explained that a Board member will make a motion on what they are willing to approve. She asked if he heard the comments from the Board members about removing the portico and using the balcony as cover for the front entrance and if he would be willing to agree to this modification. Mr. Kristani said that he doesn't know how the house would look with the proposed changes. He suggested that his architect create drawings reflecting the proposed changes. He repeated that he came before the Board for approval. He does not consider the

variances as large and the portico dimension omission was something that was missed. Regarding Mr. Hillenius' comments, he said that he did not intend to bypass the town. He submitted construction plans to the Building Department which were approved. Mr. Hillenius replied that variances were required and Mr. Kristani said that he didn't know that that the plans required a variance. Mr. Hillenius answered that Mr. Kristani was wrong as variances were required. Mr. Kristani agreed that he was wrong and then said that he wasn't wrong because the town approved the plans. He said that he did not intentionally omit information. He added that he had a conversation with the Building Manager where he said that if he could not build the house he wanted, he would not build anything and he would leave Maywood. He stated that the plans were approved and the home was built with no issues until he had an inspection that informed him that the portico encroached into the front yard setback.

Board Attorney Kaczynski listed the agreed upon conditions of approval:

- Address the comments in Exhibit PB-2 Board Engineer Greg Polyniak's 1/23/24 revised review specifically the location of the HVAC system concrete pad, driveway turning templates and confirmation that the sanitary sewer is in good working order via a video of the lateral scope
- Standard conditions
- Landscaping plan
- Concrete pad for trash cans

She advised that whatever motion is made should include the "Juliet" balcony dimensions, location and variance and the same for the portico roof. Cynthia Petersen asked if they Board could give Mr. Kristani and Mr. Latch an opportunity to revise the plans. Chairperson Panny asked if that was something Mr. Kristani would like to do. Mr. Kristani did not understand what would need to be revised. Board Engineer Polyniak explained that the Board seemed willing to give Mr. Kristani an opportunity to propose a design that is less impactful as it relates to the variances specifically that the portico would not be as large therefore reducing the overall variance request. When Mr. Kristani still did not understand, Mr. Latch repeated that the Board is not saying no variances but rather to minimize the impact of the variances. Mr. Latch feels that the Board is taking issue with the height of the portico. He asked that since the landing is existing, if he could enlarge the balcony to cover the landing. Several people began speaking at the same time and the recording is not clear. Mr. Latch repeated his statement that the Board's issue is the portico height and Mr. DeHeer said that he also objects to how far it protrudes into the front yard setback. Several Board members agreed with Mr. DeHeer's assessment.

Board Engineer Polyniak believes that the Board does not want to see a flat balcony that people can walk out onto. He suggested that the Board may be more amenable to a set of doors that open to a lowered balcony that protrudes minimally and architectural features with respect to the portico. Mr. Latch replied that he now understands what the Board is seeking. Secretary Gary Neumann asked if Mr. Latch had a plan for the columns as they had been mentioned previously. Mr. Latch said that the columns would be required to support the portico as it currently projects out. Board Engineer Polyniak believes that the balcony currently projects 23'-2" from the front property line vs. 19'-6" of the portico which he considers a significant reduction. Mr. Gargagliano referenced page Z1 of the site plan showing the basement plan. He noted that the landing dimensions were 5'-4" x 12' and column dimensions were 1'-8" x 1'-8". He then suggested enlarging the landing to match the balcony. Mr. Latch believes that he understands what the Board members are saying.

Councilperson Ullman asked the Board if the changes discussed were made to the plans, would they look favorably on the application. He said that he is not sure that he would and does not wish to prolong the process if others felt that way too. Board Attorney Kaczynski reminded the Board that the decision

to revise the plan or have the Board vote is up the Applicant. Board Engineer Polyniak advised the Board that should they vote to deny the portico, they would also be denying the balcony as it encroaches the front yard setback as well. Mr. Kristani asked for Board leniency regarding the variances. Board Engineer Polyniak believes that the Board would need to review revised plans and could not provide any guarantees regarding their future vote. Mr. Kristani stated that he could cut back the portico by 5.5' and there would be no need for a variance. He does not want to redesign and then have the Board vote to deny the application. Board Attorney Kaczynski advised that the Board would not be permitted to promise an approval but have discussed an option that is more palatable to them. Mr. Latch began doing calculations and asked for feedback. Board Attorney Kaczynski suggested providing more than one option for the Board to review. Mr. Latch and Mr. Kristani agreed. Board Attorney Kaczynski offered to adjourn the hearing to the 3/28/24 meeting and carry it further, if needed. Mr. Latch confirmed that the revised plan would need provided 10 days prior to the hearing date. Board Attorney Kaczynski announced that the hearing would be adjourned to the 3/28/24 meeting without need for additional notice. She confirmed with Mr. Kristani that he agreed to extend time for the Board to act through the end of April. He added that he emailed the extension to Board Recording Secretary Tara Grunstra. Mr. Issacs clarified that Mr. Kristani would not need to re-notice if revised plans were submitted.

**Informal Hearing**                      None

**Closed Session**                      None

### **Old Business**

- Amended Application, Checklist and Fee Schedule
  - Board Attorney Kaczynski advised that Mr. DeHeer made a recommendation regarding the land use fees which will be distributed to the Board for future discussion

### **New Business**

- Distribution of Calendar #2023-14 Mady Properties 930 Spring Valley Road Additional Application Materials
- 2/14/24 Adopted Borough Resolution #66-24 Area in Need of Re-development Study
  - Chairperson Panny asked if it could be forwarded to Board Planner Michael Kauker
    - Board Attorney Kaczynski answered that Board Planner Kauker has a copy
  - Secretary Neumann asked if the study would be funded through the Planning Board budget
    - Board Attorney Kaczynski explained that the Governing Body authorized the Board Planner to proceed with the study
  - Cynthia Petersen confirmed that the property is privately owned
  - Board Attorney Kaczynski stated that the study included condemnation

### **Open Meeting to the Public**

### **Adjournment**

A motion to adjourn the meeting was made by Harry Hillenius. Rick DeHeer seconded the motion. All eligible members present voted in favor of the motion. The meeting was adjourned at 9:27pm.



Respectfully submitted,

Tara Grunstra  
Planning Board Recording Secretary