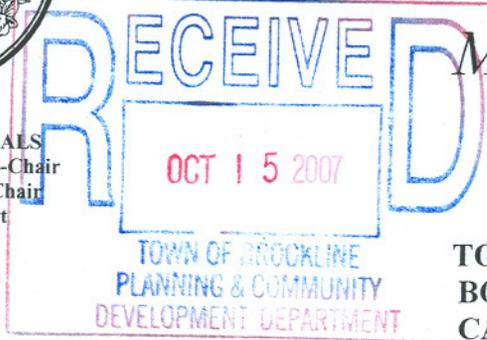




# Town of Brookline

## Massachusetts

BOARD OF APPEALS  
Diane R. Gordon, Co-Chair  
Harry Miller, Co-Chair  
Bailey S. Silbert



Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2210 Fax (617) 730-2248

Patrick J. Ward, Secretary

**TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 070036**

Petitioner, 50-60 Longwood Avenue Condominium Trust, applied to the Building Commissioner for permission to construct an addition for a vestibule, a security office, and a delivery service package storage room at the main entrance at 50 Longwood Avenue per plans. The application was denied and an appeal was taken to this Board.

On May 3, 2007, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed July 12, 2007 at 7:00 p.m. in the Selectmen's Hearing room on the sixth floor of the Town Hall as the time and place of a hearing. Notice of the hearing was mailed to the Petitioner, to his attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published June 21, 2007 and June 28, 2007, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

### NOTICE OF HEARING

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

**Petitioner: 50/60 LONGWOOD AVENUE CONDOMINIUM TRUST**

**Location of Premises: 50 LONGWOOD AVE BRKL**

**Date of Hearing: 07/12/2007**

**Time of Hearing: 7:00 p.m.**

**Place of Hearing: Selectmen's Hearing Room, 6<sup>th</sup>. Floor**

A public hearing will be held for a variance and/or special permit from

1. **4.03; Pre-Existing Special Permit Uses; Special Permit Required.**
2. **5.03; Spacing of Residential Buildings on the Same Lot; Special Permit Requested.**
3. **5.09.2.d; Design Review; Special Permit Required.**
4. **5.09.3.e; Plan Revisions; Special Permit Required.**
5. **5.20; Floor Area Ratio; Variance Required.**
6. **5.91; Minimum Usable Open Space; Variance Required.**
7. **8.02.2; Alteration or Extension; Special Permit Required.**
8. **Board of Appeals Decisions:**  
**Case# 1404 dated August 4, 1966; Modification Required.**  
**Case# 050023 dated October 25, 2005; Modification Required.**

Of the Zoning By-Law to construct a vestibule, a security office, and a delivery service package storage room at main entrance

at **50 LONGWOOD AVE BRKL**

Said Premise located in a M-2.0 district.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Publish:** June 21, 2007 and June 28, 2007.

**Diane R. Gordon  
Harry Miller  
Bailey Silbert**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board members Diane Gordon, Bailey Silbert, and Murray Shocket. Petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel; Lipshutz & Wilchins, P.C., 20 William Street, Suite 130, Wellesley, MA.

At the hearing, Polly Selkoe, Assistant Director for Regulatory Planning, distributed the Planning Board Report dated June 28, 2007. Mr. Allen then described the factual background for the petition as follows:

50-60 Longwood Avenue is the location of two 106 foot condominium towers, containing a total of 177 units, constructed by special permits in 1967 (Case #1404). The modern towers are connected by a glass enclosed vestibule and are set approximately 75 feet apart. On October 25, 2005, the Board approved a proposal to enclose the two perimeter loggias with glass (Case #050023). A variance was granted for FAR and minimum usable open space. 204 parking spaces are located on the site: 186 underground and an additional 18 surface spaces. The surrounding neighborhood consists of a mix of two-family houses and apartment buildings and the Coolidge Corner business district is to the northwest.

The Petitioner is proposing to enclose a portion of a walkway in front of an existing entry corridor to create an addition consisting of a vestibule, security room and package room. The addition will add 237 square feet of habitable space to the building. To construct the addition, an existing section of walkway and stairway will be removed, and a new set of stairs, planter boxes, and two disabled access ramps will be installed. The facade of the addition will be constructed of insulating glass, and will echo the modern design found on the existing facade. The glass will be opaque from floor to counter height, and will be clear from the counter to the ceiling. The proposed planter boxes and column covers will be constructed of brick to match the building exterior. The addition will be constructed underneath an

existing driveway canopy, and will not result in the loss of any additional landscaped or usable open space. None of the surface level parking spaces will be lost, and there will be no impact to traffic circulation in the front traffic plaza area. The addition will allow the applicant to move the security desk from the building corridor to the front of the building, improve disabled access, and relocate the fire control boxes for easier access.

Mr. Allen reviewed the zoning relief necessary for the proposed alterations:

**Section 4.03 – Pre-Existing Special Permit Uses**

A special permit is required for changes in use or structure for any pre-existing special permit use. In this case, the structure received several special permits in both the 1966 and 2005 Board of Appeals cases, including special permits for bonus FAR and Design Review.

**Section 5.03 – Spacing of Residential Buildings on the Same Lot**

A special permit is required if the distance between the two buildings is not the same as it would be if they were on separate lots. In this case, the relationship between the buildings is not actually changing, however, since the addition is below an existing canopy, they are now considered to be altering the distance between first floors of the two towers. Therefore, a special permit is required.

**Section 5.09.2.d – Design Review**

A special permit is required for any exterior change to multiple dwellings often or more units. All of the standards in paragraph (4) have been met and comments on the four most relevant follow:

- (b) Relation of Buildings to Environment: The relationship between the buildings and the environment will not substantially change. The proposed changes are minor and due to the composition (mostly glass) the appearance of the facade will remain virtually the same.
- (c) Open Space: The addition will not result in the loss of landscaped open space. However, the two existing planter boxes will be reconstructed and will be slightly reduced in size.
- (d) Circulation: The applicant will be constructing two (2) new ADA-compliant ramps to facilitate pedestrian access into the building.
- (1) Energy Efficiency: The construction of a vestibule at the main entrance will aide in retaining heat within the building during cold weather.

**Section 5.09.3.e – Plan Revisions**

Revisions to a plan after the close of a Board of Appeals hearing that affect or alter the visual appearance of the facade, roof, or cornice line, or modifies the site plan, must be referred to the Planning Board for its

recommendation in accordance with the design review standards listed under Section 5.09.4(a-l) and to the Board of Appeals for any action it deems appropriate.

**Section 5.20 – Floor Area Ratio**

	<u>Allowed</u>	<u>Existing</u>	<u>Proposed</u>	<u>Relief</u>
FAR	2.0 (100%)	2.624 (131%)	2.624 (131%)	Variance
Floor Area	156,150	204,626	204,863	–

**Section 5.91 – Minimum Usable Open Space**

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Relief</u>
Usable Open Space	10% (20,486 sf)	9.5% (19,519 sf)	9.5% (19,519 sf)	Variance

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter or enlarge any pre-existing non-conforming lot or structure.

**Modification** – Board of Appeals Decision: Case #1404 (dated August 4, 1966)

Modification of the previous Board of Appeals case is required.

**Modification** – Board of Appeals Decision: Case #050023 (dated October 25, 2005)

Modification of the previous Board of Appeals case is required.

With regard to the requested variance to allow construction of the proposed vestibule, Mr. Allen stated that literal compliance with the FAR and open space requirements under the By-Law is not feasible in light of the existing conditions at the lot in question. In particular, Mr. Allen stated that as a result of the unique character of the lot and existing structures which do not allow for any additional usable open space to be created, failure to grant the requested variance would cause substantial hardship to the Petitioner by preventing the Petitioner from addressing significant safety concerns, including new handicapped access ramps, and relocation of the fire control box for easier access. The new vestibule would also allow the Petitioner to relocate the security desk from its present location, which juts into, and thus obstructs a portion of the front corridor. Moreover, the proposed changes will have a negligible overall impact to the lot. As a result of a design change to address Planning Board concerns regarding

traffic circulation, the proposed vestibule to be constructed under an existing driveway canopy would extend only approximately 15 inches beyond the existing top step, and would increase the floor area by only 237 square feet. There would be no appreciable increase in FAR from that previously allowed under Case# 050023, and no appreciable loss of existing usable open space. There would also be no affect on parking or traffic circulation in the front parking plaza area. Accordingly, the requested variances are particularly appropriate under the circumstances of this petition.

The Chairperson inquired if any members of the public wished to be heard. Several condominium unit owners appeared, but their objections to the proposal did not relate to zoning.

Polly Selkoe, on behalf of the Planning Board, gave the following report:

The Planning Board is generally supportive of this proposal to construct an addition consisting of a vestibule, security room and package room at 50-60 Longwood Avenue. The proposed addition is modest in size and is compatible with the design of the existing building. The addition of new entrance ramps will facilitate access into the building. Additionally, the vestibule will assist in energy conservation and allow for easier access to the fire control boxes.

However, the Planning Board has concerns with the proposed layout for the parking plaza in the vicinity of the canopy and underground parking ramps. The applicant is proposing to extend the existing curb approximately 8 feet into the plaza area, which may impede vehicular/pedestrian access and circulation. The applicant should submit existing and proposed plans showing the addition and the plaza area, as well as a plaza plan showing parking and circulation issues are mitigated.

The Planning Board notes the relief sought for minimum usable open space is minimal, but feels the applicant could meet the requirements, and should seek to do so. However, the Board notes the applicant has proposed to provide landscaped open space within the vicinity of the proposed addition, utilizing new planter boxes along the stairway and ramps.

Condition #3 of the October 25, 2005 Board of Appeals case (#050023) states "Final site and landscaping plans, including lighting, shall be subject to the review and approval of the Director of Planning and Community Development, prior to the issuance of a building permit." On February 10, 2006, a preliminary site plan was approved by the Planning Director, subject to the condition that prior to the issuance of a Certificate of Occupancy for the enclosed ground floor loggias, a final landscaping and lighting plan

shall be approved and implemented, subject to the review and approval of the Chief Planner. As this case is a modification of BOA case #050023, this condition should be incorporated into the final decision.

Therefore, if the Board of Appeals finds the statutory requirements have been met, the Planning Board recommends approval of the plans, titled "50-60 Longwood, Lobby Connector" by Cubellis, dated 05/16/07, subject to conditions.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the various sections of the Zoning By-Law under which relief is needed. The Building Department has no objections to the proposed vestibule and will ensure that all State Code provisions are satisfied.

The Board having deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant all the relief requested by this Petitioner, subject to certain conditions.

The Board considered the visual relationships of site and proposed façade alterations to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposed increase in floor area will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not have any substantial effect on the traffic, nor will it cause a nuisance or serious hazard to vehicles or pedestrians. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

Accordingly, the Board makes the following findings pursuant to **Sections 5.09** and **9.5:**

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed vestibule.

2. The use as proposed by the Petitioner will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed vestibule will not have a significant adverse affect on the supply of housing available for low and moderate income people.

In regard to the requested variance, the Board finds that the literal compliance with the requirements of the By-Law is not feasible in light of the existing conditions at the lot in question. As a result of the lot conditions and the unique shape of the existing building, failure to grant the requested variances would cause substantial hardship to the property owner by preventing the owner from addressing serious safety issues, including access improvements and fire safety. Granting the requested variance to allow a nominal increase in floor area without any appreciable increase in FAR or loss of usable open space will not be detrimental to the public good nor nullify or substantially derogate from the intent or purpose of the Brookline Zoning By-Law.

Accordingly, the Board grants special permits pursuant to Sections 4.03, 5.03, 5.09.2.d, 5.09.3.e, and 8.02.2 to construct the proposed vestibule, variances from Sections 5.20 and 5.91 to allow an increase in floor area by an additional 237 square feet, and a modification of Case Nos. 1404 and 050023. The foregoing grants are all zoning relief requested to allow construction of the proposed vestibule, and are granted subject to the following conditions:

- 1) Prior to the issuance of a building permit, final facade plans, including existing facade and floor plans shall be subject to the review and approval of the Assistant Director for Regulatory Planning.

- 2) Prior to the issuance of a Certificate of Occupancy, a satisfactory final plaza plan with parking and circulation and final landscaping and lighting plan shall be approved and implemented, subject to the review and approval of the Assistant Director for Regulatory Planning.
- 3) Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision:
  - 1) a final site plan, stamped and signed by a registered engineer or land surveyor;
  - 2) final elevations of the addition, stamped and signed by a registered architect; and
  - 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals



\_\_\_\_\_  
Diane R. Gordon

RECEIVED  
 TOWN OF BROOKFIELD  
 REGISTRARS OF VOTERS  
 07 OCT 09 AM 8:44  
 Filing Date:  
 A True Copy:

ATTEST



\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals