



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

DIANE R. GORDON, Co-Chair
HARRY MILLER, Co-Chair
BAILEY S. SILBERT

333 Washington Street
Brookline, MA 02445
617-730-2010
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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 060036

Petitioner, Longwood Tower, Inc., filed an application for modification of two Special Permits (No. 3318 and No. 3318C) filed on October 25, 1996 and August 11, 2000 respectively, with respect to the property known as "Longwood Towers" and located at 20 Chapel Street, to allow (i) the conversion of two rental affordable housing units that were created pursuant to Section 4.40 (now 4.08) of the Brookline Zoning By-Law (the "Zoning By-Law") to the condominium form of ownership, and (ii) an increase in the number of parking spaces in the attended garage, from 250 vehicles to 259 vehicles, through a revised garage layout.

On June 22, 2006, the Board met and determined that the property affected was that 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 August 3, 2006 at 7:15 p.m. as the time and place of a hearing on the appeal in the Selectmen's Hearing Room on the sixth floor of Town Hall. Notice of the scheduled hearing was mailed to the Petitioner, 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 scheduled hearing was

published on July 13, 2006 and July 20, 2006 in the Brookline Tab, a newspaper published in Brookline. The 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: LONGWOOD TOWERS
Location of Premises: 20 CHAPEL STREET BRKL
Date of Hearing: 8/03/2006
Time of Hearing: 07:15 p.m.
Place of Hearing: Selectmen's Hearing Room, 6th floor

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

Modification of Case # 3318 filed October 25, 1996 and Case #3318C filed August 11, 2000

Of the Zoning By-Law to
Modification Condition #1; Affordable Housing;
Modification – Parking

at 20 CHAPEL ST 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.

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

Publish: 07/13/2006 and 07/20/2006

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board Chair Diane R. Gordon, Board member Enid Starr, and Associate Board Member Murray Shocket. Petitioner was represented at the hearing by Attorney Rebecca A. Lee of Edwards Angell Palmer & Dodge LLP.

Prior to the hearing, the Board had been provided with the Planning Board Report dated June 29, 2006. As set forth in the Petitioner's Special Permit modification application, the facts of this case are as follows:

The property at 20 Chapel Street, also known as Longwood Towers, is an apartment complex which was built in 1924 and is a contributing property to the Longwood National Register District. The development consists of three eight-story brick towers housing approximately 270 rental units, a restaurant, and a 24 hour attended parking garage which currently accommodates up to 250 vehicles.

In 1996, by means of Case No. 3318 the Board of Appeals granted numerous special permits relating to the construction of 30 additional dwelling units (through the conversion of formerly commercial space,), subject to the provision that approximately 15% of the new units be affordable as required by the Affordable Housing Requirements (then Section 4.40) of the Zoning By-Law. At that time, the Board of Appeals also granted special permits related to tandem parking in the existing garage and the resulting modifications from the parking-related dimensional requirements of the Zoning By-Law. The Board of Appeals' decision referenced a garage plan showing that up to 250 vehicles would be parked in the garage.

In 2000, by means of Case No. 3318C, the Board of Appeals approved a modification to its decision in Case No. 3318, substituting for the owner's obligation to provide four affordable units under Section 4.40 of the Zoning By-Law, an alternative by which the owner would provide two affordable units serving households with incomes under 100% of area median income at the Longwood Towers property, and four units serving tenants of lower incomes at 1470 Beacon Street, a property also owned by Avalon Properties, the then-owner of Longwood Towers. Since then, the two affordable rental units at Longwood Towers have been rented to tenants in accordance with the Affordable Housing Agreement appended to the 2000 Board of Appeals decision (Case No. 3318C).

The Petitioner has recorded condominium documents with the Norfolk County Registry of Deeds establishing the Longwood Towers Condominium at the property.

Ms. Lee stated that the Petitioner was seeking a modification to these prior decisions of the Board of Appeals, to allow the two required affordable units at the property to become for-sale, condominium units, and to allow a revised layout for the garage to accommodate up to 259 vehicles (nine more than referenced in Case No. 3318). The parking-related request was meant to clarify some ambiguity in the prior Board of Appeals decision (Case No. 3318), which could be interpreted to set a maximum number of parking spaces in the garage.

Chair Diane Gordon asked if there was anyone present who wished to speak in support of this petition.

Housing Development Manager and staff to the Housing Advisory Board (HAB) Fran Price stated that she was asked by HAB Chair Roger Blood to represent the HAB, and that HAB supports this affordable housing plan. She noted that the HAB and the Petitioner had agreed upon a series of protections for the affordable unit buyers, including a Petitioner-funded escrow

account to provide affordable unit buyers with financial assistance for special assessments, Petitioner-funded relocation payments to tenants who relocate and do not buy, and affordable unit sales prices that mitigate half the cost of the valet parking at the property. She also noted that both affordable units are two-bedroom units, and each unit will have the right to park one vehicle in the garage.

Chair Diane Gordon asked if there was anyone present who wished to speak in opposition to this petition. There were none.

Jeffrey Levine, Director, Department of Planning and Community Development, representing the Planning Board, presented the Planning Board Report for 20 Chapel Street dated June 29, 2006. He stated that the Planning Board found that the affordable units should be ownership units, and that the Planning Board was pleased with the negotiations with the Petitioner. Mr. Levine further stated that the Planning Board unanimously recommended approval of the petition subject to the conditions set forth in the Planning Board report.

The Board considered that the existing residential and parking uses at the property will be unaffected by the granting of the requested modifications, except to the extent nine more vehicles may be accommodated in the garage. Thus, the Board determined that the property is an appropriate location for the continuation of such uses, and that such uses will not adversely affect the neighborhood, or create a nuisance or serious hazard to vehicles or pedestrians, and the buildings, driveways and garage are functional and appropriate for such uses.

Accordingly, the Board makes the following findings pursuant to Sections 4.08, 6.04, and 9.05 of the Zoning By-Law:

1. The property is an appropriate location for the proposed uses;
2. The uses 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; and
5. The conversion of the affordable units at the Property will create needed homeownership opportunities for income-eligible households, and will not have an adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board grants the requested special permit modifications to the decisions in Case No. 3318 and Case No. 3318C pursuant to Sections 4.08.4, 6.04.3, and 6.04.2 of the Zoning By-Law, which special permit modifications are all of the zoning relief requested to effectuate the requested conversion of the affordable rental units to affordable condominiums, and allow for up to 259 vehicles to be parked in the attended garage pursuant to a revised garage layout as shown on the plan entitled "Proposed Garage Parking Plans" dated June 13, 2006, prepared by Margolis & Fishman, Inc., (Cambridge, MA)." A copy of the garage plan is attached to and incorporated into this Decision. Such special permit modifications are granted subject to the following conditions:

1. The affordable condominium units shall be two units proposed by the Petitioner and approved by the Director of Planning and Community Development, in his reasonable discretion (the "Director").
2. Until such time that the current tenant of an affordable rental unit purchases an affordable condominium unit, if qualified, or vacates such unit, the unit shall be operated as an affordable rental unit and the tenant shall not be charged more than an affordable rent established at 30 percent of 100 percent of area median income for a family of three as

determined by the U.S. Department of Housing and Urban Development (“AMI”), minus allowances for tenant-paid electricity for heat, cooking and lighting, as published by the Brookline Housing Authority. The current approved maximum monthly rent is \$1,769. An affordable rental unit may not be rented to a subsequent tenant.

3. Any existing tenant of an affordable rental unit who is not qualified or who chooses not to purchase a unit shall be provided with a one time relocation allowance of \$2,500 at the time such tenant vacates the affordable rental unit in accordance with all legal requirements, and provided that at such time, the tenant is current in all rent and any charges due to the Petitioner.
4. Each affordable condominium unit shall be sold to a family that requires two bedrooms and whose combined family income is equal to or less than 100 percent of AMI.
5. Each affordable condominium unit shall be sold at a sales price established such that a three person family with an income set at 90 percent of AMI would be paying 30 percent of gross income toward mortgage, condominium fees, and ½ of the parking fee, and property taxes for a standard thirty-year mortgage at 95 percent of sales price at a current interest rate but in no case set at less than 8 percent.
6. Each purchaser of an affordable condominium unit shall sign a Declaration of Restrictive Covenant and a Mortgage as provided by the Town, which documents shall be recorded in the chain of title for such unit. Such documents shall not burden any other condominium unit at the property.
7. The Town shall be responsible for determining the eligibility of buyers. Should one or more existing tenants of the affordable rental units fail to qualify or otherwise decide not to purchase an affordable condominium unit, then the Petitioner shall pay for the Town’s

public newspaper advertising, and the Town shall accept applications, determine eligibility, hold a lottery, and refer to the Petitioner, one approved, bankable buyer for each available affordable condominium unit. The deposit required from any such prospective buyer upon the signing of a purchase and sales agreement shall not exceed \$2,000.

8. Each affordable condominium unit shall be sold with the right to utilize one parking space, subject to the payment of all applicable fees under the condominium documents.
9. The Petitioner shall provide for approval by the Town, condominium documents which provide notice of the presence of the affordable condominium units, ensure that the beneficial interest is calculated so that the affordable condominium units are affordable as defined in No. 5 above, and ensure that the rights afforded affordable condominium units and the owners thereof are consistent with those afforded the owners of market rate units.
10. The affordable condominium units shall not be conveyed until their condition is approved by the Director. The appliances and finishes in such units shall conform with those provided in comparable market rate units unless substitutes are approved by the Director.
11. At the initial conveyance of each of the affordable condominium units, the Petitioner shall make a deposit of \$12,500 into an Affordable Housing Reserve Escrow Account of the Longwood Towers Condominium Trust, which funds shall be made available, based upon approval of the Trustees of Longwood Towers Condominium Trust and the Director, to pay for special assessments associated with the affordable condominium units that exceed one month's common charges in any calendar year. The Director's approval shall relate solely to ensuring that the special assessments charged against the affordable condominium units are consistent with the beneficial interests assigned to such

units under the condominium documents. The escrow arrangements will be memorialized in an agreement to be approved by Town Counsel and signed by the Director.

12. The Director shall sign documentation provided by the Petitioner, certifying that any or all of the conditions herewith have been fulfilled. Upon the sale of the affordable condominium units in conformance with these conditions, the Director shall, upon the Petitioner's request, provide a Certificate of Compliance stating that the Petitioner has fulfilled all of its obligations with respect to the affordable condominium units.
13. This Modification of the Special Permit shall be recorded in the chain of title for the property. This Modification with respect to Condition 1 of Case No. 3318 and 3318C relating to the Affordable Rental Units, shall bind only the owner(s) of the affordable condominium units. The obligations under this Modification with respect to Condition 1 shall vest in the owner of those units, and not in any other unit owner, the Condominium Trust, or the Trustees of the Condominium Trust.
14. This Modification with regard to the existing affordable rental units at 20 Chapel Street shall in no way affect the obligation of the owner of the property at 1470 Beacon Street to continue to provide the affordable units required under the Affordable Housing Agreement Relative to Town of Brookline Zoning Board of Appeals Decision and Special Permit Case 3318C, recorded at the Norfolk County Registry of Deeds in Book 14519, Page 179. Said agreement shall be deemed superseded in its entirety with respect to the property known as 20 Chapel Street by this Special Permit, but shall remain in full force and effect with respect to the property known as 1470 Beacon Street.

15. The garage at the property shall have a capacity up to 259 vehicles in a combination of self-parked and tandem (valet) parked spaces.
16. The Petitioner shall provide adequate staffing of the valet services at all times and maintain twenty-four hour valet operation at the Longwood Towers garage. Longwood Towers residents shall be given priority for access to the garage (subject to any Owner restrictions on multiple spaces).

Unanimous Decision of the Board of Appeal

Twenty days have elapsed and no appeal has been filed.



 Diane R. Gordon

A True Copy:
 ATTEST:



Patrick J. Ward
 Town Clerk

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 TOWN OF BROOKLINE
 TOWN CLERK
 2006 SEP 15 A 9:28

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Filing Date: September 15, 2006

A True Copy:
 ATTEST:



Patrick J. Ward