

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, MARCH 13, 2012

Present: Ald. Hess-Mahan (Chairman), Ald. Albright, Merrill, Laredo, Harney, Fischman; and Schwartz; absent: Ald. Crossley

City staff: Derek Valentine (Senior Planner), Ouida Young (Associate City Solicitor), and Linda Finucane (Assistant Clerk of the Board)

#42-12 BLOOMINGDALE'S DEPARTMENT STORES, INC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL for a 5-YEAR permit for a temporary tent to hold an ANNUAL rug sale in May and the temporary displacement of approximately 90 parking spaces and associated waiver for the event at 175 BOYLSTON STREET, Ward 7, CHESTNUT HILL. REF: Sec. 30-24, 30-23, 30-11(d)(10), 30-19(m) of the City of Newton Rev. Zoning Ord., 2007.

ACTION: HEARING CLOSED; APPROVED 6-0 (Schwartz not voting) DRAFT BOARD ORDER ATTACHED.

NOTE: The public hearing at which there was no public comment was opened and closed. Joanne Azar, Assistant Store Manager of Operations, represented Bloomindale's which is seeking permission pursuant to Section 30-11(d)(10) to hold its annual outdoor rug sale and pursuant to 30-19(m) to temporarily remove approximately 90 parking spaces in order to erect the tent in which to hold it. Bloomingdale's has been granted permission from the Board of Aldermen to hold this event since 1996. Initially the permit was granted annually, but since there was no substantial change year-to-year, at the suggestion of the Land Use Committee, in 1998 the petitioner requested a five-year permit, which the petitioner did ask for and was granted in 1999. Originally, the sale was held in late August, traditionally a slow retail period, but other retailers began to hold sales at that time as well and in 2007 Bloomingdale's petitioned and was granted permission to hold it during the last two weeks in May through Memorial Day, another slow retail period. The tent will temporarily displace 81 existing parking spaces.

The City has not received any complaints resulting from the tent sale. Alderman Albright suggested and the Committee was amenable to granting a ten-year permit; however, Ms. Young pointed out that the petition requested and was advertised for a five-year period. Ald. Albright moved approval of the five-year permit finding there is sufficient parking to accommodate the special event sale because it occurs at a time when parking demand is low and that there is no substantial change anticipated re the special event. The Committee included a condition that if the petitioner seeks to continue the tent sale beyond five years, it will conduct a parking demand survey during the event of May 2016 and the survey will be submitted with the re-application for continued tent sales. Alderman Albright motion carried 6-0, with Alderman Schwartz not voting.

#43-12 GRACE CONNELLY petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE to construct an attached garage and two-story addition, increasing the Floor Area Ratio to .48 where .40 is allowed by-right, at 1841 COMMONWEALTH AVENUE, Ward 4, Auburndale, on land known as SBL 43, 4, 2, containing approximately 8,475 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-15(u)(2), 30-21(b) of the City of Newton Rev Zoning Ord, 2007.

ACTION: HEARING CLOSED; APPROVED 7-0

NOTE: The public hearing was opened and closed this evening. The petitioner wishes to demolish an existing one-car detached garage and construct a single-car attached garage on the westerly side of the site and construct a two-story addition partially located within a nonconforming setback, with a deck off the rear over the existing screen porch on the easterly side of the site. Relief is necessary to extend a nonconforming structure relative to the side setback and to allow a Floor Area Ratio of .48 where .40 is allowed by right. There is no proposed increase in height.

The petitioner and her family have lived here for ten years. The one-car detached garage is dilapidated, the existing screen porch is in poor condition, the kitchen is small, there is no first-floor bathroom and the children's upstairs bedrooms are small. The existing garage is at the rear of the site in the northwest corner. There is a long paved driveway and a large area of paving, which the petitioner proposes to remove and grass over. The petitioner wishes to create with input from here neighbors an open backyard that can be enjoyed by all.

Architect Carl Oldenburg said the design of attached garage and the addition is sympathetic to the existing house. There is little change proposed to the front of the house; some of the detail will be recreated in the rear. The Historical Commission reviewed and approved the proposal. The existing screen porch, which is 6" from the easterly property line, will be rebuilt with the proposed addition above it.

There were two speakers:

John Betsy, 1845 Commonwealth Avenue, the abutter to the easterly side of the property, where the proposed garage will be sited, fully supports the petition.

Beth Doran, 1807 Commonwealth Avenue, fully endorses the plan.

When asked about the owner of 45 Brae Burn Road, which is the abutter most affected. The petitioner said she had shown him the plans and he had no problem. It was noted that although the petitioner's screen porch and proposed addition is within 6" of that owner's property line, it abuts a large backyard because the house fronts on Brae Burn Road. There is also an existing stockade fence along the property line.

In working session, the Chairman noted the odd shape of the lot, which he likened to a dog's leg. There was some discussion about the old FAR v. the new FAR. The Committee agreed it is difficult to compare because under the new rules different things are included in the calculations and it is almost impossible to do comparable FAR's.

In response to a question about the side setback on the westerly side Mr. Valentine said the existing setback is 18'4" and the proposed setback if the attached garage is constructed will be 8'4", where 7'5" is required.

Alderman Harney, who is familiar with the house, complimented the petitioner on the work she has done since purchasing it, and moved approval of the petition finding that the proposed setback will be minimally visible to abutters and from the street; the property complies with lot coverage and open space and that the petitioner is increasing the amount of open space by removing the detached garage and paving at the rear; it is consistent with the *2007 Comprehensive Plan* in meeting the needs of today's families by allowing the current residents to remain in their home.

#56-12 ONE WELLS AVENUE LIMITED PARTNERSHIP requesting an amendment to the 1968 Wells Avenue restrictive covenant to allow a graduate school of professional psychology - a non-profit use – to be operated by the Massachusetts School of Professional Psychology to locate in an existing building at One Wells Avenue. *Note: Public Hearing not required.*

ACTION: APPROVED 6-0 (Laredo Recused)

NOTE: This is a request to amend a restrictive covenant which was put into place instead of standard zoning controls for what is now known as the Wells Avenue Office Park. This type of zoning control through land restriction instead of standard zoning controls was not uncommon, but is the only such instance in Newton. As part of the original development agreement, the City purchased approximately 30 acres adjacent to the Charles River to create open space and protect the river. Amending the deed restriction, unlike a special permit, requires a simple majority vote and it requires the Mayor's approval.

This evening, Bill Cronin from Newton England Development (NED) and Attorneys John Twohig and Tim Sullivan from Goulston & Storrs represented the owner NED and its tenant Massachusetts School of Professional Psychology (a brief synopsis distributed by Mr. Twohig is attached). The uses allowed at Wells Avenue, which mimic Limited Manufacturing uses, are somewhat outdated and do not include non-profit uses. Mr. Twohig said NED is very excited about this tenancy. One Wells Avenue, the tenth largest taxpayer in the City, has had a 60% vacancy rate. Filed with the Planning Department on a parallel course is a request for Administrative Site Plan Review which is required to locate Dover protected non-profit educational uses in all districts. Mr. Twohig explained that 558 students will not all be on-site at the same time. Students have staggered on-campus hours coupled with off-campus clinics. The number of students on-campus everyday varies; as does the number of students in the morning, afternoon, and evening. There was some discussion about traffic, for which a study was submitted with the application for Administrative Site Plan Review. The Committee felt that the traffic is self-contained in the office park, and that traffic issues outside the office park are regional issues.

Alderman Fischman moved approval of the amendment to the deed restriction to allow a non-profit educational use to locate at One Wells Avenue, which motion carried 6-0, with Alderman Laredo recused.

The meeting was adjourned at approximately 9:00 PM.

Respectfully submitted,

Ted Hess-Mahan, Chairman

CITY OF NEWTON
IN BOARD OF ALDERMEN

March 19, 2012

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT/SITE PLAN APPROVAL for a temporary open-air business and a temporary parking waiver of 153 parking stalls is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor, through its Chairman, Alderman Ted Hess-Mahan:

1. The Board finds that based on prior experience, the temporary waiver of 153 parking stalls to allow for the operation of an outdoor sales event (rug sale) should have no adverse impact on the surrounding neighborhood, and
2. The Board finds that literal compliance with the City's parking regulations is impractical due to the short-term temporary nature of the sale and based on the submitted parking survey, conducted during the 2011 event, which was held at a comparable period of time using a similarly- sized tent, there should be sufficient remaining parking available on-site to meet the demand during the outdoor sales event.

PETITION NUMBER: #42-12

PETITIONER: Bloomingdale's Department Stores, Inc.

LOCATION: 175 Boylston Street, Chestnut Hill, Section 65, Block 8, Lot 99

OWNER: Bloomingdale's Department Stores, Inc.

ADDRESS OF OWNER: 225 Boylston Street
Chestnut Hill, MA

TO BE USED FOR: An annual open air sales event of not more than 15 days in duration which is to occur generally during the two weeks leading up to and including Memorial Day, and which will

require a temporary waiver of 153 parking spaces.

CONSTRUCTION:

Temporary tent approx. 82 ft. x 246 ft.

EXPLANATORY NOTE:

Section 30-11(d)(10) allows that Board of Aldermen to grant a special permit for a temporary open air business; and Section 30-19(m) allows the Board of Aldermen to grant a special permit to temporarily waive 153 required parking stalls during operation of the temporary open-air business

Land referred to is in a Business 1 District.

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features shall be located and constructed consistent with a concept plan shown in the report of the Newton Department of Planning and Development, submitted with a previous application, Board Order #193-96 and re-filed with this application, on file with the City Clerk.
2. The approval of this special permit for a temporary open air business and the temporary waiver of 153 parking spaces for the erection of the tent during the rug event is valid for five (5) years, and shall be allowed to continue to be held during the same general time period over the next five years, at the discretion of the Commissioner of Inspectional Services and the Director of the Department of Planning and Development. The petitioner must file a letter stating its intent to erect the sale tent and the dates of the sale with the Commissioner and Director no later than six months prior to the proposed start date of the tent sale.
3. This Board Order shall expire five (5) years from the date of approval.
4. The use of the temporary tent is allowed for not more than 15 days, for a period generally two weeks leading up to and including Memorial Day.
5. The temporary tent shall displace no more than 81 parking spaces.
6. If the petitioner intends to seek permission to hold the event in 2017, the petitioner shall conduct a parking demand survey during the May 2016 event. The parking demand survey shall take place during at least three full days, and shall include at least one day over the Memorial Day Holiday weekend. The petitioners should provide a scope of the proposed parking demand survey, including the dates, area of the parking facility that is proposed to be included in the survey, and manner in which the survey will be conducted to the Director of Planning and Development at least two weeks prior to beginning the May 2016 study, for review and approval. A copy of the completed parking demand survey shall be filed with the petitioner's application for a special permit for a 2017 event.

7. No building permit shall be issued pursuant to this SPECIAL PERMIT/SITE PLAN APPROVAL until:
 - a. The petitioner shall have submitted information and details on the proposed tent, including materials and location, for review and approval by the Fire Department.
 - b. The petitioner shall have complied with all State Building Code requirements for temporary structures.
 - c. The petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a Certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL.
 - d. A certified copy of such recorded notices shall have been filed with the City Clerk, the Inspectional Services Department, City Engineer, and the Director of Planning and Development.

CITY OF NEWTON
IN BOARD OF ALDERMEN

March 19, 2012

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, hereby grants the following SPECIAL PERMIT/SITE PLAN APPROVAL to extend a nonconforming structure in the side setback and to increase the FAR, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Ted Hess-Mahan.

The Board finds that:

1. The expansion of a nonconforming structure with respect to side setback and an increase in FAR from .34 to .48, where .40 is allowed by right, will not be substantially more detrimental to the neighborhood for the following reasons:
 - a. The proposed addition in the setback will be minimally visible to abutters and as viewed from the street; the property complies with dimensional standards for lot coverage and open space.
 - b. The petitioner is increasing the amount of open space on site by removing the existing detached garage and paving at the back of the site.
 - c. The proposed additions are consistent with the *Comprehensive Plan* as they will help meet the housing needs of today's families by allowing the current residents to continue to reside in the house while preserving the character of the neighborhood.

PETITION NUMBER: #43-12

PETITIONER: Grace Connelly

LOCATION: 1841 Commonwealth Avenue, Ward 4, on land known as Sec 43, Blk 4, Lot 2, containing approx. 8,475 sf of land

OWNER: Grace Connelly

ADDRESS OF OWNER: 1841 Commonwealth Avenue, Auburndale, MA

TO BE USED FOR: Attached garage and two-story addition

CONSTRUCTION: Wood-frame

EXPLANATORY NOTE: Section 30-21(b) to allow the extension of a nonconforming structure with regard to side setback; and Section 30-15(u)(2) to allow an FAR of .48 where .4 is allowed.

ZONING: Single-Residence 2 District.

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the following plans :
 - Architectural plans, not signed or stamped but prepared by Carl C. Oldenburg, Architect, dated 6/1/11 and revised 1/24/12 and consisting of the following sheets:
 - X-1: Site plan
 - A-3: Front Elevation
 - A-4: Left Elevation
 - A-5: Rear Elevation
 - A-6: Right Elevation
 - Certified Plot Plan, signed and stamped by Kevin W. Hinds, Surveyor, dated 2/23/04
 - Proposed plot plan, unsigned and unstamped, by Kevin W. Hinds, Surveyor, dated 7/15/11
2. No building permit shall be issued pursuant to this SPECIAL PERMIT/SITE PLAN APPROVAL until the petitioner has:
 - a. Recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL.
 - b. Filed a certified copy of such recorded notices with the Clerk of the Board, Inspectional Services and the Department of Planning and Development.
 - c. Submitted a plan for review and approval to the Department of Planning and Development and the Engineering Division of the Department of Public Works, in accordance with Condition #2.

3. No portion of the building pursuant to this SPECIAL PERMIT and SITE PLAN APPROVAL shall be occupied until the petitioner has:
 - a. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development, a statement by a registered architect or surveyor certifying compliance with Condition #1.

ONE WELLS AVENUE

Request to Amend City Deed Restriction

Land Use Committee – March 13, 2012

Introduction



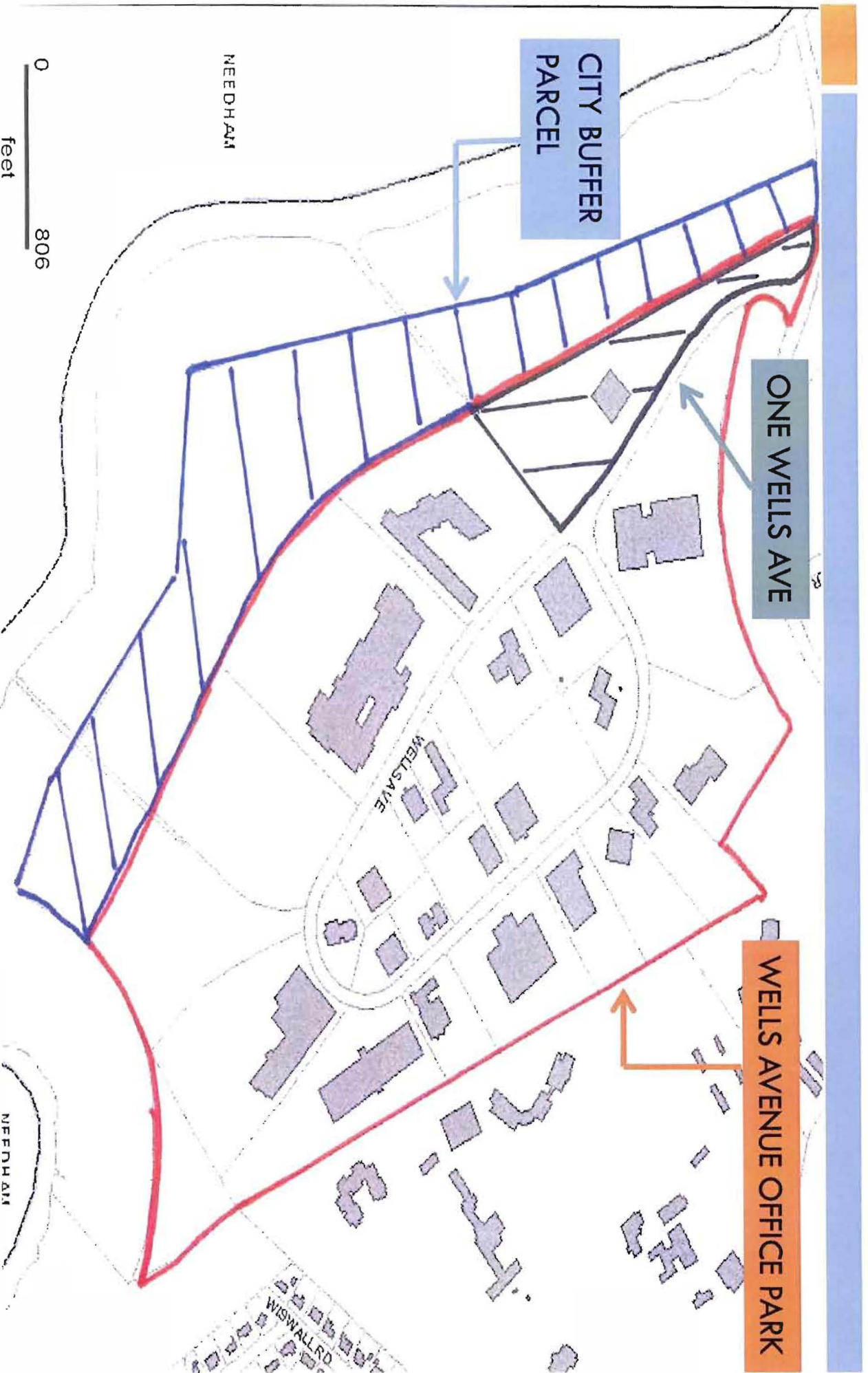
- Bill Cronin, *New England Development*
- John Twohig, *Goulston & Storrs*

Deed Restriction



- In connection with the development of the Wells Avenue Office Park, the developer and the City agreed to certain restrictions on the entire office park to effectively implement zoning on the area
- The 1968 restriction only allows certain enumerated uses

Wells Avenue Office Park



Deed Restriction

- Enumerated uses
 - Wholesale business or storage warehouse
 - Telephone central office and exchange building
 - Offices and banks
 - Carpenter or woodworking shop
 - Casting Lightweight and nonferrous metals, and spinning ferrous and nonferrous metals
 - Glass fabrication and installation
 - Laboratory, research and development
 - Machine shop, plumbing and blacksmith shop
 - Metal fabrication light
 - Molding, shaping or assembly from prepared materials
 - Optical and scientific instruments, jewelry manufacturing
 - Printing, publishing and reproduction establishments
 - Wearing apparel, fabrication and processing

Deed Restriction

- The enumerated uses in the 1968 restriction do not include non-profit educational uses
- The use restrictions implemented in 1968 are **now inconsistent with the Newton Zoning Ordinance, which allows non-profit educational uses in all districts consistent with the “Dover Amendment”**
- The deed restrictions have been amended by the City over ten times to accommodate various changes of use within the office park, including non-profit educational uses such as the Solomon Schecter School
- Each amendment has pertained only to the specific parcel changing use

One Wells Avenue – Existing Conditions



- Approximately 8 acre parcel
- 85,000 square foot, 6 story office building constructed in 1971
- Approximately 60% of the building vacant since major tenant relocated in 2011
- Opportunity to lease a majority of the building to the Massachusetts School of Professional Psychology (MSPP)

One Wells Avenue - Proposed Project

- Re-tenanting to use the building for a non-profit educational use

- MSPP Overview
 - Currently operates from two buildings in the West Roxbury and one at 225 Nevada Street in Newton

 - 558 students supported by 72 faculty and 60 employees

 - MSPP is unlike other graduate programs; students in most graduate programs spend the majority of the academic day on campus in either a classroom or research facility

 - MSPP has a unique academic structure where classroom instruction is combined with field experience, students spend a significant portion of each day off-campus at a field site and return to campus for instruction

Compliance with Zoning



- Existing office use allowed as-of-right in the Limited Manufacturing District
- Non-profit educational use allowed in all districts subject to administrative site plan only
- Administrative site plan application pending with Planning Department

Site Plan Compliance



- Interior renovations only
- No exterior building alterations
- No site alterations
- Only approximately 25 percent of students and faculty on campus at any one time:
 - ▣ Decreased peak hour traffic volumes
 - ▣ Sufficient existing parking supply – 57 spaces more than expected demand

Request for Amendment



- Respectfully request an amendment of the 1968 deed to allow the proposed non-profit educational use together with all accessory uses as are proper, usual and customary in connection therewith

CITY OF NEWTON

IN BOARD OF ALDERMEN

March 19, 2012

ORDERED:

That the Board, finding that the proposed amendment can be made without substantially derogating from the purpose for which the City of Newton was granted certain restrictions in a deed from the Trustees of the "Newton at 128 Realty Trust" to the City of Newton dated May 22, 1969 and recorded with the Middlesex South Registry of Deeds in Book 11669, Page 535, the Board hereby agrees to amend the aforesaid restrictions as follows:

PETITION NUMBER: 56-12

PETITIONER: One Wells Avenue Limited Partnership

LOCATION: One Wells Avenue; Ward 8, Section 84, Block 34. Lot 2A

OWNER: One Wells Avenue Limited Partnership

ADDRESS OF OWNER: One Wells Avenue
Newton, MA

TO BE USED FOR: Private non-profit educational use

1. That the restriction adopted by the Board Order #276-68(3) as conveyed to the City of Newton by a Deed recorded with Middlesex South District Registry of Deeds in Book 11669, Page 535 as amended by Board Order nos. 189-72(2), 189-72(3), 734-72, 414-73, 591-76(2), 417-80, 71-87, 282-91, 469-93, 428-01, 38-03(2), 324-06(2) and 325-06(2) be further amended to provide that the building may be used for a non-profit educational use and all accessory uses as are proper, usual and customary in connection with such use, as well as any other uses permitted by the aforementioned restriction, as amended.

2. That His Honor the Mayor be and hereby is authorized to execute on behalf of the City such recordable documents as may be usual, customary or necessary to give effect to the Order of the Board herein or in the prior Orders of the Board.