



ATTORNEYS AT LAW

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March 29, 2023

Via Electronic Mail

Town of Belmont
Zoning Board of Appeals
c/o Gabriel Distler
Homer Municipal Building
19 Moore Street
Belmont, MA 02478
gdistler@belmont-ma.gov

RE: Opposition to Application For A Special Permit 23-09: 147-151 Belmont Street

Dear Honorable Board Members:

Please be advised that this office represents the interests of Steven Kapsalis, individually and as Trustee of the Three Oxford Avenue Condominium, owners of the properties located at 3 Oxford Avenue and 5 Oxford Avenue in Belmont, Massachusetts ("Mr. Kapsalis"). Kindly accept this letter as Mr. Kapsalis's opposition to above-referenced application for special permit submitted by Ms. Nune Khachatryan ("Ms. Khachatryan") for the reasons discussed more fully below.

Mr. Kapsalis respectfully requests this Board deny Ms. Khachatryan's application for a special permit because the proposed plot plan and the location of the proposed driveway as presented encroaches upon Mr. Kapsalis's property. More specifically, the "BRICK" beyond the existing 6-foot fence on Ms. Khachatryan's proposed plot plan, which happens to be the proposed location of an additional parking spot, is actually property owned by Mr. Kapsalis, and not Ms. Khachatryan. For ease of reference, please see the highlighted area on Ms. Khachatryan's proposed plot plan that is enclosed with this letter.

Mr. Kapsalis owns Lot 220 which is the northerly abutting neighbor to 147-151 Belmont Street. Mr. Kapsalis has owned 3 Oxford Avenue since 1973. At the time Mr. Kapsalis purchased 3 Oxford Avenue, there was a fence located in between his property and 147-151 Belmont Avenue, now owned by Ms. Khachatryan. Since Mr. Kapsalis's purchase of 3 Oxford Avenue in 1973, he has been using the fence and the area on the northerly side of the fence (identified as "BRICK" on Ms. Khachatryan's proposed plot plan) openly, notoriously, exclusively, adversely and continuously to the interests of Ms. Khachatryan and her predecessors-in-interest (hereinafter, the "Adversely Possessed Area"). As a result, Mr. Kapsalis has acquired title to the Adversely Possessed Area by adverse possession.

Massachusetts case law is clear. Adverse possession does not require that the adverse possessor “proactively seek out a judicial determination that their adverse possession claims has ripened.” Wolpe v. Haney as trustee of SN Trust, WL 5090528, at *14 (Mass. Land Ct. Oct. 10, 2019). Once the statutory period for adverse possession has run, the adverse possessor becomes the lawful, actual possessor and the new “real owner” of the property. Owens v. Buccheri, 89 Mass.App.Ct. 1115 (2016). Therefore, Mr. Kapsalis has been the rightful owner of the Adversely Possessed Area for many years—property that Ms. Khachatryan now claims that she can trespass on to develop parking spots for her proposed driveway.

In September 2022, Mr. Kapsalis filed suit in the Massachusetts Land Court in order to obtain recordable, quit title to the Adversely Possessed Area. The pending matter is *Steven Kapsalis, Individually and as Trustee of the Three Oxford Avenue Condominium v. Nune Khachatryan*, Land Court Docket Number: 2282CV00776.

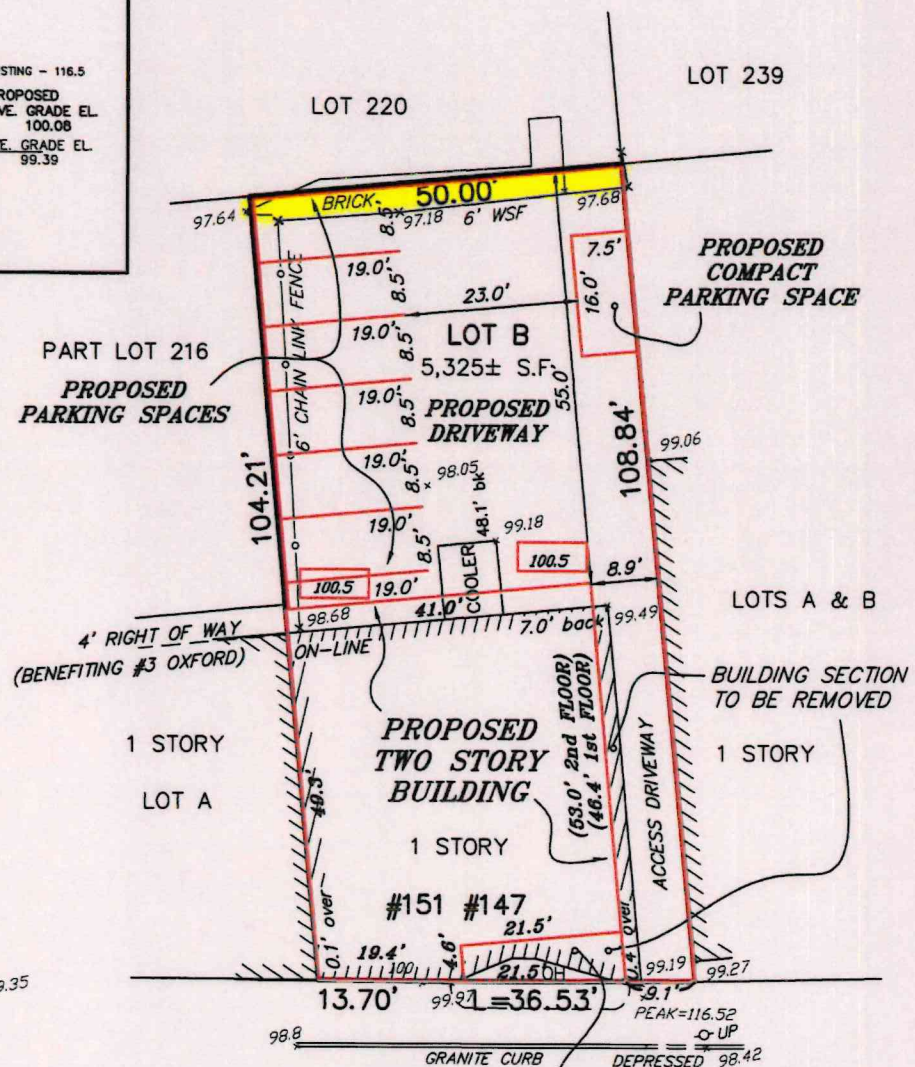
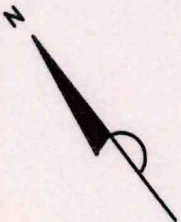
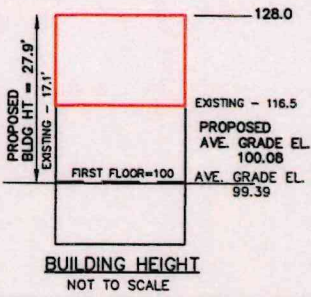
Additionally, in further opposition Ms. Khachatryan’s application for special permit, Mr. Kapsalis has substantial concerns that the proposed mixed-used premise, the excessive lot coverage, and the new use of a proposed driveway fitting seven (7) parking spots into the rear of the premises will cause undue disruption to Mr. Kapsalis’s and other residential owners’ quiet enjoyment of their respective premises.

For these reasons, Mr. Kapsalis respectfully requests this Board deny Ms. Khachatryan’s application for a special permit. Thank you for your time and consideration of this important matter.

Very truly yours,

Patrick J. Heffernan

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100.5 - PROPOSED ELEVATION

BELMONT STREET

**PROPOSED
SECOND
STORY ONLY**

THE PROPERTY IS NOT LOCATED WITHIN WETLANDS AS SHOWN ON THE TOWN OF BELMONT WETLANDS ATLAS.

| | | | |
|-----------------------|-----------------------------|---------------|-------|
| ZONING DISTRICT: | LB III (LOCAL BUSINESS III) | | |
| FRONT SETBACK: | 10' | REQ. EXISTING | PROP. |
| SIDE SETBACK: | 0' | 0.1' OVER | - |
| REAR SETBACK: | 20' | 48.1' | 55.0' |
| MAXIMUM LOT COVERAGE: | 35% | 39.5% | 39.3% |
| MINIMUM OPEN SPACE: | - | 60.4% | 0% |
| LOT FRONTAGE: | 20.00' | 50.24' | |

OWNER: NUNE KHACHATRIAN
80458/503
ASSESSORS MAP 1 - PARCEL 38G

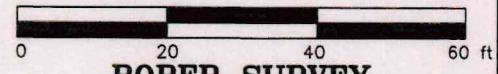
TOTAL LOT AREA: 5,325± S.F.



Scott Lynch
SCOTT LYNCH, PLS DATE 8/12/2022

**PROPOSED PLOT PLAN
#147-151 BELMONT STREET
IN
BELMONT, MA
(MIDDLESEX COUNTY)**

SCALE: 1" = 20' DATE: 8/12/2022



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