

**TOWN OF BELMONT  
ZONING BOARD OF APPEALS**

2025 FEB 13 AM 10: 01

**CASE NO.** 25-03

**PETITIONERS** Traci Doherty, Katrin Duevel, Deborah Galli, Daniel W. Halston, Blanca Lain, David Otte, Jane Otte, Sharad Ramanathan, Huang Chi-Ting and Liliane R. Wong

**PROPERTY** 2 Myrtle Street

**DATE OF PUBLIC HEARING** February 3, 2025

**MEMBERS SITTING** Casey Williams, Chair  
David Stiff  
Teresa MacNutt  
Daniel Barry  
Alexandra Danahy

**MEMBERS VOTING** Casey Williams  
David Stiff  
Teresa MacNutt  
Dan Barry  
Alexandra Danahy

**Introduction**

Pursuant to M.G.L. c. 40A, § 15, this matter came before the Board of Appeals (“Board”) of the Town of Belmont, Massachusetts (“Town”) to consider an appeal by Traci Doherty, Katrin Duevel, Deborah Galli, Daniel W. Halston, Blanca Lain, David Otte, Jane Otte, Sharad Ramanathan, Huang Chi-Ting and Liliane R. Wong to invalidate a building permit issued by-right by the Inspector of Buildings on December 2, 2024, permit number BP-24-964, to construct a second story and a two story addition at 2 Myrtle Street (previously 278 Concord Ave.) located in a single Residence C (SRC) zoning district.

**Proposal**

Petitioners are appealing the decision made by the Inspector of Buildings, acting as the Zoning Enforcement Officer per Section 7.1.1 of the Belmont Zoning By-law (“By-Law”), to issue building permit number BP-24-964 on December 2, 2024, to construct a second story and a two story addition at 2 Myrtle Street (previously 278 Concord Ave.) located in a single Residence C (SRC) zoning district.

**Documents related to this case presented to the Board:**

1. Notice of Appeal filed with Town Clerk’s office dated December 11, 2024.

**The Appeal**

The Board held a duly noticed hearing on the application on February 3, 2025. Public comment was closed and deliberations were held that same day.

At the Board meeting Mr. Daniel W. Halston, a direct abutter, made the presentation on behalf of the petitioners. He explained that, there is no direct abutter in support of this project, that the proposed construction is not in scale with the neighborhood, that the proposed construction requires a variance which cannot be obtained, and that the proposed construction would have a detrimental impact on the neighborhood because of its density, the loss of views and light to adjacent homes, and its disharmonious design. Mr. Halston added that the original house and any protected nonconformities had been abandoned due to lack of use under Chapter 40A, the By-law, or a common-law test. He noted the

original house had been abandoned for 18 years, that racoons had moved in, the original house had been used to store electronics visible through windows because interior lights were left on, and the house was not maintained. Mr. Halston said he, himself, removed snow from the sidewalks in front of this house, and when it went on the market, it was listed 'as is'. He asserted that the lot the original house rests on is nonconforming. He referenced the precedents of the legal cases of *Gomes v. Collins* and *Bransford v. ZBA, Edgartown* and referenced By-law §1.5.6 which calls for the removal of nonconformities. The proposed construction would be within 12' of his house. He also added that the proposed construction will result 5,000 square feet of habitable space, which in his opinion will be too tall, will block sunlight to adjacent homes and solar panels, result in drainage issues, increase public safety risks, is not in keeping with the neighborhood and would amount to a mansion. He mentioned that the developer never approached the neighbors to discuss the project and that any protections available to nonconforming structures have been abandoned.

Mr. Charles Lightner, 75 North Beacon Street, Watertown, MA, attorney representing the owners of 2 Myrtle Street, 278 Concord Ave. LLC, made the presentation on behalf of the owners. Mr. Lightner said that the building permit was issued by-right and that no special permit or variance is needed. The intent is to use the newly renovated structure as a single-family residence. Mr. Lightner explained that 'abandonment' is not defined in Town of Belmont bylaw and that there was no order from the Board of Health. Had it been necessary, the Town of Belmont could have taken over the house; the Town did not. He added that all bills were consistently paid, including real estate taxes, and that the original house is still standing, and that as John Forrester, the original owner, is no longer alive, his intent cannot be known. He said that the current owner purchased the property with the expectation of being able to renovate the existing single-family home, and clarified that the measure of 5,000 square feet of habitable space area includes the basement. Without the basement, the Gross Floor Area of the proposed construction is expected to be approximately 3,000 square feet, in harmony with other structures in the neighborhood.

Chair Williams opened the meeting for public comments.

Liliane Wong, resident at 10 Myrtle Street; David Harman, 38 Myrtle Street; Blanca Lain, 23 Myrtle Street; William Heach, 4 Cottage Street; Traci Doherty, 3 Myrtle Street; Sharad Ramanathan, 41 Myrtle Street; and David Otte, 9 Myrtle Street spoke in opposition to the project. Their concerns were:

- The project is not a reuse of the existing house, and feels like new construction, since so much of the existing building has been removed and because of the addition.
- The project will result in 350% larger structure than the original house.
- The project is out of proportion with the remainder of the neighborhood and is a "horror."
- With six bedrooms and five bathrooms, the project is too massive.
- The project will result in an increased footprint, and could impact the local water table and create drainage issue.
- There are many other large construction projects in the neighborhood.
- No one has occupied the house for many years or maintained the home's shrubbery, which sometimes hung over the sidewalk.
- The proposed would be out of place and scale. The grounds were not maintained over time. The previous owner stored literature and electronic equipment in the house, and came and went at odd hours.
- The project will cast shadows on the solar panels on abutting properties.

After these public comments were received, Chair Ms. Williams closed the public comments portion of the meeting and ask Board members to begin deliberations.

Ms. Williams explained to Board members that their decision should be based on whether there is evidence of abandonment by the previous owner, rather than 'disuse', which is legally different. She also added that it was best to address questions to Town Council for clarification rather than to Mr. Yagurtian.

Mr. Stiff sought clarification of what 'non-conforming use' in By-law §1.5.6 means. Mr. Kominers said that uses and structures are distinct in zoning; a zoning bylaw may provide for either protected use or structural nonconformities, both, or neither to be lost by disuse. The By-law provides for only protected use nonconformities to be lost by disuse. He added that none of the nonconformities in this case are use

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nonconformities: insufficient setback and lot size are structural nonconformities, and the setback nonconformities would be cured with the proposed construction and that the proposed use as a single-family home is conforming.

Mr. Barry questioned whether intent to abandon the structure could be established without demolition of the structure. Mr. Kominers said that findings of abandonment without direct evidence of abandonment typically occur when the structures are not standing or have deteriorated to a similar point.

Ms. Danahy asked how paying taxes factors into the question of abandonment. Mr. Kominers said that it offers some, limited, evidence and added that, per Mr. Yogurtian, utilities were paid as well.

Ms. Williams said that taxes and utilities were both current and that the Building Inspector reviews this before issuing a building permit.

The floor was given to Mr. Halston, who said that the house was not maintained because the prior owner moved out of the house, that he believes the lapse of time is enough to trigger abandonment under the common-law abandonment test, and that the prior owner used his house as a storage facility, not as a residence.

Mr. Stiff asked whether the proposed construction is a renovation of the existing structure or if it would be considered entirely new. Mr. Kominers responded that it was likely not relevant under the bylaw's provisions for protected nonconforming structures. Ms. Williams added that the central question is abandonment.

Ms. Danahy inquired if the clock for abandonment would reset with a change in ownership, which Mr. Kominers disaffirmed.

Mr. Barry explained that if the existing nonconformity latitude does apply to the question of abandonment, then this proposed project could be approved.

The Board agreed that the key consideration is whether the structure has been abandoned of structure and that abandonment does not seem to have occurred, because the existing building was not demolished and is still standing, and other sufficient evidence that the previous owner intended to abandon the structure was not presented.

### **Decision**

**Accordingly, upon motion duly made by Chair Ms. Williams, to deny the parishioners' application to invalidate the building permit issued by right by the Inspector of Buildings issued on December 2, 2024, permit number BP-24-964, to construct a second story and a 2 story addition at 2 Myrtle Street, (previously 278 Concord Ave.) located in a Single Residence C zoning district, and seconded by Mr. Barry, the Board voted 5 in favor of the denial and 0 opposed. The request from the petitioners to invalidate the permit issued by right was denied.**

For the Board,

  
Ara Yogurtian  
Inspector of Buildings  
Office of Planning & Building

Date: February 13, 2025