



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459  
617-796-1120

Petition: #224-25  
Public Hearing:  
8/19/25

Barney Heath  
Director

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## PUBLIC HEARING MEMORANDUM

DATE: August 15, 2025

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Cat Kemmett, Deputy Chief Planner for Current Planning

SUBJECT: **Petition #224-25** for SPECIAL PERMIT/SITE PLAN APPROVAL to exceed FAR

APPLICATION RECORD: <https://newtonma.viewpointcloud.com/records/882722>

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



**25 Freeman Street**

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I. Project Description

**Use:** Single family dwelling

**Zoning:** Single-residence 3 (SR3)

**Lot size:** 11,821 square feet

**Existing nonconformities:**

- Frontage of 60 feet where 70 feet is required
- Reduced front and side setbacks

**Proposal:** In 2006 the petitioner was granted a variance which allowed the construction of an attached garage with a reduced side setback of 3.9 feet where 7.5 feet is required. The Zoning Board of Appeals determined at that time that the narrow lot necessitated the location of the garage within the setback to accommodate the turning radius required for a wheelchair-accessible van that one of the homeowners requires.

The petitioner now seeks to create a second story addition over the garage to accommodate a new accessory dwelling unit (ADU) in the space over the garage. The project as designed requires both a special permit and an amendment to an existing variance for exceptions to the Zoning Ordinance. The proposed additions will decrease the existing 3.9-foot side setback to 3.6 feet and extend it vertically. The relief for the reduced setback was granted by the Zoning Board of Appeals on July 16, 2025. In addition to the amendment to the variance, special permit relief is also required to exceed the maximum FAR, which will increase from .32 to .43, where up to .40 is allowed by right.

**Analysis:** In their decision to grant the further reduction of the side setback, the Zoning Board of Appeals found that the amendment to the variance met the threshold to consider under reasonable accommodation because the exception was requested due to a disability. The petitioner is seeking special permit relief to facilitate construction of an ADU which will provide housing for a caregiver to provide live-in care for a current resident with a disability.

In following the Zoning Board of Appeals decision, staff believe this request meets the threshold for approval when evaluated as a reasonable accommodation request, and the Planning Department is supportive of the request to allow an increase in FAR. Though the footprint of the building will increase by 237 square feet, most of the new habitable space will be contained within the existing footprint of the structure. The addition will be located at the rear and will have minimal visibility when viewed from the public way, and the design appears to complement the existing building. It will not appear out of context with the surrounding neighborhood. The Planning Department believes the addition has been designed to minimize zoning relief under the special permit process while allowing for site changes necessary to make the house accessible.

II. Zoning Relief Requested:

Zoning Relief Required		
Ordinance		Action Required
§3.1.3	Request to amend Variance #3-06 to further reduce the side setback	Variance per §7.6
§3.1.3 §3.1.9	Request to exceed FAR (Special Permit)	S.P. per §7.3.3

For more details around the zoning analysis please refer to **ATTACHMENT A**.

III. Criteria for Consideration per §7.8.2.C.2:

- The specific site is an appropriate location for the proposed addition as designed. (§7.3.3.C.1)
- The proposed addition as designed will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians created by addition. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
- The proposed increase in the FAR from .32 to .43, where up to .40 is allowed by right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.1.3, §3.1.9)

IV. Project Proposal and Site Characteristics

The property at 25 Freeman Street is a 11,821 square foot lot in Auburndale that is improved with a single-family dwelling constructed in 2006. The Zoning Board of Appeals granted a variance in 2006 to allow for a reduced side setback to construct an attached garage. The site is relatively flat and features several trees and some greenery.

The petitioner requested and was granted an amendment to their variance to allow for a second story addition over the garage. This will allow space for the construction of an ADU on the top floor of the garage. The work will increase the height of the garage from one and half stories to two stories, which requires no special permit relief. The front setback and left side setback will remain the same while the rear setback will decrease from 78.3 feet to 68 feet where 15 feet is required. The right-side setback will decrease from 3.9 feet to 3.6 feet, which was approved via an amendment to Variance #3-06 granted on July 16, 2025. **(Attachment B)**

The project also includes a 237 square foot addition to the footprint at the rear and slight expansion of the paved driveway area. The total gross floor area will increase from 3,732 square feet to 5,079 square feet. The additions will result in a higher FAR, increasing from 0.32 to 0.43, where up to 0.4

is allowed by, which requires special permit relief. No relief is required for open space, lot coverage, or building height.

V. Interdepartmental Review

Review from other departments is not required at this time.

VI. Petitioner's Responsibilities

The petition is complete.

**ATTACHMENTS:**

- ATTACHMENT A:** Zoning Review Memorandum  
**ATTACHMENT B:** Variance #01-25  
**ATTACHMENT C:** DRAFT Council Order



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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: August 7, 2025

To: Anthony Ciccariello, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Katie Whewell, Chief Planner for Current Planning

Cc: Lizbeth Heyer, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Deputy City Solicitor

RE: **Request to amend Variance #3-06 and to exceed FAR**

Applicant: Nilesch Patel	
Site: 25 Freeman Street	SBL: 41029 0013
Zoning: SR3	Lot Area: 11,821 square feet
Current use: Single-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 25 Freeman Street consists of an 11,821 square foot lot improved with a single-family dwelling constructed in 2006. A variance was granted in 2006 to allow for a reduced side setback to construct an attached 1.5 story garage. The petitioner now seeks to construct further additions to the dwelling, requiring an amendment to the 2006 variance and a special permit to exceed maximum FAR. Should the variance be granted, the petitioner will need to apply for a subsequent special permit for the proposed construction.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared Lizbeth Heyer, applicant, dated 6/25/2025
- Plot Plan, signed and stamped by Anton Szerszunowicz, surveyor, dated 1/23/2006
- Proposed Plot Plan, signed and stamped by Anton Szerszunowicz, surveyor, dated 7/2/2025
- Floor Plans, prepared by PCA, Inc, architect, dated 6/1/2025
- FAR worksheet, signed and stamped by Laura Homich, architect, submitted 6/25/2025
- Variance #3-06, dated February 28, 2006

**ADMINISTRATIVE DETERMINATIONS:**

1. The petitioner was granted a variance in 2006 to construct an attached 1.5 story garage addition within 3.7 feet of the side lot line where 7.5 feet is required per section 3.1.3. The narrow lot necessitated the location of the garage within the setback to accommodate the turning radius required for a wheelchair-accessible van for the homeowner. The petitioner now seeks to amend the variance to allow for a second story addition over the garage, as well as a 237 square foot addition to the footprint, to accommodate construction of an accessory dwelling unit (ADU) for an additional caregiver. The proposed additions will decrease the 3.9 foot side setback allowed by the variance to 3.6 feet and extend it vertically, requiring an amendment to the variance.
2. The dwelling has an existing FAR of .32. The proposed additions of 1,347 square feet increase the FAR to .43 where .40 is the maximum allowed per sections 3.1.3 and 3.1.9. A special permit to exceed FAR is required.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	11,821 square feet	No change
Frontage	70 feet	<b>60 feet</b>	<b>No change</b>
Setbacks			
• Front	25 feet	<b>&lt;25 feet</b>	<b>No change</b>
• Side	25 feet	14 feet	No change
• Side	3.9 feet*	3.9 feet	<b>3.6 feet**</b>
• Rear	15 feet	78.3 feet	68 feet
Height	36 feet	25 feet	No change
Stories	2.5	2	No change
FAR	.40	.32	<b>.43*</b>
Max Lot Coverage	30%	21.3%	23.7%
Min. Open Space	50%	60.6%	55.3%

**BOLD** indicates a nonconformity

\*Allowed by Variance #3-06

\*\*Requires relief

3. See "Zoning Relief Summary" below:

Zoning Relief Required		
Ordinance		Action Required
§3.1.3	Request to amend Variance #3-06 to further reduce the side setback	Variance per §7.6
§3.1.3 §3.1.9	Request to exceed FAR (Special Permit)	S.P. per §7.3.3



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# CITY OF NEWTON, MASSACHUSETTS

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Newton City Clerk

2025 JUL 18 AM 11:33

RECEIVED

By Brenda Belsanti, ZBA Clerk at 10:05 am, Jul 18, 2025

## ZONING BOARD OF APPEALS

Brenda Belsanti, Board Clerk

#01-25

### DETAILED RECORD OF PROCEEDING AND DECISION

Petition #01-25 Lizbeth Heyer, 25 Freeman Street, Newton, is requesting to amend variance #3-06 to alter approved plans to include a second story addition over the garage and a 237 square foot addition to the footprint to accommodate construction of an accessory dwelling unit. The subject property is located at 25 Freeman Street within a Single-Residence 2 (SR-2) zoning district and consists of a 11,821 square foot lot.

The Zoning Board of Appeals for the City of Newton (the "Board") held a public hearing via ZOOM on Wednesday, July 16, 2025, at 7:00 p.m.

Due notice of the public hearing was given by mail, postage prepaid, to all "parties in interest" in accordance with M.G.L. c. 40A, § 11 and by publication in *The Boston Herald*, a newspaper of general circulation in Newton, Massachusetts, on July 2, 2025, and July 9, 2025.

The following members of the Board were present:

Michael Rossi (Chair)  
Brooke K. Lipsitt  
Stuart Snyder  
Charles Eisenberg  
Elizabeth Sweet

The following documents were submitted to Board and/or entered into the record at the public hearing: 25 Freeman Street Variance Application, received June 27, 2025.

### THE PUBLIC HEARING

1. Petitioner Lizbeth Heyer of 25 Freeman Street, Newton is requesting to amend variance #3-06 to alter approved plans to include a second story addition over the garage and a 237 square foot addition to the footprint to accommodate construction of an accessory dwelling unit to provide an accessible living space for her husband and a live-in caregiver.
2. Lizbeth Heyer, petitioner, of 25 Freeman Street, Newton stated that her husband, Mike Fogelberg, has spinal cord injury and is confined to a wheelchair. Mr. Fogelberg's health needs have changed since the original variance was granted in 2006. They would like to build an accessible accessory dwelling unit to house the petitioner's sister who will act as a live-in caregiver to Mr. Folgelberg.

3. A motion was made by Brooke Lipsitt to close the public hearing, seconded by Stuart Snyder. The motion passed 5-0 and the public hearing was closed.
4. The Board then discussed and deliberated the merits of the petition. Board members focused their discussion on whether the petition meets the statutory standard for a reasonable accommodation and whether alternatives could be achieved without zoning relief.

### **FINDINGS, DETERMINATION & CONDITIONS**

After careful study of the materials submitted and the information presented at the public hearing, the Board makes the following findings and determination:

1. Because an exception or adjustment to a rule or policy is being requested because of a disability, the 25 Freeman Street Variance Application operates as a request for a reasonable accommodation. Under the Federal Fair Housing Act, the City has an affirmative duty to afford its disabled citizens reasonable accommodations in its municipal zoning practices if it is necessary to afford such persons equal opportunity in the use and enjoyment of their property.
2. *The housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws.* Under fair housing laws, a person with disability is defined as an individual with a physical or mental impairment that substantially limits one or more major life activities, including walking and caring for one's self. The petitioner has demonstrated that the reasonable accommodation will be used by current resident Mr. Fogelberg, who meets the definition of a person with a disability.
3. *The requested accommodation is reasonable and necessary to make housing available to an individual with disabilities protected under the fair housing laws.* Mr. Fogelberg will be unable to continue living in the house as it is currently built. To continue living at the property, Mr. Fogelberg needs an additional full-time, live-in caregiver, and a space for that caregiver to reside. The plans were designed to require as few variances from the zoning requirements as possible while providing the access and conditions necessary to allow Mr. Fogelberg to continue living at the property. The requested variance would not increase the setbacks set forth in variance #3-06, it would only increase what structures are permitted to be built within those setbacks.
4. *The requested accommodation would not impose an undue financial or administrative burden on the City, nor would it require a fundamental alteration in the nature of the City's zoning practices.* The burden to the City in granting this variance as a reasonable accommodation is no greater than that for any variance to the City's Zoning Ordinance. Additionally, there is not fundamental alteration in the nature of the City's zoning practices because the petitioner would have met two of the three elements required to grant a variance to the City's Zoning Ordinance. First, the Board previously found that the site is unique due to its narrow lot width and the location of the existing dwelling. Second, granting the variance is in harmony of the general purpose and intent of the Newton Zoning Ordinance because it does not derogate from the spirit and intent of the Newton Zoning Ordinance in that the departure from the ordinance requirements would not change the character of the surrounding area. The petitioner took steps to design the ADU in a manner that mitigates its impact on abutters and the neighborhood.

The variance will not result in a substantial detriment to either the neighborhood or the public welfare.

Accordingly, a motion was made by Brooke Lipsitt, duly seconded by Stuart Snyder, to approve the requested variance. The motion passed five in favor, none opposed. Therefore, the request for a variance is granted subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Variance shall be located and constructed consistent with the plans and documents submitted with the petitioners' variance application.
2. No building permit shall be issued pursuant to this Variance until the petitioners have:
  - a. Recorded a certified copy of the Variance with the Registry of Deeds for the Southern District of Middlesex County; and
  - b. Filed a copy of such recorded Variance with the Clerk of the Zoning Board of Appeals, the Department of Inspectional Services, and the Department of Planning and Development.
3. This Variance must be exercised within one year from the date of its filing with the City Clerk or the Variance lapses.
4. The accessible addition shall at no time be used as an accessory apartment, as defined in Section 6.7.1 of the Newton Zoning Ordinances.

AYES: Michael Rossi  
Brooke Lipsitt  
Stuart Snyder  
Charles Eisenberg  
Betsy Sweet

NAYS: None



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Michael Rossi, Chairperson

The City Clerk certified that all statutory requirements have been complied with and that 20 days have lapsed since the date of filing of this decision and no appeal, pursuant to Section 17, Chapter 40A has been filed.

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Cassidy Flynn, City Clerk

#224-25  
25 Freeman Street

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, 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, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to exceed the maximum floor area ratio (FAR) allowed by right by constructing an addition as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

FINDINGS:

1. The specific site is an appropriate location for the addition that will exceed the maximum FAR because the addition will not be visible from the street. (§7.3.3.C.1)
2. The addition that will exceed maximum FAR as developed and operated will not adversely affect the neighborhood because it is designed to fit in with the context and design of other dwellings in the neighborhood. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians created by the addition that will exceed maximum FAR because the curb cut and driveway location will be maintained. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. The proposed increase in the nonconforming FAR from .32 to .43 where .40 is the maximum allowed by right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood because the new floor area added will be in the rear of the dwelling. An exception to this rule is appropriate and reasonable because the accessory dwelling unit resulting from this increase in FAR will provide housing for a caregiver to provide live-in care for a current resident with a disability. (§3.1.3, §3.1.9)
6. Granting the requested special permit relief is a reasonable accommodation under the provisions of Title II of the Americans with Disabilities Act (ADA) so as to provide flexibility in the application of land use and zoning regulations necessary to eliminate barriers to housing opportunities individuals with disabilities.

PETITION NUMBER: #224-25

PETITIONER: Lizbeth Heyer

LOCATION: 25 Freeman Street, Ward 4, Newton, on land known as Section 41 Block 29 Lot 13, 11,821 sq. ft. of land

OWNER: Lizbeth Heyer

ADDRESS OF OWNER: 25 Freeman Street  
Newton, MA 02466

TO BE USED FOR: Single family dwelling

RELIEF GRANTED: Special Permit per §7.3.3 to exceed the FAR (§3.1.3, §3.1.9)

ZONING: Single residence 3

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:
  - a. Site plan signed and stamped by Antoni Szerszunowicz, Professional Land Surveyor, dated 7/12/2025
  - b. Architectural plans prepared by PCA, Inc, submitted 1/31/2025 titled "Heyer Fogelberg Residence" unsigned and unstamped, consisting of the following sheets:
    - i. "Building Elevation," Sheet A2.00
2. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
  - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
  - b. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
3. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been

complied with for the portion of the project for which occupancy is requested, and the Petitioner has:

- a. Filed with the building permit record statements by a professional land surveyor (or professional engineer) and registered architect certifying compliance with Condition #1, including the as-built FAR.
- b. Submitted final as-built survey plans in digital format, stamped, and signed by a professional land surveyor or professional engineer, as applicable.