

DECISION AFTER REMAND FROM THE LAND COURT ON APPLICATION FOR  
SPECIAL PERMIT

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APPLICANT: Sharon Standing Building Committee, Case No. 1858  
PROPERTY LOCATION: 1 School Street

By application ("Application") filed with the Sharon Town Clerk on April 13, 2020, the Sharon Standing Building Committee (hereinafter the "SSBC" or the "Applicant") petitioned the Town of Sharon Zoning Board of Appeals for lot dimensional relief from the dimensional, lot coverage and groundwater requirements of the Sharon Zoning Bylaw for the proposed Sharon Public library.

These are as follows:

1. Minimum lot area, Section 4533, Special Permit, S4540, 4521
2. Minimum front yard, Section 2434, Variance, S6222
3. Percentage lot coverage, Section 2433, Variance, S6222
4. Percentage lot coverage, Section 4535, Special Permit, S4540, 4521
5. Natural vegetative cover, Section 4535, Special Permit, S4540, 4521

Property is located at 1 School Street and is situated in the General Residence Zone and is also within the Historic District 1 and the Groundwater Protection Overlay Districts.

On July 8, 2020, the Zoning Board closed the first public hearing and voted to deny four of the five requests for zoning relief. The Board's initial decision on this matter was voted on November 5, 2020 and filed with the Town clerk that same day. The Applicant filed a timely appeal with the Land Court, and subsequently on May 21, 2021, filed a motion for Summary Judgment seeking that the Board be Ordered to grant the relief requested, and/or annul the decision and remand the matter to the Board for a new hearing. On September 2, 2021, the Court issued an Order of Remand and Decision on Plaintiff's Motion for Summary Judgment annulling the Board's initial decision, denying the motion for summary judgment and ordering the Board to conduct a new hearing within sixty (60) days, i.e. beginning no later than November 1, 2021, to file a supplementary decision no later than thirty (30) days after the close of that public hearing and ordering that all of the preceding occur within ninety (90) days, i.e. by December 1, 2021.

In accordance with the Court's Order, the Board opened a public hearing duly noticed under the applicable statutes and bylaw provisions on October 13, 2021 and continued to and closed the hearing on October 20, 2021. The hearings were opened remotely via Zoom video/audio conferencing in compliance with the Governor's emergency declaration relative to the conduct of public meetings. The voting members were the Chairman, Joe Garber, and members Abe Brahmachari, and Steve Weiss.

On October 20, 2021, the Board voted to grant the requested relief, and directed Town Counsel to draft a decision granting said relief and to incorporate Conditions consistent with the issues discussed at the hearings of October 13 and October 20, 2021. At a duly noticed public meeting held on November 17th, 2021, the Board met and considered the draft decision prepared by its counsel. Upon a motion made by Mr. Garber, and seconded by Mr. Brahmachari, the Board

voted (3-0) to adopt that decision as the Board's findings, determinations, and conditions.

## **MATERIALS**

The following materials were, inter alia, submitted to the Board prior to the initial decision, and are incorporated herein included plans with the Board of Appeals (collectively called "Plans"): Memorandum dated April 9, 2020, summarizing the Septic System design plans for the proposed library, a Drainage Report and Stormwater Management Plan dated April 14, 2020, from DZI, Inc. architectural and plot plans originally dated March 25, 2020, and updated April 16, 2020, from DZI and LLB Architects.

New documents for the June 10, 2020, meeting included: MA Board of Library Commissioners letter dated May 28, 2020; undated Design Technique, Inc. package, ZBA CASE #1858 – 1 School Street 35-page email submission from June 4, 2020 in response to ZBA questions; Transportation Impact Assessment Proposed Sharon Public Library, Sharon, MA prepared by Tom Houston, PSC, March 5, 2019; and Pleasant St. / School St. Intersection Supplemental Analysis dated May 1, 2019 by Tom Houston, PCS, Foxboro, MA.

Newly added documents for consideration for the July 8, 2020, meeting included: a letter from Lerner Ladds Bartels, Pawtucket RI RE: Case #1858 – 1 School St. Sharon Public Library dated June 25, 2020, and a letter from Gordon Gladstone, applicant, Sharon Standing Building Committee Chair, received via email Wednesday, July 1, 2020.

At the opening hearing on May 13, 2020, the Zoning Board of Appeals and the Applicant reviewed the following correspondence, which had been received in connection with the Application: a legal ad that appeared in the Times Advocate on April 29, 2020, and May 6, 2020; a Memo from the Agent of the Board of Health, Kevin Davis, dated April 27, 2020; and a letter from the Conservation Administrator, John Thomas, dated April 29, 2020.

Newly added documents for the September 30, 2020, meeting included: application 1858 A dated September 15, 2020. Letter from Brian Winner, Mead, Talerman & Costa, LLC, attorneys for the applicant, Millis, MA dated September 25, 2020.

Additional materials submitted for the October 13 and October 20 included a written statement from the Chair of the SSBC, a PowerPoint presentation from the Trustees, as well as various Concept Site Plan depicted both the proposed location of the Library on the site and various alternative locations of the Library on the site, and several communications from neighbors.

### **Project Description and Location Description**

The project consists of the construction and occupancy of a new public library, to be developed by the applicant, the SSBC, on behalf of the Sharon Board of Library Trustees, (Trustees") each of which are public entities of the Town of Sharon (the "Town"). The overall measurements are for an 83 foot by 162 foot two-story building with partial basement containing an approximate total of 29,462 square feet, with a footprint of +/- 12,000 square feet. The parking area provides for 30 parking spaces. According to the Town's assessor maps, the lot contains 38,293 square feet. Said lot has frontage on two streets, So. Main Street and School Street. South Main Street is a heavily travelled arterial road (Route 27). School Street is a local road with a paved width of 22

feet. Access is proposed to be entirely from School Street and egress is entirely onto North Main Street. The proposed lot is abutted by single-family homes and the properties directly across School Street are also single-family homes.

A copy of the plan, modified because of the hearings of October 13 and 20, showing the project and the lot is attached hereto and incorporated herein as Exhibit 3.

The application is not in compliance with the following dimensional zoning requirements from which relief has been requested:

1. The lot size is 38,293 square feet, and the minimum lot size requirement in the groundwater protection district is 60,000 square feet.
2. The minimum front yard set-back requirements in the Single Residential B district are 70' from the North Main Street Centerline, and the project, as proposed, would be 42'.
3. The minimum front yard setback requirement from School Street is 50' from the centerline, and the project, as proposed, would be 30'.
4. The per cent of lot coverage for the Single Residence B zoning district is 25%, and the per cent lot coverage for the groundwater protection district is 15%. The project would have 76% lot coverage.
5. Natural vegetation required on the groundwater protection district is 40% of the lot, and there would be effectively no natural vegetation provided.

#### **Project Background and Financial Considerations**

The proposed project has a lengthy history. The Library Trustees presented a grant application to the Massachusetts Board of Library Commissioners (MBLC) for the 2016-2017 round of general construction projects. The MBLC made a recommendation for a grant award of \$7,485,943 of the total estimated project costs of \$17,750,528, of which \$16,632,633 would be grant eligible. The cost delta to be raised by the town through borrowing was \$9,146,690. At the town meeting held on May 26, 2019, the town voted to appropriate the sum of \$18,000,000, subject to the required proposition 2½ debt override (M.G.L. Ch 59 section 21C). By ballot vote on May 21, 2019, the required borrowing was approved.

#### **Legal Standard for Board's Review and Applicable Facts**

##### **a. Dover Amendment**

The Board was advised by Town Counsel that the proposed use as a library is an educational use and enjoys the protections afforded by the Dover Amendment M.G.L.A. c. 40A Section 3. Also, the use of the proposed building is allowed by the Town's zoning by-laws, Section 2312.b. Accordingly, the Board is required under the Dover Amendment to balance where possible, the proposed use as requested against the harm to critical needs of the community which the proposed project might threaten or impede. The Conditions listed below are therefore the result of the Board's Findings related to the bulk, height, impact, and size of the building on a lot that is small in comparison to the proposed building and is located in a residential area and zoning district.

Although the application for relief noted the need for a special permit for groundwater protection, for lot coverage percentage, and for natural vegetation requirements, and sought variances for the set back and additional lot coverage issues, the Board notes that compliance with the by-law requirements for either a special permit or a variance are not strictly applicable to a protected educational use, but rather the Board is required to make the balancing test outlined above. The Board has followed the following citations regarding the Dover Amendment.

“Accordingly, what is of relevance to the Board’s determination, however, is the “proviso to the statute that authorizes a municipality to adopt and apply reasonable regulations concerning bulk, dimensions, open space, and parking...” *Trustees of Boston College v. Board of Alderman of Newton*, c. 58 Mass. App. Ct. 794 (2003), citing *Trustees of Tufts College v. Medford*, 415 Mass. 753, 757, 616 N.E.2d 433(1993). Further, it is the applicant that has the burden to demonstrate that “compliance with these requirements would substantially diminish or detract from the usefulness of a proposed structure . . .without appreciably advancing the municipality’s legitimate concerns.” *Id.* at 759, 616 N.E.2d 433.”

#### **FINDINGS**

1. The Board, and each voting member of the Board, are personally familiar with the location of the proposed project and the neighborhood where the site is located.
2. The proposed building is in a single-family residential neighborhood.
3. The project is sited on a lot that is too small for the size and bulk of the building.
4. The number of allotted parking spaces on the lot is less than recommended for uses of this size.
5. Each of the above findings can be addressed and their impact ameliorated through the Conditions stated below.

#### **DECISION:**

In imposing these Conditions, the Board has balanced the reasonable regulations that may be accomplished without diminishing or detracting from the usefulness of the proposed project. Accordingly, each of the Conditions are designed to lessen the impact of the project through regulation of bulk, noise, fencing, landscape provisions, hours of operation, lighting control, possible blasting controls, and requiring that persons in the neighborhood are advised of the construction progress and have a manner with which to bring problems during construction to the attention of the SSBC’s contractor.

#### **VOTE BREAKDOWN October 20, 2021 meeting**

Mr. Garber made a motion to close Case 1858, 1 School St., Sharon Public Library Seconded by Mr. Abe Bramachari. The Board approved the motion unanimously 3-0-0 (Brahmachari, Garber, and Weiss).

Mr. Garber made a motion to vote on the application of the SSBC seeking lot dimensional relief, coverage relief and groundwater protection relief from the requirements of the Sharon Zoning Bylaw for the proposed Sharon Public library in Case No. 1858, 1 School St. Sharon Library as follows:

Mr. Bramachari seconded the motion.

The Chairman, Mr. Garber, asked for a vote separately for each request.

The **VOTE** of the Board, (Garber, Bramachari, and Weiss) in each instance was to GRANT the relief requested and was unanimous:

1. Minimum lot area, Section 4533, Special Permit, S4540, 4521 Board GRANTED
2. Minimum front yard, Section 2434, Variance, S6222 Board GRANTED
3. Percentage lot coverage, Section 2433, Variance S6222 Board GRANTED.
4. Percentage lot coverages, Section 4535, Special Permit, S4540, 4521 Board GRANTED
5. Natural vegetative cover, Section 4535, Special Permit, S4540, 4521 Board GRANTED.

For the reasons stated above, the Board requires that the project comply with the following Conditions:

**CONDITIONS: 1. GENERAL**

- 1.1 The construction of the new Library as presented in the application, hereinafter the "Project" shall comply with all applicable rules, regulations and by-laws of the Town of Sharon, including, but not limited to the Board of Selectmen, the Board of Health, the Conservation Commission, the Commonwealth of Massachusetts and Federal Agencies as they apply to the construction of the Project, and the State Building Code unless variances, waivers or similar relief is granted pursuant to local, state or federal regulations.
- 1.2 The SSBC shall comply with all applicable regulations issued by the Commonwealth of Massachusetts relative to the existence of hazardous waste located on the Site, including compliance with the provisions of M.G.L. Chapter 21E and other applicable government codes.
- 1.3 The SSBC shall, if required, file an Environmental Notification Form ("ENF") under MEPA covering the entire Project and any required Environmental Impact Report ("EIR") prior to the commencement of any construction except for Project Site preparation, which may commence prior to the final issuance of the EIR decision if authorized by the Secretary of Environmental Affairs.

**2. CONSTRUCTION PHASE RESPONSIBILITIES AND MITIGATION**

- 2.1 The SSBC, through its contractor, shall work with the Town to coordinate an integrated approach to permitting and inspections.

The SSBC, through its contractor, shall prepare and submit a Construction Management Plan ("CMP") to the Board and to the building inspector. The CMP shall address all

aspects of construction mitigation, including, but not limited to: (i) blasting; (ii) provisions that meet the prior approval of the Fire Department and Police Department for traffic flow and emergency vehicle ingress/egress within the Project, and their access and egress to and from public ways; (iii) stockpiling of materials; (iv) trucking routes that meet the prior approval of the Police Department; (v) a concise construction mitigation and sequencing plan; and (vi) an erosion control plan. It shall also include best management practices and which shall include, at a minimum, days and the week and hours for construction activities (including interior and exterior work and/or site preparation, drilling, blasting, etc., which address pre-construction site preparation, construction control during construction, and through substantial completion and close-out, and which shall, at a minimum, include provisions for documenting existing conditions for which damages caused by the general contractor will be mitigated, as well as E&S controls, dust controls, noise, odor, emissions, vehicle idling, vibration, trash or debris, and/or any other condition which may constitute a nuisance by virtue of litter, vermin or bird hazards. Provisions for water/fire suppression and safe, uninterrupted, and convenient access to adjacent properties/homes shall be always provided. The CMP shall attempt to minimize the area(s) left exposed at any given time to the extent reasonably possible. The Board shall review the CMP provide comments and recommendations within fourteen (14) days. The terms of that CMP are incorporated herein as if restated in this Decision and shall, except as modified elsewhere herein, at a minimum comply with the requirements below.

### 3. CONSTRUCTION REQUIREMENTS

- 3.1 The library building shall be located as shown on Exhibit 3
- 3.2 The project shall provide a six-foot-tall fence as depicted on Exhibit 3
- 3.3 Whereas an eight- to ten-foot-wide landscape strip on the School Street side of the Project, and an additional ten-foot-tall landscape strip adjacent to 66 N. Main St. , and on all other abutting properties, is financially infeasible and materially conflicts with several construction and design elements, the landscaping of the Site shall conform with the "Landscaping Plan" attached hereto and incorporated herein as Exhibit 3 and also the Tree plan attached as Exhibit 3-A.
- 3.4 The project shall contain native plants from New England in the landscaped areas depicted on Exhibit 3 on all sides of the Site. All fertilizers, pesticides and herbicides used at the Premises shall be organic and of the low nitrogen content variety.
- 3.5 Site lighting is to be designed and installed substantially as shown on the Photometric Plan which is attached hereto and incorporated as Exhibit 3.5. Site lighting shall utilize low height poles restricting light within the site. Building Signage shall be as approved by the building inspector in compliance with the Sign Bylaw. All parking lot lighting and building lighting shall not allow light to flow off the property onto the surrounding neighborhood. All light shall be kept far enough away from direct abutters property lines so as not to cast lighting onto their properties. Parking lot lighting to be turned off within

30 minutes of the library closing or 30 minutes at the end of after-hours programming. After hours lighting shall be limited to lighting required for security.

- 3.6 Traffic flow on the site shall be as approved by the Fire chief and the Police chief.
- 3.7 All external equipment that will cause noise on the exterior of the building, such as air conditioning compressors and heat pumps shall comply with MassDEP's Air Quality regulations for sound in force at the time of building permit application. All generators shall be located behind appropriate screenings for the purpose of diminishing sound that leaves the site. The SSBC, through its contractor, shall comply with the Town's noise by-laws, including without limitation, Sections 195, and 300.
- 3.8 Typical hours of construction shall be from 7:00 a.m. to 5:00 p.m. Monday through Friday. When exceptions occur, proper notification will be provided to the appropriate parties, including the police chief and posting on the website described below in section 3.9
- 3.9 A construction progress website shall be maintained by the SSBC, through its Owners Project Manager, to address all construction, including a schedule of construction, construction progress reports, and the name and contact information of the Owners Project Manager's on-site representative so that said person can and will use best efforts to address in a professional and timely manner all concerns of residents and/or municipal employees of the town. In addition to compliance with the requirements of the Sign Bylaw, Construction signage shall be as required by the Massachusetts Board of Library Commissioners and maintained in visible site to all persons passing by the site.
- 3.10 Silt fencing, absorption materials and measures to catch site runoff shall be employed and maintained as described in the Contract Documents as well as the Drainage Plan submitted to the Board. Police detail(s) shall be provided as determined by the Chief of Police. A septic memo is attached as Exhibit 3.10A.
- 3.11 The premises shall be equipped with water conserving faucets and water conserving flush toilets.
- 3.12 The septic system shall meet all current requirements set forth by the Sharon Board of Health. The septic system shall be maintained in accordance with the requirements of the Sharon Board of Health.
- 3.13 Snow and ice mitigation and treatment shall be in accordance with current Town DPW practices and guidelines.
- 3.14 Leaders or roof gutters must be directed into the infiltration system.
- 3.15 The SSBC through its blasting contractor shall, in addition to the foregoing, comply with the applicable provisions of M.G.L. ch.148, sections 13 and 19, 527 CMR 13.00 ff, all other applicable regulations, by-laws, and statutes, and the orders of the Fire Chief

4. **OMITTED**

5. **MISCELLANEOUS**

- 5.1 References to building permit(s) contained herein refer to permits associated with the Project, but do not mean permits associated with Site preparation, foundation, or utility work.
- 5.2 The SSBC shall cause to be permitted and cause to construct the Project substantially in accordance with all the documents submitted as part of its application, including, without limitation, the plans and specifications. If any changes are required as a result of future design considerations, engineering, site conditions (including topography and geotechnical matters), or local and state permitting process and/or similar such matters, and those changes materially affect the bulk and/or height of structures, or the yard sizes, setbacks, open space, parking and/or building coverage, the SSBC, and/or its contractor, representatives or agents as may be appropriate, shall return to the Board for implementation of those changes. Nominal or *de minimis* changes not materially affecting the bulk and/or height of structures, or the yard sizes, setbacks, open space, parking and/or building coverage will not require review by the Board.
- 5.3. Successors and Assigns: The SSBC may not assign the rights and obligations contained in this Decision without notifying the Board and providing appropriate contact information, provided however that, during construction, the SSBC shall remain liable for each obligation, undertaking, and commitment required herein of the SSBC, its contractor and agents.
- 5.4 Notices

Unless otherwise specified herein, all required Notices hereunder shall be deemed sufficient if sent registered mail to the parties at the following addresses:

Board:                   Zoning Board of Appeals  
                              Town Hall  
                              90 South Main St.  
                              Sharon, MA 02067  
                              Attn: ZBA

with a copy to

Richard A. Gelerman, Esq.  
Gelerman & Cabral, LLC.  
30 Walpole Street  
Norwood, MA 02062

Applicant:               SSBC

Town Hall  
90 South Main St.  
Sharon, MA 02067  
Attn: SSBC

with a copy to:

Mead, Talerman and Costa, LLC

730 Main Street

Millis, MA 02054

Attn: Brian Winner, Esq.

For the purposes of this Section, the date of receipt shall be the date of mailing.

- 5.5 The SSBC, and/or its contractors and representatives, shall not be in breach of any of the conditions herein for so long as they are unable to complete any work required hereunder due to a force majeure event or other events beyond their reasonable control. If the town's building inspector believes that a breach exists, he/she shall give written notice of the same to the SSBC, and/or its contractors, agents and representatives as may be appropriate, and give them a reasonable period to cure such breach before taking any action on the same. In rendering this Decision, the Zoning Board of Appeals notes that the Special Permit issued hereunder shall expire within twenty-four (24) months (exclusive of the time required to pursue or await the determination of an appeal referred to in M.G.L., Chapter 40A, Section 17) from the grant hereof if a substantial use thereof has not sooner commenced, except for good cause, or in the case of a permit for construction, if construction has not begun by such date, except for good cause.

Appeals, if any, shall be made pursuant to M.G.L. Chapter 40A, Section 17 and shall be filed within twenty days after the date of the filing of this Decision in the Office of the Sharon Town Clerk.

This Decision shall not take effect until a copy of the Decision bearing the certification of the Sharon Town Clerk that twenty (20) days have elapsed after the Decision has been filed in the Office of the Sharon Town Clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Registry of Deeds for the county and district in which the land is located and indexed, in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

IN WITNESS WHEREOF, the undersigned has executed this instrument under seal as of the date set forth below.

By: Joseph A. Garber 11/18/2021  
Joseph Garber, Chairman

Town of Sharon Zoning Board of Appeals

Dated: November 18<sup>th</sup>, 2021

I, Joseph Garber, Chairman of the Town of Sharon Zoning Board of Appeals, hereby certify on behalf of the Town of Sharon Zoning Board of Appeals that the foregoing is a true copy of the Decision of the Sharon Zoning Board of Appeals and that certified copies of the Decision referred to herein have been filed with the Planning Board and the Town Clerk.

By: Joseph Garber  
Joseph Garber, Chairman  
Town of Sharon Zoning Board of Appeals

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Filed in the Office of the Town Clerk on the 18<sup>th</sup> day of November, 2021.

Mark F. Hogan  
Mark F. Hogan, Town Clerk

I, Mark F. Hogan, Town Clerk of the Town of Sharon, hereby certify that the foregoing is a true copy of the Decision of the Town of Sharon Zoning Board of Appeals dated \_\_\_\_\_ and filed with the Office of the Town Clerk on \_\_\_\_\_ and that twenty (20) days have elapsed after the date of such filing without the filing of any appeal on such Decision.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mark F. Hogan, Town Clerk