

**COMMONWEALTH OF MASSACHUSETTS  
LAND COURT  
DEPARTMENT OF THE TRIAL COURT**

NORFOLK, ss.

No. 21 MISC 000610 (KTS)

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AMY BALDWIN,	)
	)
	)
Plaintiff,	)
v.	)
	)
SHARON STANDING BUILDING	)
COMMITTEE, <i>et al.</i> ,	)
	)
Defendants.	)

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**DECISION ON MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Amy Baldwin, commenced this action for judicial review of the decision of the Sharon Zoning Board of Appeals (the “Board”) to approve construction of a new public library at 1 School Street in Sharon (the “Project”). Baldwin requests that this court annul the Board’s decision on the grounds that the Board failed to apply the proper legal standard required by G. L. c. 40A, § 3, commonly called the Dover Amendment, when it decided to grant the special permit. The project proponent, the Sharon Standing Building Committee (“SSBC”), has moved for summary judgment on the grounds that Baldwin lacks standing to maintain this appeal.

I held a hearing on SSBC’s motion on February 13, 2023 and took the matter under advisement. For the reasons set forth in this decision, SSBC’s motion is ALLOWED and Baldwin’s complaint is dismissed.

***Standard of Review***

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Hakim v. Massachusetts Insurers’*

*Insolvency Fund*, 424 Mass. 275, 283 (1997); *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 711 (1991). In determining whether genuine issues of fact exist, the court must draw all inferences from the underlying facts in the light most favorable to the party opposing the summary judgment motion. *White v. Univ. of Massachusetts at Boston*, 410 Mass. 553, 556-557 (1991). To prevail, the moving party must affirmatively demonstrate that there is no triable issue of fact. *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989).

Here, the parties have agreed to 80 of the 87 facts proposed by SSBC in support of its motion for summary judgment. The following are the undisputed facts which are material to my decision.

#### ***Undisputed Material Facts***

1. SSBC has proposed to construct a new public library at 1 School Street (the “Library Property”).
2. The Library Property is located at the corner of School Street and North Main Street with a lot area of approximately 38,293 square feet. It is owned by the Town of Sharon and is improved with a dated, former school building.
3. The Library Property is located in the Residential District B and the Water Resources Protection District under the Sharon zoning bylaw. A municipal library is allowed as an educational use in both districts.
4. The library project is an educational use subject to the protections of the Dover Amendment.
5. In 2016, the Town of Sharon Board of Library Trustees (the “Library Trustees”) and SSBC began the process of constructing a new public library by hiring a project manager and architect to create a preliminary schematic design. Over the next several years, the

preliminary schematic design progressed to the point where, on April 13, 2020, the Library Trustees filed an application for a special permit with the Board. The application proposed a two-story building with a footprint of 11,971 square feet and a total gross building area of 29,462 square feet. The application also sought relief from the dimensional, lot coverage, and groundwater requirements of the Sharon zoning bylaw. The application did not seek relief from the minimum parking requirements as the Project satisfies those requirements.

6. The Board initially denied the application, after which the Library Trustees appealed the Board's decision to the Land Court in a case entitled *Sharon Library Trustees v. Abhijit Brahmachari, Member of the Sharon Zoning Board of Appeals, et al.*, 20 MISC 000525.

7. By a decision dated September 2, 2021, this court annulled the Board's decision and remanded the matter back to the Board with instructions to conduct a further public hearing and to reconsider the application. In particular, the remand order instructed the Board to consider the special protections provided by the Dover Amendment for an educational use and to "balance the usefulness of the project as a Dover Amendment-protected educational use against any compelling municipal interests that are served by the Sharon zoning bylaw."

8. In accordance with the remand order, the Board conducted a further public hearing and, on November 18, 2021, issued a decision approving the library project.

9. Baldwin filed this appeal.

10. Baldwin owns the property at 32 Pleasant Street in Sharon which is improved with a single-family dwelling. Her property is located at the intersection of Pleasant Street and School Street, which is approximately 300 feet from the Library Property. She is an abutter for purposes of G. L. c. 40A, § 17.

11. Baldwin opposes the Project because, she claims, it will result in a significant increase of traffic on her street, increased noise and congestion caused by the additional vehicles generated by the new library, and a concomitant decrease in safety on the roads in the area of her house and neighborhood. She also asserts that the Project will have inadequate on-site parking, which will lead to an increase in traffic and congestion in her neighborhood due to library patrons circulating to look for parking, as well as a decrease in the availability of parking in the general area.

12. Baldwin also testified in deposition that she has concerns about “aesthetics, noise, damage to her home from rock removal and earthwork, septic sizing, and light.” But, she admitted that these concerns were shared by her neighborhood and the community and therefore not unique to her.<sup>1</sup>

### *Discussion*

SSBC has moved for summary judgment on the grounds that Baldwin lacks standing to maintain this appeal. The issue of standing has been treated by Massachusetts courts as a matter of subject matter jurisdiction. *Doe v. The Governor*, 381 Mass. 702, 705 (1980).

Baldwin brought this appeal under G. L. c. 40A, § 17, alleging that the Board applied a legally untenable standard in deciding to approve the Project and, therefore, the decision should be annulled. Standing to challenge such a decision is limited to persons who are aggrieved by the decision of the permit-granting authority. G. L. c. 40A, § 17; *Murchison v. Zoning Bd. of Appeals of Sherborn*, 485 Mass. 209, 212 (2020). “[S]tanding to challenge a zoning decision is conferred only on those who can plausibly demonstrate that a proposed project will injure their

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<sup>1</sup> During her deposition, Baldwin talked about conversations with members of her neighborhood in which they discussed their shared concerns about the project, and ultimately stated that “we have the same concerns, yes.” Defendants’ Exhibit 3(B), Transcript of the Plaintiff’s deposition at 56.

own personal legal interests *and* that the injury is to a specific interest that the applicable zoning statute, ordinance, or bylaw at issue is intended to protect.” *Standerwick v. Zoning Bd. of App. of Andover*, 447 Mass. 20, 30 (2006) (emphasis in original). While the term “person aggrieved” is not to be narrowly construed, the plaintiff’s injury must be more than speculative, and must be particularized and distinct from the interests of the general community. *Bell v. Zoning Bd. of Appeals of Gloucester*, 429 Mass. 551, 554 (1999); *Harvard Sq. Defense Fund, Inc. v. Planning Bd. of Cambridge*, 27 Mass.App.Ct. 491, 493 (1989) (a “person aggrieved” acquires standing “by asserting a plausible claim of a definite violation of a private right, a private property interest, or a private legal interest.”)

To be “aggrieved” by a zoning board decision, the plaintiff must suffer “some infringement of his legal rights.” *Sweeney v. A.L. Prime Energy Consultants*, 451 Mass. 539, 543 (2008), quoting *Marashlian v. Zoning Bd. of Appeals of Newburyport*, 421 Mass. 719, 721 (1996). A plaintiff may not establish standing by merely alleging a zoning violation. *Sweeney*, 451 Mass. 545. “The language of the bylaw cannot be sufficient in itself to confer standing: the creation of a protected interest (by statute, ordinance, bylaw, or otherwise) cannot be conflated with the additional, individualized requirements that establish standing.” *Id.* In other words, to show that he or she is aggrieved, a plaintiff must demonstrate both that the legal right violated is intended to be protected by the applicable zoning bylaw, and that the alleged violation caused specific injury to his or her personal legal interest. *Standerwick*, 447 Mass. at 30.

To survive a challenge to his or her standing, a plaintiff must establish aggrievement by proffering credible evidence of a particularized injury. *Marashlian v. Zoning Bd. of Appeal of Newburyport*, 421 Mass. at 721. Such credible evidence must have

“both a quantitative and qualitative component. . .Quantitatively, the evidence must provide specific factual support for each of the claims of particularized injury the plaintiff

has made. Qualitatively, the evidence must be of a type on which a reasonable person could rely to conclude that the claimed injury likely will flow from the board's action. Conjecture, personal opinion, and hypothesis are therefore insufficient.”

*Butler v. City of Waltham*, 63 Mass.App.Ct. 435, 441 (2005) (citations omitted); see also *Kenner v. Zoning Bd. of Appeals of Chatham*, 459 Mass. 115 (2011) (finding no standing for abutter who alleged harm in the form of an obstructed view of the ocean, a diminution in property value, and increased traffic because the alleged harms were either *de minimus* or speculative). The degree of “aggrievement” necessary to sustain a standing challenge was described in *Kenner* as follows:

“The adverse effect on a plaintiff must be substantial enough to constitute actual aggrievement such that there can be no question that the plaintiff should be afforded the opportunity to seek a remedy. To conclude otherwise would choke the courts with litigation over myriad zoning board decisions where individual plaintiffs have not been, objectively speaking, truly and measurably harmed. Put slightly differently, the analysis is whether the plaintiffs have put forth credible evidence to show that they will be injured or harmed by proposed changes to an abutting property, not whether they simply will be ‘impacted’ by such changes.”

*Id.* at 122. See also *Barvenik v. Bd. of Aldermen of Newton*, 33 Mass.App.Ct. 129, 132-133 (1992) (“Subjective and unspecified fears about the possible impairment of aesthetics or neighborhood appearance, incompatible architectural styles, the diminishment of close neighborhood feeling, or the loss of open or natural space are all considered insufficient bases for aggrievement under Massachusetts law.”); *Bell v. Zoning Bd. of Appeals*, 429 Mass. 551 (holding that suitability of the neighborhood scheme was not enough to confer standing because any injury would be to the community and not particular to plaintiff, therefore finding no evidence of harm to “any legally protected interests” of the plaintiff); *Denneny v. Zoning Bd. of Appeals of Seekonk*, 59 Mass.App.Ct. 208, 214 (2003) (holding that plaintiff’s testimony that the proximity of a cell tower to her property would diminish its value was speculative and conclusory and “insufficient to warrant a finding of aggrieved person status”); *Monks v. Zoning Bd. of Appeals of Plymouth*, 37 Mass.App.Ct. 685 (1994) (holding that speculative personal opinion about the

diminution of property value as result of zoning decision was insufficient to confer standing); *Cohen v. Zoning Bd. of Appeals of Plymouth*, 35 Mass.App.Ct. 619 (1993) (holding that conclusory assertions of increased traffic, without evidence of specific injury to an abutter's property, was insufficient to confer standing on the abutter).

One who owns land which abuts property that is the subject of a request for zoning relief is presumed to be aggrieved by the zoning decision. G. L. c. 40A, § 17; *Standerwick*, 447 Mass. at 33; *Denneny*, 59 Mass.App.Ct. at 212. The presumption recedes, however, when the party defending the decision challenges the plaintiff's standing with "any additional evidence" showing that the plaintiff is not aggrieved. *Standerwick*, 447 Mass. at 33; see also *Barvenik*, 33 Mass.App.Ct. at 131. Once the defendant offers evidence rebutting the presumption, the burden shifts to the abutter to prove standing "which requires that the [abutter] 'establish – by direct facts and not by speculative personal opinion – that his injury is special and different from the concerns of the rest of the community.'" *Standerwick*, Mass. 447 at 33, quoting *Barvenik*, 33 Mass.App.Ct. at 132; see also *Sweenie*, 451 Mass. at 545. The issue of standing, then, will be determined on all of the evidence, with no benefit to the plaintiff from the presumption of aggrievement. *Barvenik*, 33 Mass.App.Ct. at 131. The defendant need not present affirmative evidence to refute the plaintiff's basis for standing if the plaintiff's own discovery responses admit that the plaintiff has no evidence to support the allegation of aggrievement. *81 Spooner Road LLC v. Zoning Bd. of Appeal of Brookline*, 461 Mass. 692, 703-704 (2012).

The initial question in this case is whether the harms alleged by Baldwin—increased traffic resulting in safety concerns or the need for additional parking—fall within the interests

protected by the Sharon zoning bylaw.<sup>2</sup> SSBC asserts that neither of these interests are protected because “they are not zoning related concerns which may be regulated under the Dover Amendment.” SSBC’s interpretation of the Dover Amendment is too broad.

The parties agree that a public library is an educational use that is protected by the Dover Amendment from certain types of zoning regulation.

“The Dover Amendment bars the adoption of a zoning ordinance or by-law that seeks to prohibit or restrict the use of land for educational purposes. However, a proviso to the statute authorizes a municipality to adopt and apply ‘reasonable regulations’ concerning bulk, dimensions, open space and parking, to land and structures for which an educational use is proposed.”

*Trustees of Tufts College v. Medford*, 415 Mass. 753, 757 (1993) (emphasis omitted). In this way, the Dover Amendment aims to strike a balance between preventing local discrimination against an educational use and legitimate municipal goals advanced by reasonable zoning regulations. *Id.* at 757. However, reasonable dimensional requirements still apply to an educational use so long as, on balance, they serve to fulfill legitimate municipal concerns. *Id.* at 758.

The Sharon zoning bylaw declares its purpose, in relevant part, as follows: “to lessen congestion in the streets; to conserve health, to secure safety from fire, flood, panic and other dangers;” Sharon Zoning Bylaw, Ch. 275, Art. I, §1100. Based on this language alone, impacts on safety caused by an increase in traffic or a lack of adequate parking are interests protected by the Sharon zoning bylaw. Therefore, the question of Baldwin’s standing turns on whether there

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<sup>2</sup> Baldwin testified in deposition that she has “concerns” about the impact of the new library on “aesthetics, noise, damage to her home from rock removal and earthwork, septic sizing and light.” However, she also conceded that these concerns are not particular to her but, rather, the type of impacts that affect a neighborhood in general. Even without that concession, Baldwin did not offer any facts in support of these concerns. In light of the agreed upon facts and Baldwin’s allegations of injury, the only harms to be considered for the purpose of standing are traffic and parking.

is credible evidence that the increased traffic and need for more parking are harms to Baldwin's personal legal interests sufficient to confer standing.

### *Traffic*

Baldwin is an abutter to the Library Property. Therefore, she is presumed to be aggrieved by the Board's decision. SSBC disputes that the library will cause any such aggrievement. In support of this assertion, SSBC submitted a traffic impact assessment and a supplemental analysis of the intersection of the Pleasant Street/School Street intersection prepared by its traffic consultant, Professional Services Corporation, P.C. ("PSC"). The supplemental study was undertaken because of concerns raised by neighborhood residents that traffic generated by the new library would cause safety and other problems at that intersection. Both reports were presented to the Board during the public hearing process.

The traffic impact assessment is a comprehensive study of the roadway network in the immediate area of the Project that concluded that the roadway network is adequate to accommodate the new library.<sup>3</sup> The assessment demonstrated that the traffic generated by the Project will have no appreciable impact on traffic volumes, intersection operations, safety, or vehicle queuing on roadways in the area of the Project. PSC also prepared the supplemental analysis of the intersection at Pleasant Street and School Street which is located directly in front of Baldwin's house.<sup>4</sup>

Pleasant Street extends northerly to a residential neighborhood comprised of 31 homes. It dead ends at its northern end and connects to MA Route 27 at its southern end. The only other street which connects Pleasant Street to a major road is School Street. The residential character

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<sup>3</sup> Defendant Sharon Standing Committee's Exhibit 2(A), March 5, 2019 Traffic Impact Assessment.

<sup>4</sup> Defendant Sharon Standing Committee's Exhibit 2(B), May 1, 2019 Pleasant Street/School Street Intersection Supplemental Analysis.

of the neighborhood and lack of cut-through roadways allowed PSC to forecast peak hour traffic volumes generated by the residences in the neighborhood and, combined with the expected traffic from the library, analyze the impact of the library on the intersection in front of Baldwin's property. PSC assumed a hypothetical worst-case scenario for traffic at that intersection and demonstrated that the traffic expected to be generated by the new library will not change the operation of the intersection. PSC explained its analysis as follows:

“Using this worst case traffic assignment, the Pleasant St./School St. Intersection will operate under highly desirable conditions with excellent level-of-service and minimal delay. With the 2026 No-Build weekday PM peak hour traffic volumes the Pleasant St./School St. Intersection will operate a level-of-service A (LOS A) with minimal delay of 8.8 seconds. With the 2026 Build weekday PM peak hour traffic volumes, the Pleasant St./School St. Intersection will continue to operate at level-of-service A (LOS A) and will continue to have the same minimal delay of 8.8 seconds. *Upon completion of the proposed Sharon Public Library, there will be no change in intersection operations at this location.*”<sup>5</sup>

The PSC traffic impact assessment and the supplemental analysis of the Pleasant Street/School Street intersection is expert evidence that rebuts the presumption that Baldwin will be aggrieved by the library project. With the presumption gone, the burden shifts to Baldwin to produce credible evidence of actual harm that is particular to her in order to survive SSBC's standing challenge.

Baldwin did not produce any expert evidence to rebut the PSC analysis, nor did she produce other affirmative evidence of harm to her that would be caused by an increase in traffic generated by the new library. Rather, she embraces the PSC traffic impact assessment and its supplemental analysis, both of which predict a general increase in traffic, and essentially contends that *any* increase in traffic will have a negative impact on her. Specifically, she cites PSC's conclusion that the project will generate 120 new vehicle trips during the weekday

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<sup>5</sup> Defendant SSBC's Ex. 2(B) at 2 (emphasis supplied).

afternoon (PM) peak hour, 12 of which will use the intersection directly in front of her house. Using the data collected by PSC, the accuracy of which she does not challenge, Baldwin offers her lay opinion that this additional traffic will create safety concerns and “interfere with the quiet and safely walkable character of the neighborhood.” In other words, she simply disagrees with the expert traffic engineer’s conclusions without offering an engineering-based reason for her disagreement.

Baldwin is not qualified to offer a traffic engineering opinion. Rather, her assertion that PSC’s conclusions are wrong and that she will be harmed by the increased traffic are the speculative personal opinions of a layperson. Moreover, Baldwin offered no facts to demonstrate how interference with the “walkable character of the neighborhood” caused by increased traffic is particular to her as opposed to a harm to the entire neighborhood. Without an expert analysis that differed from the PSC traffic study or other facts to support her conclusion, Baldwin has not provided credible evidence that she will be harmed by the increase in traffic resulting from the library project.

On balance, the expert evidence submitted by SSBC, when compared to Baldwin’s lay opinion, established that the traffic concerns raised by Baldwin are not fact-based and do not demonstrate individualized harm to her. Even if Baldwin will be impacted by traffic at a slightly greater level due to her proximity to the intersection of Pleasant Street and Sharon Street, the worst-case traffic scenario predicts one additional car at the intersection every six minutes. The impact on Baldwin’s property of that degree of change in traffic will be *de minimis*.

As described by the *Kenner* court, the analysis for the court is “whether the plaintiffs have put forth credible evidence to show that they will be injured or harmed by proposed changes to an abutting property, not whether they simply will be ‘impacted’ by such changes.”

*Kenner*, 459 Mass. at 122. Baldwin has not offered credible evidence of actual harm, only speculative personal opinion. I find that she is not aggrieved by the decision of the Board. Thus, she does not have standing to continue with this appeal based on traffic.

### *Parking*

Baldwin also claims standing based on an unspecified harm that she contends will flow from an inadequacy of parking spaces on the library site. She contends that this inadequacy of parking will cause library patrons to “circulate looking for parking.” In this regard, her claim that the Project lacks adequate parking is an extension of her traffic argument.

Under the Board’s decision, the library project will have 33 on-site parking spaces for patrons and employees. That number of parking spaces complies with the Sharon zoning bylaw and, therefore, SSBC did not seek relief from the parking requirements of the bylaw when it proposed the library project. This compliance notwithstanding, Baldwin cites a recommendation of the Massachusetts Board of Library Commissioners that the project should provide 60 parking spaces for patrons and employees. Although this is a recommendation based on state standards, and not a requirement of the Sharon zoning bylaw, SSBC secured an additional 42 parking spaces at the Congregational Church that is located across North Main Street, approximately 450 feet from 1 School Street.<sup>6</sup> Those spaces will be dedicated to library use during library hours. As a result, the library project will have 75 parking spaces available for use by patrons and employees after construction is completed.

Because the library project complies with the parking requirements of the Sharon zoning bylaw, Baldwin has no basis to challenge the Board’s decision based on inadequate parking. Regardless, on the issue of standing, Baldwin offered no facts that would establish harm to her

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<sup>6</sup> Defendant SSBC’s Ex. 2(A) at 42.

that would flow from the number of parking spaces on the library site.<sup>7</sup> Her contention that library patrons will have to circulate her neighborhood looking for parking is rank speculation and contrary to the express requirements of the Board's decision. Like her claims of injury caused by increased traffic, Baldwin's claims of injury due to inadequate parking on the library site lack factual support and, instead, are personal opinion and conjecture. Therefore, Baldwin lacks standing to continue with this appeal based on parking.

***Conclusion***

For the foregoing reasons, this court lacks subject matter jurisdiction over Baldwin's appeal under G. L. c. 40A, § 17. SSBC's motion for summary judgment is ALLOWED. The decision of the Sharon Zoning Board of Appeals is affirmed. A final judgment will enter in favor of SSBC and the Sharon Zoning Board of Appeals, and against Baldwin.

So Ordered.

By the Court. (Smith, J.)

/s/ Kevin T. Smith

Attest:

/s/ Deborah J. Patterson  
Deborah J. Patterson  
Recorder

Dated: March 14, 2023

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<sup>7</sup> Baldwin cites *Marashlian v. Zoning Bd. of Appeals*, 421 Mass. 719, in which the court found that traffic and parking were sufficient bases for standing. In that case, however, the court found that the plaintiffs had presented credible evidence and specific facts to show that their individual parking needs would be harmed by the proposed project. Baldwin has presented no such facts.