



25 June 2020

Town of Sharon
 Zoning Board of Appeals
 90 South Main Street
 Sharon, MA 02067

Re: Case #1858 - 1 School St.
 Sharon Public Library

Dear Chair Brahmachari and Members of the Zoning Board of Appeals,

Thank you very much for allowing a continuance of the hearing. We anticipate that this has given you time to review all the documents that have been presented regarding ZBA Case #1858 and the application dated 4/7/2020. This allowed the project team to ensure that we have nothing more to present.

We would like to reiterate and clarify exactly what we are requesting.

As referenced in Sharon's town counsel letter, the Sharon Public Library is an educational use and in accordance with M.G.L. Chapter 40A section 3, referenced as the "Dover Amendment", we are seeking exemption from certain local zoning requirements as follows:

1. Section 4540 Special Permit within the Groundwater Protection District
2. Section 2433 Maximum lot coverage of 25%
3. Section 2434 (a) (1) Building location: Minimum Street Setback

The following table summarizes Sharon's zoning requirements, what is proposed and what relief is being requested:

Zoning Bylaw Section	Required/Allowed	Provided	Relief Requested
Section 4540 Percent Lot Coverage Septic Flow	15% 230 GPD	74% 1,281 GPD	Acceptance Acceptance
Section 2433 Percent of lot coverage per Residential District B 2433	25%	32%	Acceptance
Section 2434 Minimum Front Yard	70' from North Main Street Centerline	52' +/-	Acceptance
Minimum Front Yard	50' from School Street Centerline	30' +/-	Acceptance

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Per the legal finding of the Town's attorney, the library is considered an educational use: "A public, municipal library is considered an educational purpose on land owned by a subdivision of the commonwealth and, therefore, the use is allowed on any parcel of land

*regardless of use restrictions. Such protected uses are, however, subject to "reasonable" dimensional regulations."*¹

Regarding the **Groundwater Protection District** requirements, the design team believes that the project provides a design that exceeds the Special Permit requirements. Approving the project with the design proposed to address the drainage and septic design would allow for approval under (1) section 4540, (2) exemption under 4521, or (3) approval under the "Dover Amendment" - M.G.L. Chapter 40A section 3.

Regarding the **dimensional relief**, the design team believes that the following paragraph applies to the lot coverage request and that strict adherence to the requirements would impede or significantly detract from the educational use of the property:

*"Percent of lot coverage per Residential District B § 2433: Again, the Board's consideration should include an analysis of whether application of the lot coverage requirements would impede, prevent or significantly detract from the educational use of the Property. If so, regulation would be unreasonable as applied to the Project. Again, the factual determination remains in the Board's reasonable discretion."*²

Moreover, while 1 School Street is in the Single Residence District B requiring a lot coverage of 25%, the District directly across School Street and North Main Street is General Residence District with an allowed lot coverage of 40%. At 32% lot coverage, the library would be 8 percentage points under what is allowed in this directly abutting area.

Additionally, regarding the dimensional relief for setbacks, the design team further believes that the project provided setbacks are reasonable. They are comparable to the existing conditions in the neighborhood and allow the center of town area to present a historic looking façade in keeping with the neighborhood.

*"Minimum front yard § 2434: The proposed building falls approximately 20 feet short on minimum front yard setbacks. The Board should consider whether strict application of these requirements would be reasonable in the context of the whole project as well as existing conditions in the neighborhood."*³

Both the Proponent (the Library Trustees) and the Applicant (the Standing Building Committee) have completed their presentations. The project team feels confident that all of the boards, commissions, professionals and townspeople that have reviewed and participated in the planning of this project over the past six plus years have created the best solution for a library here in Sharon. Moreover, the voters have overwhelmingly shown their support for this project through 5 Town Meetings and 1 ballot question. This project, located and shown as presented to the ZBA, is what a

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¹ Gelerman and Cabral letter dated 4/22/2020 page 3

² Gelerman and Cabral letter dated 4/22/2020 page 5 point 3.

³ Gelerman and Cabral letter dated 4/22/2020 page 5 point 2.

significant majority of the citizens reviewed and approved at the May 2017 and May 2019 Town Meetings and the May 2019 ballot question.

On behalf of the Applicant, the Sharon Standing Building Committee, we respectfully request that the ZBA approve this application.

Thank you for your time and consideration,

A handwritten signature in blue ink, appearing to be 'R. Drayton Fair', written in a cursive style.

R. Drayton Fair, AIA, ALA, LEED AP BD+C

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Memorandum

To: Zoning Board of Appeals
 From: Gelerman and Cabral, LLC
 Date: April 22, 2020
 Re: One School Street – New Public Library

We are aware that your Board has received an application for the proposed construction of a new public library to be located on the property now known as One School Street, Sharon, Massachusetts (the "Property"). As counsel to the Board, we have prepared this memorandum regarding the legal aspects for the Board to consider on the application for variances and special permits for that project.

We have, for your convenience, outlined our Zoning Bylaw provisions that are normally applied to requests for variances and/or special permits for a building that does not qualify for the protection afforded by the Dover Amendment. We set out these Bylaw provisions so that the Board may refer to them for comparison purposes in your deliberations. It is however our opinion, as explained below, that the proposed use does enjoy the protections of the Dover Amendment.

Sharon Zoning Bylaw Requirements

Due to the existing circumstances at the Property, several of the Town's Zoning Bylaw requirements cannot be met. The Property is located in the Single Residence District B and the Groundwater Protection District. The Application seeks the following relief:

Zoning Bylaw Section	Required/Allowed	Provided	Relief Requested
Minimum lot size within groundwater protection district §4533	60,000 sf/dwelling unit	38,293 sf	Special permit under § 4540 or exemption under § 4521
Minimum front yard § 2434	(1) 70' from North Main Street Centerline (2) 50' from School Street Centerline	52' +/- 30' +/-	Variance § 6222
Percent of lot coverage per Residential District B § 2433	25%	76%	Variance § 6222
Percent of lot coverage per	15%	76%	Special permit under § 4540 or

groundwater protection district §4535			exemption under § 4521
Natural vegetation per groundwater protection district § 4535	40% minimum	0	Special permit under § 4540 or exemption under § 4521

Pursuant to § 6222 of the Zoning Bylaw and G.L. c. 40A, § 10, the Board may grant a variance when the following findings are made:

Owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

In addition, pursuant to § 4540 of the Zoning Bylaw, the Board may grant a special permit from the requirements of the Groundwater Protection District where it finds that:

that the intent of this bylaw as well as its specific criteria are met. In making such determination, the Board of Appeals shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to water quality posed by potential failure of any proposed control measures.

Further, § 4544 states:

Subject to the conditions listed in Subsection 6313 of this bylaw, a special permit for a use or activity in a location within the Groundwater Resources Protection District may be granted only if the Board of Appeals determines, after opportunity for review and recommendation by other Town agencies as specified above, that groundwater quality will comply with USEPA rules and regulations implemented under the Clean Water Act and groundwater quality and on-site wastewater discharges will comply with the Massachusetts DEP groundwater discharge permit program (314 CMR 5.00).

Alternatively, the Board may exempt an insensitive location from the requirements of the Groundwater Protection District pursuant to § 4543(b):

Subject to the considerations listed in Subsection 6313 of this bylaw, the Board of Appeals may grant a special permit to exempt a location within the Groundwater Resources Protection District from the requirement of Section 4500 of this bylaw if the applicant demonstrates that the development or use sought will not adversely affect the groundwater because:

(1) The location is underlain by soils having a transmissivity of less than 10,000 gallons per day per square foot or the location is separated from the aquifer serving as an existing or potential source of public water supply by an aquaclude or groundwater divide; and

(2) Development at that location will have no significant adverse impact upon any developed or planned public water supply.

As stated above we believe that the following statutory and case law Dover amendment provisions are those that the Board should consider in its determination of whether or not to grant the relief requested in the application.

The Dover Amendment

M.G.L. c. 40A, § 3 contains the so-called "Dover Amendment, "which exempts certain educational uses from certain local zoning requirements:

No zoning ordinance or by-law shall . . . prohibit, regulate or restrict the use of land or structures for . . . educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation [emphasis supplied]

A public, municipal library is considered an educational purpose on land owned by a subdivision of the commonwealth and, therefore, the use is allowed on any parcel of land regardless of **use restrictions**. Such protected uses are, however, subject to "reasonable" **dimensional regulations**.

The leading case on how the Dover Amendment applies to the application of dimensional regulations to an educational use is Trustees of Boston College v. Bd. of Aldermen of Newton, 58 Mass. App. Ct. 794 (2003). The Appeals Court held that some of Newton's dimensional and parking regulations were validly imposed, while others were not. The standard relied upon for making those determinations was whether the regulation would "substantially diminish or detract from the usefulness of the [proposed use] or impair the character of the [proposed use] without appreciably advancing the municipality's legitimate concerns."

"A special permit procedure, in itself, cannot be declared invalid in all circumstances involving educational institutions." Id. at 800. The question of reasonableness depends on the particular facts of each case, as applied to the proposed use.

In Boston College, the Court found that the floor area ratio (FAR) regulation, as applied to the entire Middle Campus, would prohibit any development without a special permit and was, therefore, invalid. After Newton's FAR regulation was increased in 1987, the entire Middle Campus became nonconforming, as the existing campus FAR exceeded the new regulation limits. Therefore, any additions to the Middle Campus would require a § 6 finding and special permit. The Court found that such a requirement significantly impeded the educational use without appreciably advancing municipal goals.

The Court further found that Newton's height, story and setback requirements, as applied to the Middle Campus, were unreasonable. The Court found that application of the setback requirements would require BC to significantly downsize the project, and that the average setbacks for other properties along the road were also nonconforming, some even more so than that proposed by BC. Finally with regard to parking, the Court remanded to the Board to "fashion some kind of reasonable accommodation."

Procedurally, whether or not the Dover Amendment should be read as ameliorating the strictures against the granting of variances, or your decision should simply state that the requirements for a variance or special permit are inapplicable because of the Dover amendment has been left somewhat open. Trustees of Tufts College v. City of Medford, 33 Mass. App. Ct. 580 (1992). In one case it was suggested that a variance, rather than a declaration of invalidity, could be an appropriate vehicle for adjusting dimensional requirements to achieve a balance between the uses protected by the Dover Amendment and the municipal interests that find expression in zoning ordinances. See Sisters of the Holy Cross v. Brookline, 347 Mass. at 498–499. Such a suggestion was repudiated in Radcliffe College v. Cambridge, 350 Mass. at 618–619, presumably because of the highly restrictive conditions that the enabling act places on the granting of variances.

In our opinion, whether a variance from dimensional zoning bylaws, or special permit, should be required for a protected educational use is for the Board to determine in its discretion, based upon the application of the facts of the case and the reasonableness of the dimensional regulations as applied to the proposed use. As a practical matter, if the Board does determine to grant the requested relief, we can aid in drafting a decision in a manner that protects that decision from any concern on this issue,

With the foregoing in mind, we offer the following guidance to aid the Board in reaching its determination whether application of the Bylaw's dimensional regulations would "impede the educational use without appreciably advancing municipal goals."

Taking each of the applicable dimensional regulations in turn, the possible impacts of each are as follows:

1. Minimum lot size within groundwater protection district §4533: Because the lot itself is undersized, regardless of what use is proposed, any new construction or significant addition to the Property would require a special permit. Therefore, no matter what size the new library would be, discretionary relief would be necessary should your Board determine to allow the special permit relief requested. The Court in the Boston College case found that such a requirement significantly impeded the educational use without appreciably advancing municipal goals. If your Board determines that the facts of this case are similar to the Boston College case, you may be guided by the Court's determination in that case.

2. Minimum front yard § 2434: The proposed building falls approximately 20 feet short on minimum front yard setbacks. The Board should consider whether strict application of these requirements would be reasonable in the context of the whole project as well as existing conditions in the neighborhood. In the Boston College case, the Court looked at the average existing setbacks of neighboring buildings and determined that the Newton setback requirement exceeded the setbacks of the nearest neighboring buildings, and its strict enforcement would require Boston College to significantly downsize the project. For those reasons, the Court held the setback provisions unreasonable as applied to Boston College.

3. Percent of lot coverage per Residential District B § 2433: Again, the Board's consideration should include an analysis of whether application of the lot coverage requirements would impede, prevent or significantly detract from the educational use of the Property. If so, regulation would be unreasonable as applied to the Project. Again, the factual determination remains in the Board's reasonable discretion. To the extent the Board sees this as a groundwater protection issue, our guidance in 4 and 5 below would be applicable.

4 and 5. Percent of lot coverage per groundwater protection district §4535; and Natural vegetation per groundwater protection district § 4535: Both of these requirements may be waived by the Board if its finds that Project will have no significant adverse impact upon any developed or planned public water supply, or otherwise be harmful to the groundwater and/or flow. If the Board so finds then the finding follows that the strict application of those regulations would necessarily substantially diminish or detract from the usefulness of the Project without appreciably advancing the municipality's legitimate concerns.

It is for the Board to consider the relevant facts as applied to the Property and the application and whether or not such facts lead to the conclusion that strict application of the Bylaw's dimensional regulations and required findings for a special permit and variance would be reasonable as applied to the whole project. Furthermore, if application

of any of the dimensional regulations and required findings for a special permit and variance would impede or prevent the project or impair the character of the use without advancing any of the goals of the Bylaw, then the Board may find that such regulations and required findings do not apply.

Finally, the Board may also find that, due to the unique nature of the project and the circumstances of the application of the Dover Amendment, the Board's decision would have limited precedential impact on future special permit and variance applications in the Town.