

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

NORFOLK, ss.

No. 20 MISC 000525 (KTS)

TOWN OF SHARON BOARD OF)
LIBRARY TRUSTEES,)
)
Plaintiff,)
v.)
)
ABHIJIT BRAHMACHARI, CHAIRMAN,)
JOSEPH GARBER, STEPHEN WEISS,)
as they are members of the TOWN OF SHARON)
ZONING BOARD OF APPEALS, and the)
TOWN OF SHARON,)
)
Defendants.)

ORDER OF REMAND

This is an appeal pursuant to G.L. c.40A, §17 of a decision of the Town of Sharon Zoning Board of Appeals (the “Board”) denying approval for the new public library proposed by the Town of Sharon Board of Library Trustees (the “Trustees”).

This matter came before the court on the Plaintiff’s Motion for Summary Judgment held on August 9, 2021. For the reasons set forth in the court’s decision, it is hereby

ORDERED that the Plaintiff’s Motion for Summary Judgment is ALLOWED as to Count I of the Complaint and DENIED as to Count II of the Complaint. It is further

ORDERED that the Board’s decision denying approval of the new public library project is annulled. It is further

ORDERED that this case, Land Court Miscellaneous Case No. 20 MISC 000525, is **REMANDED** to the Board for a lawfully noticed public hearing on the application of the Trustees for approval of the public library project. It is further

ORDERED that without delay the Board shall open, hold, and conclude this new public hearing, after full and proper notice of the hearing has been published, posted, and served, in accordance with governing law, including G. L. c. 40A, § 11; notice shall be served on all parties as legally required, including on the abutters to the proposed site. It is further

ORDERED that:

1. The Board will hold the public hearing no later than 60 days after the date of this Order;
2. After the presentation of any new or additional information by the Trustees in support of the public library project, the Board shall 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; and
3. No later than 30 days after the close of said public hearing, the Board will file with the Sharon Town Clerk a supplementary decision that explains its decision to either approve the project “as is,” to approve the project with reasonable limitations necessary to protect compelling municipal interests, or to deny the project with an explanation of the reasons for its decision. It is further

ORDERED that the above three items will occur no later than 90 days after the date of this Order, unless the court on motion for good cause shown allows later action. It is further

ORDERED that, no later than 20 days after the filing of the Board’s decision with the Sharon Town Clerk, the Trustees shall either file with the court an amended complaint seeking

review of the new decision, or the parties shall file a stipulation of dismissal, unless otherwise ordered by the court. It is further

ORDERED that, absent further order of the court, and except as specifically authorized in this Order of Remand, all proceedings in the litigation of this action are **STAYED** pending the issuance of the Board's supplementary decision on remand. It is further

ORDERED that the court retain jurisdiction over this case, including over any appeals which may be taken (or other actions brought) from or relating to the Board's further proceedings pursuant to this Order. No party currently a party to this litigation who is aggrieved by the Board's decision on remand need initiate in this court a new lawsuit appealing the Board's decision on remand, but any such aggrieved party shall, within twenty (20) days of the filing of the Board's decision with the Town Clerk, (a) file with the court (and serve on all parties) a proper motion for leave to amend the pleadings to assert a right to judicial review of the Board's decision on remand, with the form of the proposed amendment annexed, and (b) file with the Town Clerk written notice of having filed the motion to amend, accompanied by true copies of the moving papers.

So Ordered.

By the Court. (Smith, J.)

/s/ Kevin T. Smith

Attest:

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

Dated: September 2, 2021.