

The Adventure Park at Heritage Museums & Gardens Special Permit Application

Adventure Park at Heritage Museums and Gardens, LLC (hereinafter, the “Applicant”) constructed an aerial adventure park on property owned by Heritage Plantation of Sandwich, Inc. in 2015. The Applicant operated the Aerial Adventure Park for four seasons, beginning in 2015, during which it served thousands of local children and adults, providing them with a unique opportunity to be active in nature. In 2018, the Superior Court determined that the Aerial Adventure Park could not operate as a Dover Amendment protected use and required a special permit. Accordingly, the Applicant ceased its operations in August 2018 and now seeks a special permit as an Outdoor Recreation Facility pursuant to Section 4150 of the Zoning By-law.

The Aerial Adventure Park is a challenge course, most akin to a ropes course. The Aerial Adventure Park consists of five courses, which are designated by level of difficulty using symbols similar to those used at ski trails (yellow, green, blue, black). Each course consists of wood tree platforms connected by “bridges”. The platforms are all constructed at varying heights. The bridges consist of ropes, cables, and wood and are comprised of different elements which a climber must cross to reach the next platform. Climbers are attached to safety cables throughout the course by a harness and safety clips. Each climber undergoes a safety orientation of approximately thirty minutes prior to beginning their climb. When a climber completes a course, they may return to the starting point and choose a different course. Photographs of the course are attached hereto as **Exhibit A**.

Each climber’s ticket entitles them to 2.5 hours on the courses, including orientation time. The Aerial Adventure Park requires climbers to reserve a ticket in advance. Other than when school groups arrive together, on average 15 people start their climb every 30 minutes during the week and 20 people start their climb every 30 minutes on weekends. The reservation system also helps to manage vehicle activity to and from the park by spreading the cars out throughout the day. The total capacity of the park is 120 climbers at any one time. In the 2015, 2016, 2017, and 2018 seasons, the Aerial Adventure Park attracted approximately 19,361; 31,145; 28,710; and 18,049 climbers respectively. The Aerial Adventure Park received numerous positive testimonials from its users who were thrilled to have an outdoor exercise activity that was accessible to children and to climbers of many different levels of ability.

Because the Applicant operated the Aerial Adventure Park for four seasons prior to its closure, the Applicant is able to provide actual operations, noise, property valuation, and traffic information from the proposed use.

In 2015, HMMH conducted a noise study of the Aerial Adventure Park when the Park was at full capacity. A copy of the study report is attached hereto as **Exhibit B**. HMMH studied whether the Aerial Adventure Park was audible from the Highview Condominium on Highview Drive. *HMMH Report*, at p. 1. HMMH concluded that “At no time during either monitoring with the park in operation were any sounds from the park audible at all. The background sound levels were quite low, and were dominated by traffic on Route 6 and Highview Drive, birds, and crickets, with contributions from occasional aircraft.” *HMMH Report*, at p. 1-2. HMMH further studied reference levels within the park and conducted a study using worst-case sound propagation assumptions, which found that “The predicted Adventure Park sound levels, both

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average and maximum, are well below the measured ambient sound levels at the site near the Highview Condominiums.” *HMMH Report*, at p. 2.

In 2015, 2016, and 2017, the Applicant’s traffic engineer, Patrick Dunford of VHB, studied traffic counts and vehicle speed, and conducted roadway capacity analyses. Those analyses showed that the traffic impacts from the Aerial Adventure Park were minimal and were spread over three roadways. A copy of Mr. Dunford’s report is attached hereto as **Exhibit C**. The report concludes that “Based on VHB’s traffic counts and three year study of the area surrounding the Adventure Park, we conclude that there were minimal delays for motorists and that the Adventure Park component of the street traffic has not created any measurable significant impact on traffic operations in this area.” *Traffic Report*, at p. 1. VHB studied vehicle speeds and concluded that the average vehicle speed in the area was approximately 30 miles per hour. *Traffic Report*, at p. 2. VHB further studied roadway capacity and concluded that “even if the volumes on Pine Street, Grove Street, and Shawme Road increased to three times the 2017 observed level these intersections would still function at LOS A. As no such significant increases in street traffic are anticipated, these intersections should continue to operate acceptably from a capacity perspective for the foreseeable future.” *Id.* It is noted that the Superior Court credited Mr. Dunford’s testimony and concluded that the plaintiffs had not proved that they had been harmed by traffic generated by the Aerial Adventure Park.

The Applicant also engaged Certified Real Estate Appraiser, Cape Cod Appraisal Services to study what, if any, impact the Aerial Adventure Park has had on surrounding property values. A copy of the Impact Analysis is attached hereto as **Exhibit D**. The Impact Analysis finds “the data and analysis clearly show no negative influence was created in the immediate community, neighborhood or on the market values of contiguous residential property due to the Adventure Park. In conclusion, no measurable negative impact on real estate property values was caused by the Adventure Park.” On page 4, the Impact Analysis further notes that “Shawme-Crowell State Forest is a 700-acre camp ground with 15 miles of hiking and horseback riding trails. Other facilities include a playground and nature center. Therefore, the museum use with outdoor recreational uses conforms to the existing neighborhood with other outdoor recreational amenities at the camp-ground.” Moreover, “the data shows measurable **increases** in property values at the Highview Drive Condominium project after the installation of the Adventure Park in 2015 at 6.25% per year. Therefore, the Park installation had no negative impact on property values.” *Impact Report*, p. 7 (Emphasis supplied.) The data also “shows measurable **increases** in property values in the Hilltop Dr Condominium project after the installation of the Adventure Park in 2015 at 5.75% per year. The Park installation had no negative impact on values.” *Impact Report*, p. 8 (Emphasis supplied.) The extensive Impact Analysis is clear that the Adventure Park has had no negative impact on property values in the surrounding area and that property values, in fact, have increased since the installation of the Adventure Park.

Section 2210 of the Sandwich Zoning By-law, the use regulations, allows an outdoor recreational use in a residential district by special permit. An outdoor recreation facility is a “small-scale community recreation and sports fields or facilities allowed by special permit under Section 4150.”

THE ADVENTURE PARK MEETS ALL SIX CRITERIA FOR AN OUTDOOR RECREATION FACILITY SPECIAL PERMIT.

Section 4151 establishes six criteria which must be met in order for a special permit to be granted. The requirements are not subject to relief. All six criteria are listed below, followed by the Aerial Adventure Park's strict compliance with each required criteria.

a) No building or other structure related to the outdoor recreation facility shall be constructed or placed on a lot with an area less than 80,000 SF. Such structures shall be single story, shall be compatible with the surrounding neighborhood and shall not exceed 500 SF. In residential districts concession stands located in permanent structures are expressly prohibited.

The Aerial Adventure Park is on two lots totaling 35.37 acres, or 1,540,717 square feet, well in excess of the required 80,000 square feet. There are three structures associated with the facility.¹ The first is an elevated platform that is 240 square feet from which the ropes courses begin. The other two "structures" are yurts; they are single story and the yurt the Applicant proposes to maintain is 452.39 square feet. With the deck around the yurt, the total size of the structure is 499 square feet. The applicant proposes to remove second, larger yurt and replace it with a yurt identical to the 452 square foot yurt, again with a proposed deck bringing the total to 499 square feet. The existing decking connecting the two yurts will be removed so that each has a separate deck. Accordingly, as proposed, the Aerial Adventure Park meets this requirement. There is no concession stand located in a permanent structure associated with the Aerial Adventure Park. The Aerial Adventure Park thus meets this special permit criteria.

b) Lighting is prohibited for fields and parking areas related to outdoor recreation facilities located in residential districts. In commercial and industrial districts lighting is permitted only between dusk and 10 PM. Where permitted lighting structures shall not exceed the maximum height requirement for the district in which the lot is located as described in Section 2600 of this by-law.

The Aerial Adventure Park does not have any lighting associated with it. Accordingly, the Aerial Adventure Park complies with this criteria.

c) Lot coverage by buildings, structures, paving or other impervious surfaces or additions to any buildings, structures, paving or other impervious surfaces shall not exceed twenty percent (20%).

Lot coverage, excluding buildings associated with the Museum, and including the proposed paved accessible parking spaces is less than 1%. When the two buildings that are associated with the Museum that are on the Aerial Adventure Park lots are included, lot coverage is still well below 20%.

¹ The other two existing structures on the property are not associated with the Aerial Adventure Park and are used exclusively by the Museum.

d) Buildings or structures, including any accessory buildings or structures, shall not be located within one hundred (100) feet of any property boundary line.

The closest setback from the two yurts to the property line is 113 feet. Accordingly, the yurts and launch platform are not within one hundred feet of any property boundary line. Notably, the property line that the structures are closest to is along Shawme Road. The property directly across Shawme Road from the Aerial Adventure Park is also owned by Heritage.

e) Off street parking shall be provided and shall not be located within one hundred (100) feet of any property boundary line and shall be screened from any public way or private driveway.

Off street parking for the facility is provided on an unpaved field in the part of the site that is closest to Pocasset Road. This facility also serves as overflow parking for the Museum. The off street parking facility is screened from Shawme Road by vegetation and several boulders, as shown on the attached plan. One hundred spaces in the parking facility are dedicated to the Aerial Adventure Park and are not within 100 feet of Shawme Road.

f) Spectator seats shall not exceed one hundred (100) in number.

“Spectator seats” are undefined by the Zoning By-law. The Aerial Adventure Park has three log benches on the ground with an approximate seating capacity of 20, and 12 picnic tables that approximately seat 72, for an approximate total seating of 92, though we would not necessarily characterize these as “spectator seats.”

Accordingly, the Aerial Adventure Park thus meets or exceeds all criteria for a special permit for an Outdoor Recreational Facility in a residential district.

THE ADVENTURE PARK MEETS THE STANDARD FOR ISSUANCE OF A SPECIAL PERMIT.

Section 1330 of the Zoning By-law further provides that “Special Permits shall normally be granted unless, because of conditions peculiar to the particular case but not generally true for similar permitted uses on other sites in the same district, it appears that nuisance, hazard or congestion will be created, or for other reasons there will be substantial harm to the neighborhood or derogation from the intent of the by-law, so that the stated district objectives will not be satisfied.”

The Applicant’s materials show that there is no nuisance, hazard or congestion to be created by the Aerial Adventure Park. The Superior Court concluded that the traffic generated by the Aerial Adventure Park does not harm the neighbors. The Applicant’s noise study affirmatively proves that there is no noise from the Aerial Adventure Park audible to the neighbors, and certainly no noise that would rise to the level of a nuisance.

The Aerial Adventure Park is in an R-1 zoning district, the stated purpose of which is “preserving current surrounding conditions and the environment of the community.” One of the most unique features of the Aerial Adventure Park is that it preserves the surrounding environment. The course is constructed among the existing trees and relies on the continued

existence and health of those trees in order for its operation to succeed. Accordingly, the Aerial Adventure Park inherently must preserve the surrounding environment for its very existence. Moreover, the Aerial Adventure Park's closest neighbors are Heritage and Shawme-Crowell State Forest. Heritage Museum & Gardens consists of numerous acres of gardens with walking trails throughout them, in addition to the Museum collections. The Shawme-Crowell State Forest is a large public forest consisting of a public campground and hiking trails. An arboreal ropes course is certainly consistent with two other public, outdoor, recreational uses. In fact, the three harmonious uses create an attractive destination for any outdoor enthusiast.

The Aerial Adventure Park also complies with the criteria on which the Planning Board and Town Engineer may provide recommendations for a special permit as set forth in Section 1342 of the Zoning By-law.

a) Protection of adjacent area against detrimental or offensive uses on the site by provision of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, odor and allowance of sunlight and air;

The Aerial Adventure Park contains several drainage structures, as shown on the plan filed herewith, which ensure adequate surface water drainage. There is no outdoor lighting associated with the Aerial Adventure Park, and no sources of dust, vibration, or odor. As discussed above, the Aerial Adventure Park has had a noise study performed which establishes that there is no audible noise from the Aerial Adventure Park that could be heard by its neighbors. As the Aerial Adventure Park is predominantly an outdoor, natural space with less than 1% lot coverage, it certainly provides for allowance of sunlight and air, and in fact encourages children and adults to experience sunlight and air that they otherwise would not.

b) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;

The Superior Court expressly found that "only a small portion of the road capacity was utilized after the construction of the [Aerial Adventure Park] and that there has been no appreciable traffic delays caused by the congestion of the streets." The Aerial Adventure Park provides more than ample off-street parking and provides several trails for pedestrian movement within the site. There is a crosswalk for climbers who wish to access Heritage Museums & Gardens across the street to do so safely. Moreover, as described above, the surrounding roadways have more than ample capacity and the Aerial Adventure Park has not created any measurable significant impacts on traffic in the area.

c) Adequacy of facilities for handling and disposal of refuse and other production by-products;

There are adequate trash barrels on the site for any refuse generated by the Aerial Adventure Park. The Superior Court found that any detritus found along the roadways around the Aerial Adventure Park is to no greater degree than any other roadscape and that the plaintiffs had failed to establish any evidentiary nexus between the litter and the Aerial Adventure Park. There are no production by-products from the Aerial Adventure Park.

d) Protection of environmental features on the site and in adjacent areas;

The Aerial Adventure Park more than protects environmental features on the site. The proposed lot coverage is less than 1%. The Aerial Adventure Park is designed around the existing trees and thus preserves and protects them. One purpose of the Aerial Adventure Park is to bring participants – including children – in to nature, consistent with its surrounding uses, Shawme-Crowell State Forest and the Heritage Museum & Gardens. Accordingly, preservation of environmental features on the site is an inherent purpose of the Aerial Adventure Park.

e) Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood;

The structures associated with the Aerial Adventure Park were designed to blend in to the woodland setting of the park and the surrounding State Forest. The existing and proposed yurt are low, round structures, echoing the shape of Heritage Museums & Gardens' Auto Gallery, and similar to the six yurts available for rent in Shawme-Crowell State Forest, providing architectural consistency with the surrounding area. Yurts were also chosen for their association with outdoor operations such as state parks and other wilderness facilities and are thus consistent with the heavily vegetated property on which they sit and with the adjacent Shawme-Crowell State Forest and its campground, which features six rentable yurts, and hiking trails. The structures associated with the Aerial Adventure Park are located on museum property totaling one hundred acres and thus are not visible from any of the surrounding residences, nor are the surrounding residences visible from the Aerial Adventure Park. The proposed structures comply with all Zoning By-law requirements and are setback from the closest road by 113 feet.

f) Co-ordination with and improvement of systems of vehicular and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and others features that support the neighborhood;

As discussed previously, the Aerial Adventure Park has adequate vehicular and pedestrian access and drainage. There is no water supply or sewage disposal at the site, the seasonal climbers may use portable restrooms or the adjacent Museum's restrooms. There is no lighting associated with the Aerial Adventure Park, nor is there landscaping other than to screen the parking area, as the use is designed to preserve the existing woodland.

g) Compliance with all applicable sections of the Zoning By-Law.

As set forth above, the Aerial Adventure Park complies with all requirements of the Zoning By-law, as it meets or exceeds all criteria for a special permit for an outdoor recreational use and is a complementary use to the two existing outdoor recreational uses that surround it.

Accordingly, the Aerial Adventure Park meets all criteria for a special permit for an outdoor recreational use in a residential district.