



**To:** Zoning Board of Appeals  
**From:** Ralph Vitacco, Director of Planning & Economic Development  
**Subject:** The Adventure Park at Heritage Museums and Gardens, LLC  
Special Permit  
**Date:** 05/09/19

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On April 23, 2019, The Adventure Park at Heritage Museums and Gardens, LLC ("Applicant") applied for a special permit under Sandwich Protective Zoning By-laws section 4150 to operate an Outdoor Recreation Facility.

#### Background

The Town of Sandwich Building Department issued building permit C14-92 on September 18, 2014 to Lambros Construction for an aerial treetop adventure park at Heritage Museum and Gardens. The basis for the issuance of the permit was the aerial park represented an accessory operation to the museum's primary use. The Town received an ACCT compliance certificate from Seafox Consulting Inc. and issued a Certificate of Inspection and a Certificate of Occupancy on May 12, 2015 to Heritage Plantation of Sandwich for the adventure park.

Shortly after the issuance of the building permit, an Appeal of the Decision of the Building Inspector ("ADBI") was filed. On October 28, 2014, a public hearing took place. The ZBA deliberated and voted unanimously to deny the ADBI. The decision was appealed to the Barnstable County Superior Court.

The Aerial Treetop Adventure Park operated for approximately 4 seasons from 2015 to 2018 until Justice Cornelius Moriarty annulled the permit and ordered the ceasing of operations on August 27, 2018.

#### Review of Section 2300 Applicability

The intended site of operation for the Adventure Park at Heritage is 0 Pocasset Road and 0 Shawme Road. Both properties are within the R-1 district. Based on the Zoning

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By-Law section 2300 Regulation Use Schedule, an outdoor recreation facility is allowed by special permit.

Section 4150 dictates the requirements of the special permit and it further states the requirements are not subject to relief through variance.

The section allows for a small scale community recreation and sports fields or facilities. Additional clarity is provided within the definition section of the By-law.

**RECREATION FACILITY** – Indoor or outdoor sports facilities or athletic clubs including but not limited to, playing fields, courts, pools or ice rinks, rock climbing walls, or other sports areas, spectator facilities and other structures accessory to general athletics and recreation.

The Applicant shall present to the satisfaction of the Board that the challenge course can be a small scale community recreation facility.

Neither section 4150 nor the definition identifies who may operate a Recreation Facility. It does not preclude a commercial entity from such operation.

The Applicant is requesting permission to operate a challenge course as an Outdoor Recreation Facility.

The Commonwealth Department of Public Safety (DPS) identifies Challenge Courses as an Amusement Device. DPS 520 CMR defines an AMUSEMENT PARK as “A location that has 35 or more amusement devices that may be operated.”

DPS 520 CMR defines Challenge Course as “A facility or facilities not located in an amusement park or carnival consisting of one or more elements that challenge participants as part of a supervised educational/recreational curriculum.”

The Commonwealth Department of Public Safety licenses challenge courses separately from amusement parks.

#### Cape Cod Commission Review

The application identifies the subject property lot area as 34 acres. The Cape Cod Commission requires a mandatory review of an Outdoor Use with a Total Project Area that exceeds 40,000 square feet.

Heritage is utilizing a portion of its property which was used as overflow parking. A review of satellite imagery shows that there was no appreciable clearing from 2007 to present. The field remains pervious. Also based on satellite imagery there does not appear to be any significant clearing as a result of the installation of the ropes course. The course is suspended above ground and does not appear to encumber the flow of wildlife in the area.

A review of the application, pre-existing file and ongoing conversation with the Cape Cod Commission concluded that a mandatory referral is not required.

#### Review of Section 4151 Applicability

Section 4151 establishes the criteria necessary for the granting of the special permit.

The application appears to address the six elements required for the special permit. The Applicant's representative will articulate how the Adventure Park at Heritage is meeting or intends to meet each requirement.

There are several criteria which may require additional consideration:

- a) Such structures shall be single story, shall be compatible with the surrounding neighborhood and shall not exceed 500 SF.

Currently there are two connecting yurts with a total square footage that exceeds the 500 SF threshold. The applicant is proposing two separate yurts with decking at 499 SF each. This appears to meet the requirement.

Although Shawme Road contains private residences and the Highview and Hilltop Condominium complexes, the yurts do not appear to be to be incompatible with the neighborhood. Within Heritage there is a round barn, carousel building and a "treehouse." There are several yurts within the abutting Shawme-Crowell State Forrest.

- b) Lighting is prohibited for fields and parking areas related to outdoor recreation facilities in residential districts.

The applicant states the Aerial Adventure Park does not have any lighting associated with it. As the outdoor facility is located within a residential district, no lighting can be permitted.

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

Based on the plan provided by the Applicant there are several elements of the challenge course that encroach on the 100 foot setback.

The Zoning By-law defines STRUCTURE as, "Anything constructed or erected, the use of which requires fixed location on the ground, or attachment to something on the ground, including all buildings, mobile homes, billboards, towers, swimming pools or tanks that have a capacity of 4,000 gallons or more, or the like or part thereof; but not including paving, usual lawn accessories, fences or retaining walls (6) feet in height or less."

Prior to the issuance of the original building permit in 2014, the Building Inspector expressed similar concerns involving elements of the challenge course and setbacks. The Applicant's representative, citing *MacNeil v. Town of Avon*, successfully argued that structures less than 30 inches in height in no way obstruct the front yard and have no detrimental effect on public health, safety, morals or general welfare. The Applicant's representative further stated the construction of the tree platforms leaves the entire front yard open at ground level.

The original building permit was annulled due to the improper application of the Dover Amendment; setbacks were not addressed.

The original building permit was adhering to R-1 district front yard setbacks as described in section 2600. The current special permit views setbacks in relation to an outdoor recreational facility with the intent of creating an adequate buffer between the facility and potential neighbors.

The Board may accept the strict definition of structure as prescribed in the By-Law and require the removal of all the elements of the challenge course that encroach upon the 100 foot setback or accept the applicant's interpretation and allow the elements of the challenge course which encroach upon the 100 foot setback to remain and condition that no other structures may be placed within the setback.

If the Applicant has successfully articulated to the satisfaction of the Board that they have met the requirements of section 4151, the Board must then determine if the granting of the special permit conforms to section 1330 of the Sandwich Protective Zoning By-Law.

#### Review of Section 1330 Applicability

*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 that the stated district objectives will not be satisfied.*

In support of their special permit application, the Applicant has provided several studies to illustrate the operation of the proposed outdoor recreation facility will not create substantial harm to the neighborhood.

The Applicant's representative should address the studies individually at the public hearing.

The Applicant provided a sound study conducted by HMMH dated December 10, 2015. The study measured sound from the adventure park on both August 27, 2015 and

October 17, 2015. The summary states, "At no time during either monitoring with the park in operation were any sounds from the park audible at all."

The Applicant provided a traffic study conducted by VHB dated April 23, 2019. The study compares traffic counts from 2017, 2016 and 2015. The summary states, "Based on traffic counts and three year study of the area surrounding the Adventure Park, VHB conclude that there were minimal delays for motorists and that the Adventure Park component of the street traffic did not create any measurable significant impact on traffic operations in this area."

The Applicant provided an impact analysis on residential property conducted by Cape Cod & Islands Appraisal Group, LLP dated April 16, 2019. The study was conducted on April 1, 2019 and concludes the following:

#### Highview Drive Condominium

"In conclusion, the data shows measurable increase in property values in the Highview Dr 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."

#### Hilltop Drive Condominium

"In conclusion, the data shows measurable increase 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 property values."

#### Pine Street

"In summary, values from 2015 to 2018 increased about 2.25% per year confirming an increase in market value."

The August 27, 2018 ruling issued by Justice Moriarty addressed three distinct ways the aerial adventure park had a negative impact on the neighborhood: traffic, trash and diminution of property values.

All parties agreed that there was an increase in traffic on the neighboring streets. The judge concluded that only a small portion of the road capacity was utilized after the construction of the adventure park and that there were no appreciable traffic delays caused by the congestion of the streets.

The court observed evidence of trash along the road but to no greater degree than any other roadscape. An evidentiary nexus between litter and the adventure park could not be established.

Judge Moriarty accepted the opinion of the plaintiffs' real estate appraiser who stated subject properties suffered a loss in market value of approximately 10% after the construction of the aerial adventure park. The judge further states the evidence was credible and established fair market values of the plaintiffs' properties had been reduced as a result of the aerial adventure park.

Summary

In addition to the applicant, the Board can expect to hear testimony from the public in opposition and support of the project.

The Office of Planning & Economic Development has received correspondence from an abutter articulating a substantive argument in opposition to the aerial adventure park. The Board should require the Applicant to address these concerns to the satisfaction of the Board. The Board should weigh the arguments in deliberation and condition the decision as they see fit.

It is the responsibility of the Applicant to establish that they have met the requirements of sections 4151 and 1330 to the satisfaction of the Board. If the Board grants the special permit, it is within their authority to impose conditions that reflect the spirit and intent of the By- law and character of the community.

Submitted for your review.