

**CHECKLIST FOR BOARD OF APPEALS’ REVIEW OF THE  
ADVENTURE PARK AT HERITAGE MUSEUMS AND  
GARDENS, LLC’S APPLICATION FOR SPECIAL PERMIT**

QUESTION	REQUIRED RESULT IF “Yes”	REQUIRED RESULT IF “No”
Is there any genuine supervised educational/recreational curriculum associated with the Aerial Adventure Park?	Proceed to next question	Denial
Are the Aerial Adventure Park’s 69 elements “amusement devices?”	Denial	Proceed to next question
Does the ASTM F2959-16 standard apply to commercial” aerial adventure parks? <u>See</u> Highview Opposition Letter, Exhibit C (ASTM F2959-18, Section 1.2).	Denial	Proceed to next question
Has Outdoor Ventures obtained amusement device licensing in connection with its aerial adventure park operations, including from the State of Tennessee?	Denial	Proceed to next question
Did The Aerial Adventure Park LLC contemplate availing itself of tax and overtime wage exemptions on the grounds that the Aerial Adventure Park is an “amusement park,” assuming that the Park’s operating schedule did not exceeded the maximum threshold allowed under such laws? <u>See</u> Plaintiffs’ Proposed Findings and Rulings submitted at trial (a copy of which is attached as <b>Exhibit F</b> ), ¶¶ 188-190.	Denial	Proceed to next question
In defining the term “Spa,” does the ZBL clarify its	Denial	Proceed to next question

<p>intended meaning of “small-scale outdoor recreation,” by characterizing the latter as “tennis courts, croquet courts etc.” <u>See</u> ZBL, Definitions section (referencing “small scale outdoor recreation <b>such as tennis courts, croquet courts etc.</b>”)?</p>		
<p>Did the Barnstable Superior Court conclude that the Applicant anticipates attracting 50,000 visitors and “intends to construct three additional courses and offer night climbing up to and including 10:00 p.m., which will substantially increase the number of the AAP’s customers and, consequently, the traffic on the roads.” <u>Sullivan v. Heritage Plantation of Sandwich, Inc.</u>, No. 1472CV00560, 2018 WL 5881655, at *4 (Mass. Super. Sept. 10, 2018).</p>	Denial	Proceed to next question
<p>Has The Adventure Park, LLC marketed and operated the Aerial Adventure Park as a “lucrative” and regionally impactful “economic development project,” aimed at achieving “financial success for the operator,” with the capacity to drive tourism not only in Sandwich but throughout Cape Cod generally by serving as a “premier outdoor recreational destination”. <u>See</u> Exhibit F, Proposed Findings and Rulings, ¶¶ 9, 31, 33-34, and 144; <u>Id.</u> at 38. For example, did Heritage and Outdoor</p>	Denial	Proceed to next question

Ventures agreed upon an area of geographic exclusivity within which they mutually agreed not to “open another adventure park.” <u>Id.</u> at ¶ 142.		
Is the Aerial Adventure Park a “small-scale community recreation” facility?	Proceed to next question	Denial
Does the Aerial Adventure Park contain multiple tree platform “structures” that are located within 100 feet of a property boundary line in violation of ZBL Section 4151(d)?	Denial	Proceed to next question
Does the Aerial Adventure Park contain multiple tree platform “structures” that are located within the 30-foot setback in violation of the ZBL, requiring a variance?	Denial	Proceed to next question
Does the Aerial Adventure Park utilize off-street parking that is located within 100 feet of a property boundary line and is not screened from a public way in violation of Section 4151(e) and Section 3540?	Denial	Proceed to next question
Does the Aerial Adventure Park contain outdoor light fixtures on Lot 1 in violation of Section 4151(b)?	Denial	Proceed to next question
Does the Aerial Adventure Park include a concession stand within a permanent structure in violation of Section 4151(a)?	Denial	Proceed to next question
Does Section 3540 require that the “commercial” Aerial Adventure Park be “screened from any adjacent residential use or district?”	Denial	Proceed to next question

Is the Aerial Adventure Park “in harmony with” “the general purpose and intent of the ordinance or by-law?”	Proceed to next question	Denial
Would “conditions peculiar to” the Proposed Project “but not generally true for similar permitted uses on other sites in [this R-1 Zoning] district,” produce visual and physical “nuisance, hazard or congestion?”	Denial	Proceed to next question
Would the Aerial Adventure Park “for other reasons” cause “substantial harm to the neighborhood or derogation from the intent of the [ZBL], so that the stated district objectives” of “preserving current surrounding conditions and the environment of the community” under Section 2140 “will not be satisfied.” See ZBL, Sections 1330 and Section 2140?	Denial	Proceed to next question
Would the Aerial Adventure Park contradict any of the ZBL’s core stated objectives such as “[e]ncouraging the most appropriate use of land,” “[c]onserving the value of land and buildings,” “the conserving of natural resources and the preventing of blight and pollution of the environment,” and “[l]essening the congestion of traffic?” See ZBL, Section 1100.	Denial	Proceed to next question
Would the Aerial Adventure Park project and its more than 75 amusement devices, aerial courses and other accoutrements and conditions	Proceed to next question	Denial

<p>“peculiar” to the Proposed Project, be compatible with the underlying scenic, historic, residential neighborhood?</p>		
<p>Would the Aerial Adventure Park generate visual and physical clutter, increased congestion on the area’s narrow and unpaved scenic roads, and other hazards and nuisances, including deleterious drainage impacts that the Old King’s Highway Regional Historic District Commission found to exist to confer standing in its March, 2016 appeal proceeding relating to then-proposed construction of parking and/or infrastructure facilities associated with the Aerial Adventure Park?</p>	Denial	Proceed to next question
<p>Did the Barnstable Superior Court conclude that “the plaintiffs [including Highview residents] have suffered a diminution in their property values of approximately 10%” as a result of the Aerial Adventure Park, <i>amounting to tens of thousands of dollars per property</i>. Exhibit A, <u>Sullivan</u>, <i>supra</i>, 2018 WL 5881655, at *7-8 (emphasis added); <u>Fireside Motors, Inc.</u>, <i>supra</i>, 395 Mass. at 372.</p>	Denial	Proceed to next question
<p>Is the grass parking area something other than an all-weather surface, and does it include parking spaces within the 20 foot minimum setback from Shawme Road in violation of Section 3130 of</p>	Denial	Proceed to next question

the ZBL? See Exhibit F(Plaintiffs' Proposed Findings and Rulings, ¶ 214.		
Is the Aerial Adventure Park substantially different from the project that the Historic District Committee voted on in issuing a purported certificate of appropriateness on or about April 23, 2014?	Denial	Proceed to next question
Did abutters receive notice of the Historic District Committee hearing that resulted in the Committee's purported issuance of a certificate of appropriateness in connection with the Aerial Adventure Park?	Proceed to next question	Denial
Is there a valid certificate of appropriateness authorizing the construction and operation of the Aerial Adventure Park?	Proceed to next question	Denial.