

**STATE OF RHODE ISLAND
NEWPORT, SC.**

SUPERIOR COURT

**BELLEVUE-OGRE POINT
NEIGHBORHOOD ASSOCIATION
Plaintiff**

v.

**PRESERVATION SOCIETY OF
NEWPORT COUNTY
Defendant**

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C.A. No. NC2014- 98

COMPLAINT

This is a complaint for declaratory judgment, brought pursuant to the Declaratory Judgments Act, R.I. Gen. Laws Ch. 9-30, for relief in the form of a judgment declaring the rights of the parties under ordinances of the City of Newport and statutes of the State of Rhode Island with respect to the defendant's planned construction of a structure on a parcel of real property owned by the defendant within the City of Newport.

FACTUAL ALLEGATIONS

1. The plaintiff Bellevue-Ochre Point Neighborhood Association ("BOPNA") is a domestic non-profit corporation organized under the laws of the State of Rhode Island, and having its principal place of business in Newport, Rhode Island.
2. BOPNA's members are owners and residents of parcels of real property in the area of Newport defined as the R-60 Zone being bounded by Coggeshall Avenue and Spring Streets on its west side, Perry, Dixon, Ward, Cliff and Sea Avenue on its north side and the Atlantic Ocean on its east and south sides (the "Bellevue-Ochre Point Neighborhood," or "Neighborhood").

3. The Bellevue-Ochre Point Neighborhood is a unique residential area of historic significance. It includes estates with great mansion residences on large, landscaped lots on quiet streets on or near the Atlantic Ocean. Many of the mansion residences are designated on the National Register of Historic Places and seven are National Historic Landmark properties. The Neighborhood is a National Historic District (with Bellevue Avenue running through its core) and is part of the larger National Historic Landscape District.
4. The property values in the Neighborhood are among the highest in the City of Newport, reflecting the character of the land and the structures in that part of the city. BOPNA members paid a premium in the purchase of their homes for the Neighborhood characteristics described in the preceding paragraph. The continuing value of their homes depends on the preservation of the essential characteristics of the Neighborhood and its status as a National Historic District.
5. The BOPNA was founded for the purpose of acting, on behalf of BOPNA members, to preserve the essential character of the Neighborhood, by monitoring and analyzing proposals for alterations, development, or construction within the Neighborhood that could affect the Neighborhood characteristics, and to take action to advocate in any appropriate forum for the enforcement of all applicable statutes, ordinances, and regulations that govern alterations, development, or construction in the Neighborhood.
6. The defendant Preservation Society of Newport County ("PSNC") is a domestic non-profit corporation organized under the laws of the State of Rhode Island, and having its principal place of business in Newport, Rhode Island.

7. PSNC owns nine large and historic Newport mansions that it maintains as museums which are open for public visitation and for occasional rental for party functions. Seven of these are in or near the Bellevue-Ochre Point Neighborhood.
8. The Bellevue-Ochre Point Neighborhood developed as an area of very substantial single family residences on large lots, built for and owned by members of the highest echelons of wealthy Americans. Since the 1950s, the Neighborhood has evolved to a certain extent from its original character of strictly large mansions on large lots owned by wealthy families. In particular, an educational institution, Salve Regina University, and the PSNC have acquired some of the former mansions and converted them to uses as college/ university or museum. However, residential use comprises 65 percent of the land area of the Neighborhood, and of the 153 properties listed in the National Register of Historic Properties Inventory for the Historic District, approximately 80 percent are in private ownership as residential properties.
9. The Neighborhood is within Newport's Historic District. Newport ordinances require that any new construction and any alterations of existing structures within the Historic District must conform to standards that are intended to maintain to the maximum extent possible the look and feel of the area as it was originally built, which is a quiet, private, and protected residential enclave.
10. The primary use of properties in the Bellevue-Ochre Point Neighborhood remains private residence. College/university and museum uses are inconsistent with the primary, residential use of the Neighborhood generally, and for that reason are allowed only by special use permit, and are intended to be subordinate to the principal, residential use in the Neighborhood.

11. The quality and character of the Neighborhood exists because a delicate balance has been achieved between the primary, residential use and the more intensive, public, and quasi-commercial uses of college/university and museum.
12. Maintenance of this delicate balance is critical to the enjoyment by BOPNA members of their properties, and the maintenance of the values of those properties.
13. One of the mansions owned by PSNC is lot 59 of Newport Tax Assessor's plat 36, located at Ochre Point Avenue, and is known, and will hereinafter be referred to, as "The Breakers."
14. The Breakers was constructed between 1893 and 1895 as a palatial, lavishly luxurious single family residence. It sits on approximately 13 acres of grounds, which also contain a children's playhouse and gate keeper cottage.
15. In the late 1940s, PSNC acquired possession of The Breakers by lease from its owners, and converted The Breakers from use as a single family residence to museum.
16. At the time that the PSNC leased The Breakers and converted it to museum use, The Breakers was located in a residential zoning district in which museum was a use permitted as of right.
17. In 1972, the PSNC acquired ownership of The Breakers.
18. In 1977, the Newport Zoning Ordinance was amended to classify the district in which The Breakers was located as an R-60 zone, and provide that use as a museum in the R-60 zone was a use that was permitted only under a special exception approved by the Newport Zoning Board of Review.
19. The Newport Zoning Ordinance as it has been in effect at all times since has provided that museum use in the zoning district in which The Breakers was located was a use

permitted only under a special exception or special use permit approved by the Newport Zoning Board of Review.

20. The Newport Zoning Board of Review has never approved a special exception or special use permit permitting the use of The Breakers as a museum.
21. The PSNC heavily advertises its ownership of its mansion properties, and their availability for public visits and viewing, as a means of generating operating revenues. It derives approximately 40 percent of its annual revenues from ticket sales to the public for entry to its properties.
22. The Breakers is the largest and most famous of the Newport mansions, and is the flagship of the PSNC collection. In its advertising, PSNC emphasizes The Breakers over its other properties, using The Breakers as the leading attraction in its efforts to promote its ticket selling business.
23. The Breakers attracts more than 400,000 visitors annually to its grounds.
24. In 2013, the PSNC applied to the City of Newport for a Certificate of Appropriateness concerning its intention to construct a Welcome Center on The Breakers lot.
25. The Welcome Center that the PSNC desires to construct is a permanent, all seasons use building with a footprint of approximately 3,650 square feet. The planned Welcome Center would contain galleries with exhibits, interactive media displays, public rest rooms, a restaurant serving prepackaged food and drinks with an enclosed seating area comprising 1,350 square feet, and a patio area of another 1,830 square feet for restaurant patrons.

26. The PSNC has received or will in the immediate future receive a Certificate of Appropriateness for its planned Welcome Center, and, on information and belief, intends to move forward with the construction of the Welcome Center.
27. The BOPNA and its members would be injured in fact if the PSNC proceeds with the construction of the Welcome Center. The BOPNA has 10 members who own and live in residences that are in close proximity to The Breakers.
28. If constructed, the Welcome Center would cause a significant intensification of the use of The Breakers property. It will result in a significant increase in the amount of traffic in the area and will increase the numbers of visitors who will be in the vicinity of The Breakers and in and around the streets where the members of the BOPNA reside.
29. The increase in the intensity of the use of The Breakers will affect the current balance within the Neighborhood between private, residential use and the more intensive, public, and quasi-commercial uses of college/university and museum, tilting the balance toward intensive use, and altering the character of the Neighborhood.
30. The alteration of the character of the Neighborhood that would be effected if the Welcome Center were to be constructed would decrease the BOPNA members' enjoyment of their property, and would have a deleterious effect on the values of their properties.
31. A real and continuing controversy exists between the parties as to whether the PSNC's proposed construction of the Welcome Center is prohibited by applicable laws and ordinances.

COUNT I

32. The plaintiff realleges each and every allegation contained in paragraphs 1 through 31 above, as if separately stated herein.
33. Because The Breakers has never received a special exception or special use permit approved by the Newport Zoning Board of Review, its current use as a museum constitutes, under the current Newport Zoning Ordinance, a lawful prior non-conforming use.
34. Construction by PSNC of the proposed Welcome Center would constitute movement of the non-conforming use to another part of The Breakers lot, and a change in the non-conforming use of land.
35. The Newport Zoning Ordinance prohibits movement of a non-conforming use to another part of the lot, and prohibits the change in the non-conforming use of land except to a conforming use or structure.

WHEREFORE, the plaintiff BOPNA requests that this Court enter its judgment declaring:

- a. The Breakers is a lawful non-conforming use within the R-60 district;
- b. The construction of the Welcome Center would constitute a movement of non-conforming use to another part of the lot;
- c. The construction of the Welcome Center would constitute a change in the non-conforming use of the land; and
- d. The construction of the Welcome Center is prohibited under the Newport Zoning Ordinance.

COUNT II

37. The plaintiff realleges each and every allegation contained in paragraphs 1 through 31 above, as if separately stated herein.

38. The proposed Welcome Center will house a restaurant as defined under Rhode Island law and Newport ordinances.
39. The Newport Zoning Ordinance prohibits museums from operating restaurants on property in use as a museum.
40. There exist several other properties in or near the Bellevue-Ochre Point Neighborhood, including six owned by PSNC, that are in museum use or have the potential for being placed in museum use.
41. BOPNA has members who reside in close proximity to other properties in or near the Bellevue-Ochre Point Neighborhood that are in museum use or have the potential for being placed in museum use.
42. If operation of a restaurant at The Breakers is permitted, it is likely that other properties in museum use will likewise commence restaurant operations.
43. The operation of a restaurant by any property in museum use in or near the Bellevue-Ochre Point Neighborhood will cause injury in fact to those BOPNA members whose properties are in close proximity to the properties in museum use.

WHEREFORE, the plaintiff BOPNA requests that this Court enter its judgment declaring:

- a. The Welcome Center will house a restaurant; and
- b. The Newport Zoning Ordinance prohibits the operation of a restaurant on property in use as a museum.

COUNT III

44. The plaintiff realleges each and every allegation contained in paragraphs 1 through 31 above, as if separately stated herein.
45. The proposed Welcome Center is an accessory use and an accessory structure within the meaning of the Newport Zoning Ordinance.

46. The Newport Zoning Ordinance prohibits an accessory use and/or an accessory structure on a property in use as a museum, with the specific exception of accessory use for the sale of goods to the public.

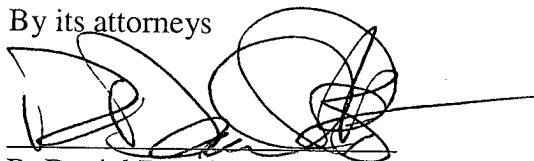
WHEREFORE, the plaintiff BOPNA requests that this Court enter its judgment declaring:

- a. The proposed Welcome Center is an accessory use and an accessory structure within the meaning of the Newport Zoning Ordinance.
- b. The Newport Zoning Ordinance prohibits an accessory use and/or an accessory structure on a property in use as a museum, with the sole exception of an accessory use for sale of goods to the public;
- c. The proposed Welcome Center is not an accessory use for sale of goods to the public within the meaning of the Newport Zoning Ordinance;
- d. The proposed Welcome Center is not permitted as an accessory use or structure on The Breakers property.

The plaintiff demands a trial by jury.

**BELLEVUE-OCHE POINT
NEIGHBORHOOD ASSOCIATION**

By its attorneys



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Dated: March 7, 2014