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## NEWPORT

# Welcome center appeal rejected

A Superior Court judge rules that the local neighborhood association has no legal standing to appeal the decision by the Newport Zoning Board of Review.

By Sean Flynn  
Staff writer

A Superior Court judge ruled Wednesday that the Bellevue Ochre Point Neighborhood Association does not have the legal standing to appeal the Jan. 27 decision by the Newport Zoning Board of Review to overturn the Historic District Commission's rejection of a proposed visitors center at The Breakers.

Judge Bennett Gallo ruled the neighborhood association lacks

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**DONALD O. ROSS**

chairman of the Preservation Society of Newport County's board of trustees

standing on two grounds. First, the association as an entity is not a property owner in the city that has been injured by the zoning decision. Second, the association

does not qualify as an abutter that could appeal because it does not have property within 200 feet of The Breakers.

The neighborhood association had appealed the zoning board decision that granted the Preservation Society of Newport County, which owns The Breakers, a "certificate of appropriateness" for the \$4.2 million welcome center that is proposed to replace the current tent, portajohns and overgrowth in vegetation to the left of the entrance to

The Breakers. The HDC refused to grant the certificate on a 4-3 vote Aug. 27, 2013.

The judge granted the motion filed by attorney William Landry, representing the Preservation Society, to dismiss the lawsuit.

It was the second loss for the neighborhood association in less than three weeks.

Gallo on July 18 dismissed a separate lawsuit filed by the Bellevue Ochre Point Neighborhood Association that claimed the city's zoning laws prohibit

the Preservation Society from establishing a welcome center at The Breakers property at all.

"We're delighted that the court has once again ruled in our favor," Donald O. Ross, chairman of the Preservation Society's board of trustees, said in a prepared statement.

"We believe that our proposal for a small, elegant welcome center at The Breakers is architecturally and historically

**APPEAL A7**

## Appeal

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appropriate. Providing amenities like restrooms and simple refreshment services at a site with 400,000 annual visitors is a matter of basic customer service and human courtesy. We believe it is time for this small group of opponents to put an end to unwarranted court challenges which are wasting valuable time and resources."

That is advice the neighborhood association apparently is not prepared to take. James Moore, president of the Bellevue Ochre Point Neighborhood Association, said Wednesday's ruling was decided "on the most narrow legal

interpretation of zoning law." He said the association has 13 members who live within three blocks of The Breakers and represents "hundreds of residents in the area."

The association is unlikely to appeal Wednesday's decision, Moore said. However, he said, "We are going to appeal the July decision to the state Supreme Court."

He said the association is waiting for Landry to file an order with the court summarizing Gallo's July decision and then will file the appeal.

Gallo in July rejected the neighborhood association's claim "that The Breakers museum constitutes a legal non-conforming use in an R-60 zone (residential lots with at

least 60,000 square feet) and, therefore, may not be moved or altered," as summarized in the decision.

"The fact that at one time a museum use was non-conforming is irrelevant because, under the current zoning ordinance, museums are now permitted by special use permit," Gallo wrote. "Because the zoning board is empowered to issue and consider special use permits, any approvals necessary for the development of the proposed welcome center present questions for the zoning board."

Neighborhood association members argued before Gallo that the welcome center is not eligible for a special use permit. In their view, since it is prohibited under zoning, it would require a

"use variance." Such variances are rare, since the owner has to show that without it, he or she would be barred from a reasonable use of the property.

Moore said he wants the Supreme Court to clarify whether anyone under the city's zoning laws can operate a restaurant in a residential zone, which is how he characterized the welcome center.

Landry said the Preservation Society has filed for a special use permit. The zoning board is expected to schedule hearings on the application at its Aug. 25 meeting. Landry said a hearing could be scheduled in September, but that would be up to the board.

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