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WEEKEND EDITION

Visitors center suit tossed out

The court next month will hold a hearing on a separate lawsuit filed by the Bellevue Ochre Point Neighborhood Association.

By Sean Flynn
Staff writer

NEWPORT—A Superior Court judge on Friday threw out a lawsuit filed by the Bellevue Ochre Point Neighborhood Association that claimed the city's zoning laws prohibit the Preservation Society of Newport County from establishing a welcome center at The Breakers property.

Judge Bennett Gallo ruled, "All the declarations that BOPNA requests this court to make are

part and parcel of an everyday review of a building application by municipal zoning officials: in the first instance by the zoning officer, then on review by the zoning board."

Before the lawsuit went to court, Guy Weston, the city's zoning officer, said the city zoning code allows museums in that area of the city with a special-use permit. He said he believes the proposed welcome center, as part of the museum, can operate, if it receives a special-use permit from

the zoning board.

The judge upheld that interpretation.

Gallo 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."

The city's Zoning Board of Review voted in January to overturn the Historic District Commission's rejection in August 2013 of

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SUIT A7

July 19-20, 2014 A7

Suit

Continued from A1

the proposed visitors center, a \$4.2 million, 3,650-square-foot pavilion-style building that will include a ticketing area, wheelchair-accessible restrooms, information on its historic properties and snacks and drinks in an area that includes tables and chairs. The center would be hidden in a grove of trees at the northwest corner of the property and cover less than 1 percent of the total Breakers grounds, the Preservation Society said.

The next apparent step would have been for the Preservation Society to apply for a special use permit from the zoning board, but the neighborhood association filed the lawsuit asking for a declaratory judgment that would have prohibited that from happening.

"Essentially, BOPNA asks this court to review the society's proposed development plans and determine whether they fit within, or violate, the terms of the zoning ordinance," Gallo wrote. "This is

clearly a task more appropriate for the local zoning officials."

Gallo is not done ruling on the merits of the overall case, however. He has scheduled a hearing for Aug. 6 on a separate lawsuit filed by the Bellevue Ochre Point Neighborhood Association that appeals the zoning board's decision to overturn the Historic District Commission.

Attorney William Landry, representing the Preservation Society, said Friday he will argue the neighborhood association does not have standing to file the appeal, since it does not own property in the city and none of its members lives within 200 feet of The Breakers, meaning they are not legally abutters.

Separately, the Preservation Society has appealed a 4-3 vote by the City Council in May to reject the society's applications for victualing licenses. That means that sandwiches, snacks and soft drinks will not be available at The Elms Carriage House or the Marble House Tea House this year, although they were available at The Elms for the past eight

years and at Marble House for the past five years.

The Preservation Society filed the appeal with the state Supreme Court, which directly hears the appeals of city or town council decisions.

Attorney R. Daniel Prentiss, who represents the neighborhood association, said Friday he expects all three separate legal actions will end up before the Supreme Court — an appeal of Friday's decision, the appeal of the zoning board's decision to overturn the Historic District Commission and the appeal of the victualing licenses' denial.

"There's no question," he said. "The Supreme Court will have to interpret the city's zoning ordinance."

Meanwhile, the Preservation Society was happy it won the round in the legal battle decided Friday.

"We are very pleased the judge ruled on the issues the way he did," said John Rodman, the society's director of museum experience. "This is a very clear decision in our favor."

Flynn@NewportRI.com