

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC.

SUPERIOR COURT

[FILED: August 25, 2014]

BELLEVUE-OGRE POINT
NEIGHBORHOOD ASSOCIATION

v.

PRESERVATION SOCIETY OF
NEWPORT COUNTY

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C.A. No. NC 2014-0098

AMENDED DECISION

GALLO, J. This Amended Decision is being filed to correct the following:

On page 5 of the original Decision filed on July 18, 2014, the following paragraph originally read as follows:

BOPNA’s first count requests that this Court declare that the Breakers museum constitutes a legal non-conforming use in an R-60 zone and, therefore, may not be moved or altered. The Court’s view is that this is a non-issue. The fact that at one time a museum use was non-conforming is irrelevant because, under the current Zoning Ordinance, museums are now permitted in the area by special use permit. See Campbell v. Tiverton Zoning Bd., 15 A.3d 1015 (R.I. 2011). In Campbell, our Supreme Court dismissed a portion of the defendant zoning board’s appeal from a Superior Court judgment because plaintiff’s underlying action for a declaratory judgment seeking “that the building plans and building permit [to rebuild a yacht club] represent an unlawful expansion of a preexisting legal, non-conforming use” was rendered moot. Id. at 1019, 1021. During the pendency of that appeal to the Rhode Island Supreme Court, the Tiverton Town Council amended its zoning ordinance; the amendment placed a “floating zone” on the yacht club’s lot that permitted the challenged operation, thus extinguishing the yacht club’s status as a legal non-conforming use. Id. at 1021. Similarly here, the Breakers museum was a non-conforming use prior to 1977, but the current Zoning Ordinance now permits this use by special use permit. 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. See Lloyd v.

Zoning Bd. of Review for Newport, 62 A.3d 1078, 1085 (R.I. 2013); see also G.L. 1956 § 45-24-42(a).

The above-referenced paragraph is hereby amended as follows:

BOPNA's first count requests that this Court declare that the Breakers museum constitutes a legal non-conforming use in an R-60 zone and, therefore, may not be moved or altered. The Court's view is that this is a non-issue. The fact that a museum may be non-conforming is irrelevant since under the Zoning Ordinance, museums are permitted in the area by special use permit.¹ 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. See Lloyd v. Zoning Bd. of Review for Newport, 62 A.3d 1078, 1085 (R.I. 2013); see also G.L. 1956 § 45-24-42(a).

In all other respects, the Decision filed on July 18, 2014 remains as originally filed.

¹ When the Breakers began its museum operations in 1942, such operations were permitted by right. The zoning ordinance was amended in 1977 to provide that a museum use may be permitted throughout the city by special exception. No special use permit was sought or obtained by the Breakers other than that related to the refreshment shed in 1997.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Bellevue-Ochre Point Neighborhood Association v.
Preservation Society of Newport County

CASE NO: NC 2014-0098

COURT: Newport County Superior Court

DATE DECISION FILED: August 25, 2014

JUSTICE/MAGISTRATE: Gallo, J.

ATTORNEYS:

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For Defendant: William R. Landry, Esq.; Matthew H. Leys, Esq.