

Museums on Bellevue as a matter of right?

Newport City Council resolutions would broaden allowable uses on Bellevue Avenue, legalize weekly rentals

BY BOB OTTAVIANO

NEWPORT—Real-estate debates may liven up in the next two years in Newport, if early actions of the new City Council are any indication.

A pair of resolutions introduced by returning Council members would make it easier to open museums on Bellevue Avenue, and would allow single-family homes throughout the city to be rented on a weekly basis.

Both resolutions will be heard at the first meeting of the incoming Council, next Wednesday, Jan. 12.

Mayor Richard C. Sardella is asking for a review of special uses allowed in R-60 zones – residential areas with a minimum lot size of 60,000 square feet, or about 1.5 acres.

Sardella makes no bones about the fact that his resolution is prompted by the ongoing Cutler case. In June, Laurence and Judy Cutler were denied permission by the Newport Zoning Board of Review to open a museum of American illustration in their Vernon Court home on Bellevue Avenue.

Sardella has been vocal in his support of the Cutlers' plans, and his criticism of the Zoning Board's decision.

"It's kind of frustrating," he said, in reference to the steps that the Cutler petition has gone through. "If (an applicant) meets all criteria – unanimous approval from the

Planning Board, and the Historic District Commission; if (an applicant) makes concessions, and addresses neighbor's concerns – and he's still denied a requested use, then something is wrong with the system that we have."

The zoning changes he advocates would put more authority in the hands of City Hall administrators, Sardella said.

He added that he's not trying to shift the authority of the Zoning Board to the City Council – and he denied that he's seeking to punish the Board for making a decision he disagrees with.

At press time, a draft of Sardella's resolution was being reviewed by City Solicitor Joseph J. Nicholson Jr. The draft and Nicholson were unavailable to Newport This Week.

The resolution would not change the law right away. Sardella said he's asking the administration to review its options for making certain special uses allowable as a matter of right.

A resolution from Councilman James W. Baccari seeks immediate action to allow weekly rentals of single-family houses.

Baccari said his intent is to welcome more families to spend vacation time in Newport. That would happen, according to his resolution, if the city allowed "the opportunity for affordable lodging with self-contained cooking facilities for periods of less than (30) days."

Baccari did not think that allowing short-term rentals would exacerbate the party-house problem in Newport. He argued that the city already allows short-term rentals in the form of time-share properties.

Families who can't afford time-shares would be able to stay – and spend money – in the city if his resolution passed, Baccari said.

He was confident that real-estate professionals would weed out groups of young people and other potential clients likely to raise a ruckus in houses rented by the week. "We have to start trusting (rental agents) to be more responsible," Baccari said. ♦



Lisette Prince photo

Ready to do battle: Laurence Cutler is continuing his efforts to open a museum in his Vernon Court home despite having been denied permission by the Newport Zoning Board of Review.

Cutler case prompts a look at Newport zoning

BY BOB OTTAVIANO

NEWPORT—Laurence and Judy Cutler would like to build a park and a memorial arch on a three-acre parcel adjacent to their Vernon Court home.

It remains to be seen whether the latest petition from the Cutlers to the city of Newport will

engender any heat. Late last month, a hearing on the park proposal was postponed by the Historic District Commission until Jan. 11.

In the meantime, it seems useful to shed some light on the process that stalled the couple's larger plans.

The Cutlers' proposal to create

an art museum in their 52-room, 31,000-square-foot home was rejected last June by the Newport Zoning Board of Review. The Cutlers quickly appealed the board's decision to Superior Court. No action has been taken to date.

In Vernon Court, the Cutlers would like to open the National Museum of American Illustration, showcasing more than 2,000 original paintings they own by Maxfield Parrish, Norman Rockwell, N.C. Wyeth and others.

A group of neighbors object to the museum plans. Those objections, and the persistence of the Cutlers in pursuing their goal, make this case worth reviewing.

And that review provides a good opportunity to take a look at the inner workings of the Newport Zoning Board of Review, a powerful but generally low-profile arm of the city's government.

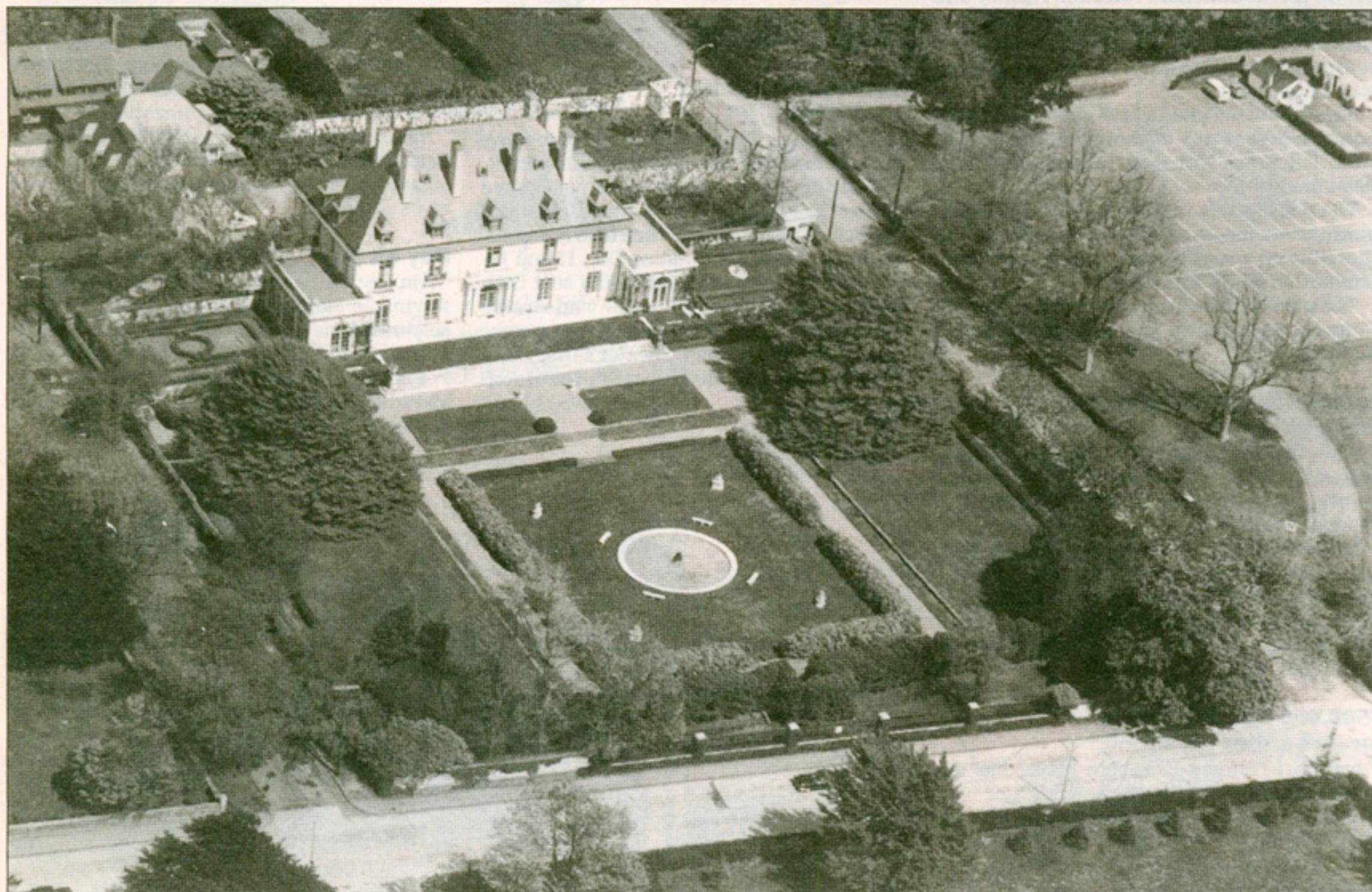
On June 28, the Board voted 3-2 to grant a request from the Cutlers to establish their museum.

But by state law, municipal zoning boards must approve an application for a special-use permit by at least a 4-1 margin. So even though they won a majority, the Cutler couple's request was rejected.

Chairperson Carol O. Cummins voted to approve, as did Charles Y. Duncan and Elizabeth H. Minifie. Karen Augeri-Benson and Paul W. Gagne voted to deny.

The Zoning Board is composed of five voting members and two alternate members. According to Newport Zoning Officer Guy E. Weston, the alternate members vote in matters where regular members are unavailable, or where personal or professional circumstances might suggest a conflict of interest for a regular member.

Continued on back page



© John Hopf photo

This photograph, taken in 1967, shows Vernon Court on Bellevue Avenue between Shepard and Victoria avenues and, to its south the Stoneacre property between Victoria and Ruggles avenues.

Cutler case... *Continued from front page*

For the latter reason, voting member Roger H. King Jr. recused himself from the Cutler case. King, who owns an art gallery on Bowen's Wharf, stepped aside in favor of Minifie, then first alternate on the Zoning Board.

The duty of zoning boards is to hear petitions for regulatory variances, special-use permits and appeals of decisions made by the Planning Board.

The term "regulatory variance" is pretty much self-explanatory: when granted, it's an exception to a given provision of the zoning code.

Most of the Newport Board's work is in hearing requests for variances, Weston said. A typical application is from a homeowner looking to build a deck that would come closer to her property line than the code allows.

The Planning Board reviews petitions for subdivisions. If they reject a petition, the appeal is heard by the Zoning Board.

Generally sought for commercial purposes, a special-use permit allows a given enterprise to operate in an area where such enterprises are not normally permitted.

The Cutlers asked the Zoning Board for permission to operate a museum at the southern end of Bellevue Avenue. That neighborhood is an R-60 zone, shorthand for a residential district with a minimum lot size of 60,000 square feet (about 1.5 acres).

Special-use applications are measured against several criteria, Weston said. Among those are consistency with the city's Comprehensive Land Use Plan; harmony of the prospective use with

the surrounding area; potential adverse impact on neighbors' property values; traffic patterns; fire codes; and other regulations.

It's part of Weston's job to review petitions like the one from the Cutlers, and to make recommendations to the Board. By late April, Weston had submitted his report, without objections to the plan.

Under the heading "Staff Comments," Weston noted that "The total area of the museum space is approximately 5,100 sq. ft. The remaining portion of the building is to remain a residence for the petitioner."

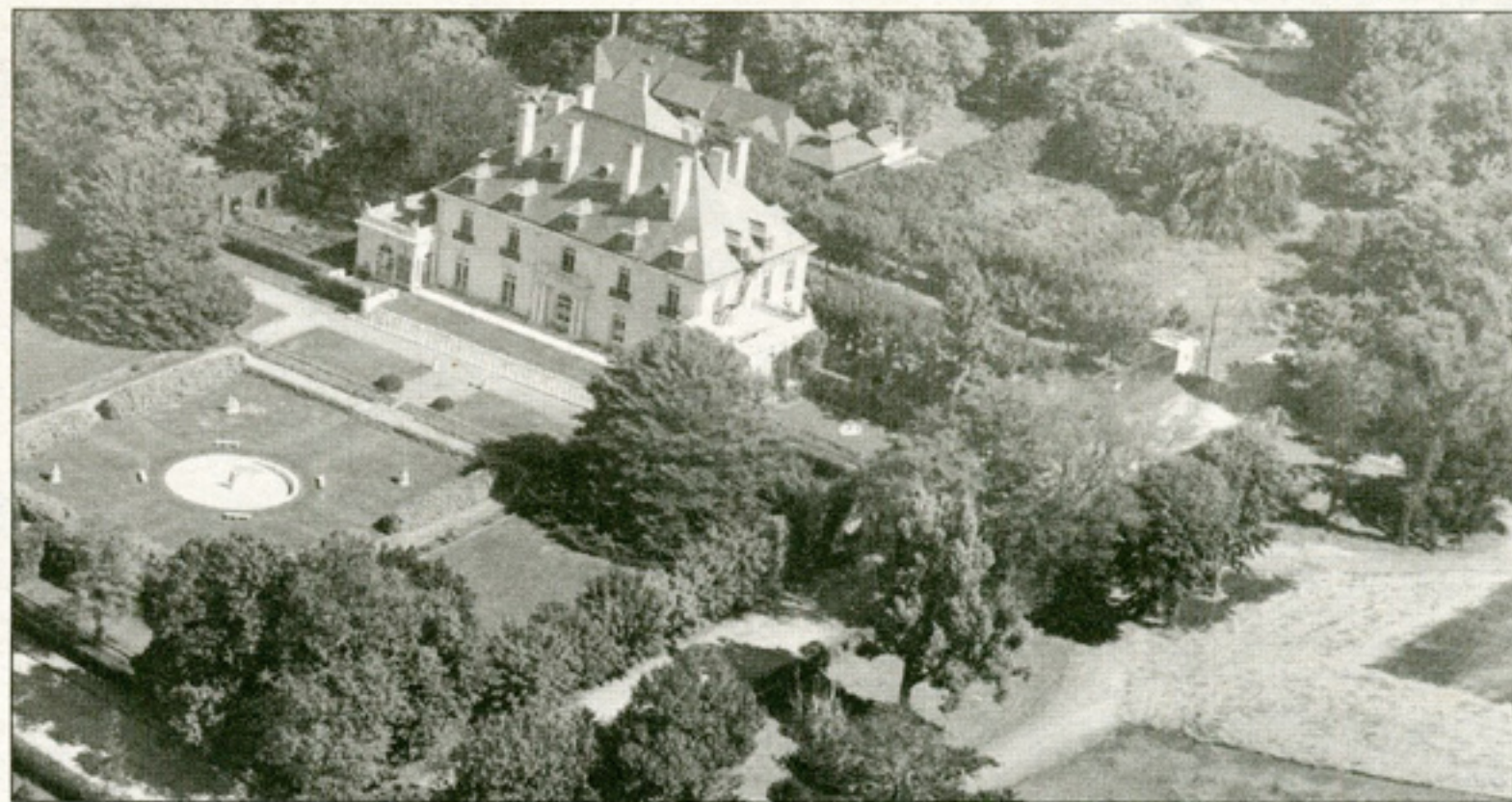
"The only exterior changes are to be made for the purposes of providing handicap accessibility. The Historic District Commission has approved these changes."

"The petitioner provides more than the required 23 off-street parking spaces for the proposed use. The existing driveways are adequate to handle the proposed traffic. The use is in harmony with the surrounding area, which consists of large single-family and multi-family estates, and other museum uses."

"The scale of the (proposed) use will have a minimal impact on traffic flows."

According to Laurence Cutler, four of his neighbors objected to the museum proposal. He identified them as Noreen Drexel, Jonathan H. Pardee, Richard A. Plotkin and Cassandra Stone.

Drexel is the only one in that quartet considered an immediate neighbor, or abutter, by the city of Newport. As an abutter, she was notified by the Department of



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Vernon Court before its days as a junior college, with part of Stoneacre's property at the bottom right of photograph.

Planning, Zoning and Development of the Cutler petition in December 1998, not long after it was filed.

Drexel later engaged an attorney, Richard N. Sayer, to represent her against Cutler. Pardee was represented by former City Solicitor Mary Jo Carr.

As is customary in Newport zoning matters, attorneys for the prevailing side wrote the decision that summarized the board's findings on June 28. A draft of that decision, signed by Carr and Sayer, was submitted to Weston in August.

Heavy on legalese, the seven-page submission offered 28 reasons for rejecting the Cutler request. For example:

- the museum plan represents an encroachment of commercial use into a residential area.
- the relationship between the museum foundation and the company that owns the property – and the fact that the Cutlers intend to live above their museum – is "not within the spirit or intent of the Newport Zoning Ordinance with respect to museums and museum use."
- one of the two driveways into Vernon Court is not wide enough

to meet zoning requirements, and the plans do not provide for sufficient parking, based on the Cutlers' attendance estimates.

On various grounds, Laurence Cutler has rejected the decision document as "garbage."

In early September, Cutler's attorney, Brian G. Bardorf, sent a formal objection to the Board, stating that "the proposed decision does not represent the instructions of the Zoning Board, does not represent the findings and decisions of the Zoning Board, unfairly characterizes the detailed testimony and evidence presented to the Board during extensive hearings on this petition, and constitutes little more than the (objectors') arguments against granting the petition rather than the findings of the Newport Zoning Board of Review."

Some Board members apparently agree, and that's where the matter now rests. The Cutler appeal can't be reviewed in Superior Court until Weston's office submits a decision signed by all five of the members who voted.

Attorneys for the prevailing side have yet to deliver a decision that is satisfactory to the entire board, Weston said.

The Cutlers have at least one powerful public figure in their corner. Days before Christmas, new Newport Mayor Richard C. Sardella hosted WADK's afternoon talk show, "Open Forum."

His guest was Laurence Cutler. On the air with Cutler, Sardella said, "The majority of the (City) Council-elect has overwhelming support of the (Cutler proposal)."

"It may happen that the Zoning Board might reconsider their decision and rule favorably, so that we could have (everyone) from Newport and all over Rhode Island share in this wonderful collection of American art."

That's unlikely to happen. According to Weston, the rule of administrative finality states that no matter decided by entities such as zoning boards can be reopened unless the board finds the relevant application is substantially different than the application they voted on.

Laurence Cutler has stated in public that he intends to aggressively pursue permission to open a museum, without ever suggesting he might modify in any significant way the plans he and his wife have put together.

Cutler was unavailable for comment. ♦