RHODE ISLAND ETHICS COMMISSION

Meeting Material

November 15, 2022

Rhode Island Ethics Commission

Open Session
Meeting Materials

STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION
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NOTICE OF OPEN MEETING

AGENDA

12th Meeting

DATE: Tuesday, November 15, 2022

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

1. Call to Order.

2. Motion to approve minutes of Open Session held on October 18, 2022.

3. Director's Report: Status report and updates regarding:

   a.) Complaints and investigations pending;
   b.) Advisory opinions pending;
   c.) Access to Public Records Act requests since last meeting;
   d.) Financial Disclosure; and
   e.) Ethics Administration/Office Update.

4. Advisory Opinions.

   a.) Nicole M. Shevory, alternate member of the Newport Zoning Board of Review, requests an advisory opinion regarding whether she qualifies for a hardship exception to the Code of Ethics' prohibition against representing herself before her own municipal agency, in order to seek approval of planned renovations to her home. [Staff Attorney Popova Papa]

5. Motion to go into Executive Session, to wit:

a.) Motion to approve minutes of Executive Session held on October 18, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

b.) In re: Calvin Ellis, Complaint No. 2022-7, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

c.) In re: Richard Nassaney, Complaint No. 2022-6, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

d.) In re: Timothy Milisauskas, Complaint No. 2022-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

e.) Motion to return to Open Session.

6. Motion to seal minutes of Executive Session held on November 15, 2022.

7. Report on actions taken in Executive Session.

8. Election of Officers.

9. New Business proposed for future Commission agendas and general comments from the Commission.

10. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE, AT 1-800-RI5-5555.

Posted on November 10, 2022

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: November 15, 2022

Re: Nicole M. Shevory

QUESTION PRESENTED:

The Petitioner, an alternate member of the Newport Zoning Board of Review, a municipal appointed position, requests an advisory opinion regarding whether she qualifies for a hardship exception to the Code of Ethics' prohibition against representing herself before her own municipal agency, in order to seek approval of planned renovations to her home.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, an alternate member of the Newport Zoning Board of Review, a municipal appointed position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing herself before her own municipal agency, in order to seek approval of planned renovations to her home.

The Petitioner is the second alternate member of the Newport Zoning Board of Review ("Zoning Board"), having been appointed by the Newport City Council in December of 2021. She explains that the Zoning Board consists of five members and two alternates. The Petitioner states that she attends all Zoning Board meetings in case she is needed but only participates if a Zoning Board member is unavailable and she is required to sit in his or her absence, adding that, since her appointment, she has only participated in approximately three meetings.

The Petitioner represents that in May of 2022, after a year and a half of unsuccessful bidding on homes, she and her husband purchased a house in Newport to accommodate their growing family. The Petitioner describes the house as a three-story, two-family home built in 1870 that is in a state of disrepair and needs extensive renovations to become a safe and comfortable home in accordance with today's modern living standards. She adds that the house consists of two units, one encompassing the first floor ("Unit 1"), and the other encompassing the second and third floors of the house ("Unit 2"). The Petitioner explains that she and her family currently live on the first floor as the second and third floors are uninhabitable. She notes that there have been no substantial repairs done to the house since its construction. She further notes that the prior owner never lived in the house and always rented it out. The Petitioner represents that she and her husband intend to rent out Unit 1 and live in Unit 2 after they conduct the necessary renovations in order for the house to become safe and comfortable for living.

The Petitioner states that the house was built on an undersized lot and, in order to be able to realize some of the renovations they are planning and make the house safe and up to today's building

code, the Petitioner and her husband are required to seek approval from the Zoning Board concerning several matters. She notes that they have already submitted an application for a special use permit and a regulatory dimensional variance to the Zoning Board, which is tentatively scheduled to be heard on November 27, 2022, pending receipt of an advisory opinion from the Ethics Commission. The application includes a request for approval to: 1) reconfigure the front porch and stairs to bring them up to current building code, given that the stairs leading into the house are not uniform in height or width and present a safety hazard; 2) install two dormers, one on the front of the house and one on the back, in order to add additional ceiling height and space to the third floor, given that the ceiling height is insufficient and there is no means of egress consistent with the current building code; 3) add a rear addition to the back of the house to allow them, among other things, to bring the interior staircases up to current building code, because currently the staircases are very narrow, steep, and unsafe; and 4) add a rear exterior porch and staircase to Unit 2, which would allow her family to have a direct access to outdoor living and another egress to Unit 2. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she qualifies for a hardship exception that would allow her to seek approval for the planned renovations to her home.

The Code of Ethics prohibits a public official from representing herself or authorizing another person to appear on her behalf, before a state or municipal agency of which she is a member, by which she is employed, or for which she is the appointing authority. Section 36-14-5(e)(1) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). While many conflicts can be avoided under the Code of Ethics by recusing from participating and voting in certain matters, such recusal is insufficient to avoid section 5(e)'s prohibitions. Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, these prohibitions continue while the public official remains in office and for a period of one year thereafter. Section 5(e)(1) & (4). Upon receipt of a hardship exception, the public official must also advise the state or municipal agency in writing of the existence and the nature of her interest in the matter at issue; recuse herself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue; and follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter. Section 5(e)(1). See, e.g., A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review ("BZB") and permitting him to appear before the BZB to request a dimensional variance for his personal residence, but requiring that he recuse himself from participating and voting in the BZB's consideration of his request for relief).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing oneself before a municipal agency of which she is a member. Having determined that section 5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the Petitioner's specific circumstances represented herein justify a finding of hardship to permit her or her authorized representative, including her husband, to appear before the Zoning Board.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered the following factors in cases involving real property: whether the subject property involved the official's principal residence or principal place of business; whether the official's interest in the property was pre-existing to her public office or was recently acquired; whether the

relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative.

In the past, the Ethics Commission has applied the hardship exception in various circumstance allowing public officials to either represent themselves before their own public agencies or before an agency over which they have appointing authority. For example, in Advisory Opinion 2022-10, the Ethics Commission opined that a member of the Scituate Town Council qualified for the hardship exception allowing him to appear before the Scituate Building and Zoning Official, over whom the Town Council had appointing authority, in connection with the building of a new home in which the petitioner intended to reside with his family. In that advisory opinion, the Ethics Commission noted that, although the subject property was not acquired prior to the start of the petitioner's public service, the relief sought involved the petitioner's anticipated future personal residence and not a new commercial venture.

Also, in Advisory Opinion 2009-18, the Ethics Commission granted a hardship exception to a member of the Little Compton Town Council, allowing him to appear before the Little Compton Zoning and Planning Boards regarding a special use permit necessary to take down the current structure, which, had been previously used for both residential and commercial purposes, but which he described as derelict, and build a new building with commercial space downstairs and a residence upstairs intended for use by a family member. See also A.O. 2010-32 (granting a hardship exception to a Barrington Zoning Board member who sought a variance to construct a new home on a legal non-conforming lot, given that the property was to be used as his primary residence and was located in the same neighborhood where the petitioner had lived for more than nine years, enabling his children to remain at the same school); A.O. 2007-51 (granting a hardship exception to a Portsmouth Town Council member who owned two adjacent lots containing her primary residence and a garage, and opining that she or her spouse could appear before the Portsmouth Zoning Board to seek a variance to tear down her garage and replace it with a new residence for her and her spouse and then have her adult son move into her current residence); A.O. 2007-19 (granting a hardship exception to a Little Compton Town Council member, whose primary residence was one of two houses owned by his mother and located on a single substandard lot, and opining that he could appear before the Little Compton Zoning and Planning Boards to seek a subdivision variance for the property in order for his mother to gift his residence to him and the second home to his siblings); A.O. 2004-33 (granting a hardship exception to a member of the Exeter Town Council so that he and/or his spouse could appear before the Exeter Planning Board to request a special use permit to allow the petitioner to provide mental health counseling out of an office in his primary residence); A.O. 98-113 (granting a hardship exception to a Narragansett Zoning Board member who sought a variance for a vacant lot on which he intended to build and move into a new primary residence because, although the property interest did non pre-exist his public office, it was being purchased as his principal residence).

Here, although the Petitioner purchased the house shortly after her appointment to the Zoning Board, the relief sought is to ensure the safety and inhabitability of her primary residence. The majority of the planned renovations under the relief sought from the Zoning Board are relative to Unit 2, where the Petitioner and her family would reside. Given the nature of the property, any benefits of the relief sought to Unit 1, which is expected to be rented out after the renovation, are

intertwined with those to Unit 2. It is the opinion of the Ethics Commission that the totality of these particular circumstances represented herein justifies making an exception to section 5(e)'s prohibitions. Accordingly, the Petitioner may represent herself, either personally or through a representative, including her husband, before the Zoning Board relative to the approval of her application. The Petitioner must, however, recuse herself from participating in the Zoning Board's consideration of and voting on their application. Notice of recusal shall be filed with the Ethics Commission in compliance with section 36-14-6.

This Draft Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:
§ 36-14-5(e)
§ 36-14-6
520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:
A.O. 2022-10
A.O. 2014-26
A.O. 2010-32
A.O. 2009-18
A.O. 2007-51
A.O. 2007-19
A.O. 2004-33
A.O. 98-113

Keywords:
Hardship Exception
Property Interest