

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2026-15

Approved: May 5, 2026

Re: Richard Berlinsky

QUESTION PRESENTED:

The Petitioner, an alternate member of the Newport Zoning Board of Review, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before his own municipal agency in order to seek a dimensional variance which will allow him to construct a second-floor deck at his personal residence.

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 himself before his own municipal agency in order to seek a dimensional variance which will allow him to construct a second-floor deck at his personal residence.

The Petitioner is the second alternate member of the Newport Zoning Board of Review, having been appointed to that position by the Newport City Council in June 2025. He explains that the zoning board consists of five sitting members and three alternates. The Petitioner states that, as an alternate, he attends all zoning board meetings in case he is needed. He further states that he participates in the discussions at those meetings but only votes if a sitting zoning board member has recused or is otherwise unavailable and the Petitioner is required to sit in his or her absence.

The Petitioner is currently planning renovations to his home that include the construction of a second-floor deck that will extend over an addition, and a first-floor deck located off the addition. The Petitioner explains that the second-floor deck would provide much-needed shade to that area of the home. The Petitioner states that the proposed second-floor deck size exceeds the permitted 100 square feet deck size permitted under the newly amended zoning ordinance. Therefore, he represents that he will have to apply for and receive a dimensional variance from the zoning board in order to construct the proposed

second-floor deck.¹ The Petitioner informs that he has already submitted the proposed construction plans to the building inspector, who advised him to seek guidance from the Ethics Commission prior to proceeding before the zoning board. The Petitioner informs that if granted a hardship exception, he plans to hire an attorney or a real estate expert to represent him before the zoning board so he will not be addressing the zoning board personally unless asked for clarification on the project.

The Petitioner states that he has owned the home for approximately 9.5 years and that he has lived in it for the past approximately 1.5 years. He further states that this is his primary residence and that he does not rent it out. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before his own municipal agency in order to seek the dimensional variance.

The Code of Ethics prohibits a public official from representing himself or authorizing another person to appear on his behalf, before a municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1); 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016). 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 § 36-14-5(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. § 36-14-5(e)(1) & (4). Upon receipt of a hardship exception, the public official must advise his agency in writing of the existence and the nature of his interest in the matter at issue; recuse himself 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. § 36-14-5(e)(1).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing oneself before a municipal agency of which he is a member. Having determined that § 36-14-5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the Petitioner's specific circumstances as represented herein justify a finding of hardship to permit him or his authorized representative 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 public official's principal residence or principal place of

¹ The Petitioner states that although the construction of the second-floor deck is not the only renovation planned, it is the only one requiring a dimensional variance from the zoning board.

business; whether the public official's interest in the property was pre-existing to his 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.

The Ethics Commission has previously granted hardship exceptions in a number of cases to public officials who sought to appear before their own boards regarding their personal residences. In Advisory Opinion 2014-26, for example, the Ethics Commission granted a hardship exception to a member of the Barrington Zoning Board of Review, allowing him to appear before his own board to request a dimensional variance to construct a second-story dormer on his personal residence. There, the Ethics Commission granted a hardship exception based on the following representations by the petitioner: the dimensional variance sought involved his principal residence, his ownership of the subject property significantly predated his public office, and the relief sought was personal and not connected to any commercial objective. Additionally, the Ethics Commission required the petitioner to recuse himself from participating and voting when the zoning board considered his request for relief. See also A.O. 2021-46 (granting a hardship exception to a member of the Jamestown Zoning Board of Review, allowing him to represent himself before his own board in order to seek a setback variance that was required to construct a garage on his personal residence, but requiring him to recuse from participation and voting during the zoning board's consideration of his request and to inform his fellow zoning board members of the receipt of the advisory opinion and the fact that he would be recusing from the matter pursuant thereto); A.O. 2020-15 (granting a hardship exception to an Exeter Zoning Board of Review member, allowing him to represent himself before his own board in order to seek a dimensional variance to construct a shed at his personal residence that he acquired prior to his appointment to the zoning board, but requiring him to recuse from participation and voting during the zoning board's consideration of his request for relief); A.O. 2011-34 (granting a hardship exception to an East Greenwich Zoning Board member who sought a dimensional variance to construct a storage shed on her personal property, on the bases that the property involved her principal residence, her ownership of the subject property predated her public office by over two years, and the relief sought was personal and not tied to any commercial objective).

In the present matter, the Petitioner seeks to obtain a dimensional variance in order to construct a second-floor deck at his personal residence. The Petitioner's purchase of his home predates his appointment to the zoning board and the relief sought involves a personal, as opposed to commercial, venture. Considering the Petitioner's above representations, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the totality of the circumstances justifies granting an exception to § 36-14-5's prohibitions in order to allow the Petitioner, either personally or through his authorized representative, to appear before the zoning board to seek the desired dimensional variance.

However, § 36-14-5(e)(1)(i-iii) authorizes the Ethics Commission to condition such exception upon the Petitioner's agreement to follow certain steps aimed at reducing any appearance of impropriety. Pursuant thereto, and in addition to the Code of Ethics requirement that the Petitioner recuse from participation and voting during the zoning board's consideration of his request for relief, he must, prior to or at the time of his appearance before the zoning board, inform the other zoning board members of his receipt of the instant advisory opinion and of his recusal in accordance therewith. Notice of recusal must be filed with the Ethics Commission consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. An advisory opinion rendered by the Commission, until amended or revoked by a majority vote of the Commission, is binding on the Commission in any subsequent proceedings concerning the person who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion. 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, agency policy, ordinance, constitutional provision, charter provision, or canon of judicial or 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. 2021-46

A.O. 2020-15

A.O. 2014-26

A.O. 2011-34

Keywords:

Hardship Exception