



**ETHICS COMMISSION**  
c/o CITY OF ANNAPOLIS OFFICE OF LAW  
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October 12, 2021

Carl Richard Corse, Chair  
Jay Schwarz, Member  
Building Board of Appeals  
Annapolis, Maryland 21401

Re: Request for Advisory Opinion

Dear Mr. Corse and Mr. Schwarz,

In September 29 and 30, 2021, e-mails you requested an advisory opinion as to whether a conflict of interest would arise if three members of the Building Board of Appeals (“BBOA”), on which you serve, participated in an appeal hearing before the BBOA.<sup>1</sup> That appeal, Case FEN2108-001 SAYC, arises from the denial of a fence permit application submitted by the South Annapolis Yacht Center (“SAYC”).

Three BBOA members have raised conflict of interest concerns. Those three members are Matthew Evans, Robert Hruby, and Jay Schwarz.

The controlling provision for analyzing whether a conflict of interest would arise from their participation is Annapolis City Code (“Code”) § 2.08.040 (A)(1)(a). That provision provides, in relevant part, that “[a]n official or employee may not participate in...any matter in which, to the knowledge of the ...official..., the official... or a qualified relative of the official... has an interest.” This Commission views an interest as a pecuniary interest. Code § 2.08.020 (A)(9). Per the facts noted below, for two members, the Commission finds a conflict of interest would exist if they participated in the subject appeal.

Mr. Hruby is the landscape architect who prepared the fence permit at issue and is assisting SAYC in its effort to secure that permit, thereby suggesting a pecuniary interest in his continued retention by SAYC. Mr. Schwarz, an architect, has a longstanding relationship with the owner/developer of the SAYC, including designing and presently working on the development and construction of the SAYC project. This engagement suggests a pecuniary interest in the

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<sup>1</sup> Mr. Schwarz requested advice on his own behalf.

continuation of the relationship. These BBOA members have disclosed "...the nature and circumstances of their conflict..." in accordance with Code § 2.08.040 (A)(2).

Mr. Evans, an attorney, arguably does not have a conflict of interest, as any relationship he had with the SAYC developer was in the distant past, but he advises he will not participate in the review of the case, citing concerns arising from the Maryland Attorneys' Rules of Professional Conduct. See Maryland Rule 19-301.9.

The required recusal of two members with a third member declining to participate in deliberations would deny the BBOA the quorum required to consider the subject appeal. In this circumstance, an otherwise conflicted member may participate in the subject appeal to secure a quorum. Code § 2.08.040 (A)(2)(a). Consistent with this statutory authorization, the Commission suggests the BBOA Chair designate one of the two conflicted members to participate in the appeal hearing. In exercising an appropriate recusal, the other conflicted member should not only refrain from participating in the deliberations regarding the subject appeal, but should remove himself from the room or virtual meeting when those deliberations are undertaken. The Commission urges Mr. Evans to act similarly.

Please note that Code § 2.08.030 (C)(2) requires the Ethics Commission to file advisory opinions with the City Attorney's Office. Code § 2.08.030 (C)(2) also provides those advisory opinions may be made public at the discretion of the Ethics Commission. The Commission has determined that this advisory opinion will be publicly posted to the City's web site because of its usefulness to the public and members of the City Council.

Thank you for your service and interest in maintaining high ethical standards in the City of Annapolis.

With best regards,



James E. Dolezal  
Chairman

cc: Members of the BBOA  
Mayor and City Council Members  
City Attorney Michael Lyles