

**TOWN OF OLD ORCHARD BEACH, MAINE
ADMINISTRATIVE REVIEW BOARD HEARING
Tuesday, July 9, 2019
3:00 p.m.**

The Administrative Review Board met at 3:18 p.m. on July 9, 2019 in the Town Council Chamber. The following Board members were in attendance:

Attending: Town Manager Larry Mead
Assistant Town Manager, Louise Reid
Code Enforcement – Ricky Haskell
Police Chief Dana Kelley
Police Captain David Hemingway
Planner Jeffrey Hinderliter
Fire Chief Fred Lamontagne
Marc Bourassa – Town Business Community Member
Michael Shannon – Alternate Citizen Member of the Town
Daniel Blaney – Alternate Town Business Community Member
Tina Englert – Citizen Member of the Town
Philip Saucier, Esquire – Bernstein & Shur

MOTION: Marc Bourassa motioned and Dan Blaney seconded to open the Administrative Review Board at 3:18 p.m.

VOTE: Unanimous.

The Board will review the following business at this Administrative Review Board meeting:

Suzanne Nickerson – (210-1-10) – one year round rental, 17 Smithwheel Road

The Committee was provided with the previously attended Administrative Review Board Minutes involving Suzanne Nickerson – on March 29, 20019.

The Town Manager in his capacity as Chair of the Administrative Board asked each of the Board members to introduce themselves to those in attendance during this day’s review.

The meeting of the Administrative Review Board was convened pursuant to Article 2, Section 18-39 of the Town’s Code of Ordinances to review the business license issued to Susanne Nickerson and Amy Ampuja for one year round rental at 17 Smithwheel Road, prior to the Town Council conducting a hearing to consider whether to suspend or revoke the license. Code Enforcement Officer Rick Haskell determined the license holder to be in violation of Section 18-31(e), operating a business or activity without the required license, Administrative Review Board Meeting Minutes of 7 9 19 – Susan Nickerson – 17 Smithwheel

specifically exceeding the permitted one year-round rental by renting to multiple individual tenants. Ms. Nickerson was notified of the violation on April 15th and has subsequently continued multiple rentals since that notice. The Police Department since the time of notice has issued multiple summonses to Ms. Nickerson for the violation, totaling \$13,850 in fines owed to the Town.

The Council may suspend or revoke a business license for cause, including any of the grounds for denying a license application under Section 18-35. In my review of 18-35, the grounds for denial include:

- The business or premises are not in compliance with other ordinances;**
- Any public health, safety, or welfare problems occurring were not satisfactorily resolved and are likely to recur;**
- The applicant has permitted or committed while conducting a licenses business violation of this article; and**
- The applicant owes a fine as a result of a violation of this article.**

At the June 18, 2019 Town Council Meeting the Council tables consideration of a business license for two additional year round rentals at this same address in the name of Amy Shara with the expectation that the Administrative Review Board will meet to review the violations. At the request of the Council, the Town Manager suspended the issuing of summonses for continuing violations since June 18, 2019, pending today's meeting. Otherwise the total of fines owed to the Town would now be almost \$25,000.

The Board's task is to conduct the fact finding concerning these violations with the goal of resolving the matter through a Consent Agreement with the Licensee. If the Licensee does not accept a Consent Agreement proposed by the Board the License Administrator shall recommend to the Town Council that the license be either suspended or revoked.

Attorney Neil Weinstein was present representing Susan Nickerson on this issue as well as Amy Sharma co-owner of the property who were in attendance.

The complaints have been made way back in March that Susanne Nickerson was renting rooms at her residence outside of the parameters of her business license. The premise is licensed for one year round rental for the bedroom in the basement for the time from 2018 to 2020. The Town documented in March of 20019, in checking various rental sites online including Craigslist, that there were individual rooms advertised for rent; and the telephone number listed (207-332-1100) was registered to Suzanne Nickerson.

At the June 18, 2019 meeting the request for a business license was on the Town Council Agenda and in addressing this license separately for Amy Shara (210-1-10), 17 Smithwheel Road, two year round rentals – it was reported that there have been continuous violations of this business including the renting of units without a license and that consideration be given to a Consent Agreement between the Town and this property owner.

At this Administrative Review Board Meeting, Attorney Weinstein acknowledged that Susan Nickerson was aware that she was illegally renting without a license to rent. It was noted by the Town Manager that during the month of March members of the Old Orchard Beach Police Department's Special Enforcement Team had been conducting an investigation into the operation of an unlicensed business at 17 Smithwheel Road and that Officers had been in contact with the subject offering the room for rent via text as well as voice calls. Susan Nickerson has been notified Administrative Review Board Meeting Minutes of 7 9 19 – Susan Nickerson – 17 Smithwheel

in writing and in person that she was in violation of Ordinances relative to renting but she continued to rent two rooms without a permit. Several times during the discussion it was noted that it was difficult to accept the assurances of Susan Nickerson since her since she has found not to be truthful to the Town's staff in the past.

Susan Nickerson claimed that in discussions with former Code Officer James Butler that he had given her approval that the rental of the two rooms was approved but there was never any substantiation to that claim in writing or other means of documentation. Ms. Nickerson stated several times that she had done everything that she felt was necessary and had been requested.

It was affirmed that the rental of the one unit bedroom the lower level had been approved but at no time was the approval for rental of the two additional rooms multiple units approved. Over the years there has been advertising for multiple unit rentals and units were rented without a license.

It was acknowledged by Attorney Weinstein that Ms. Nickerson felt the need to rent the two units because of financial needs she was having. He felt that any repercussions by the Town should be limited due to the fact that she was also handling personal medical issues. Ms. Nickerson indicated that she had not gotten a notification of the latest issues being raised. Attorney Weinstein also indicated that his client has done everything needed and that consideration to giving her approval for the rental of the two units should have a more thoughtful approach to the size of the fine.

In reviewing the records that were presented to the Administrative Review Board, it was noted that in telephone calls from October of 2018 through June 6, of 2019, that the Code Office has presented to Ms. Nickerson items that needed to be addressed in order to even consider renting the two rooms. Several visits to the home were met with no one answering.

The Administrative Review Board expressed their concern that in many of the incidents related to renting of 17 Smithwheel Road, she would say she was not renting but then faced with fact she would change her story to the rooms were being vacated. The question on honest representation of facts clouded the Board's ability to take for fact comments Ms. Nickerson was making.

Chief Dana Kelley made a motion:

MOTION: to assign an immediate fine in the amount of \$5,000 to be paid and that the remainder of the \$13,850 will be removed should there be no violations between now and the renewal of the April 2020 Business License; and that the renters in the two units were to be removed; and the two units are not to be rented until April 2020. A recommendation was also made that there be a Consent Agreement as well. Marc Bourassa seconded the motion.

There was no vote taken on this and discussion continued with Attorney Weinstein indicating this was harsh considering she made a mistake in the filing of the business license application and that her present financial and medical situations are difficult for her to handle. He indicated that Ms. Nickerson needed the revenue from the rentals. Attorney Weinstein indicated he saw no need for a Consent Agreement.

Since no vote was taken on the first motion, the following Motion was made for consideration.

MOTION: Michael Shannon motioned and Marc Bourassa seconded to Enter into a Consent Agreement with the following terms: \$1,500 fine with balance dismissed upon Town Council's approval of license renewal assuming no violations of licensing ordinance before them; Main floor tenants be removed by the end of July; Licensee withdraws applications for the other two units/bedrooms and may resubmit at time of renewal for existing license; and Licensee agrees to allow at least monthly inspections of the main living floor upon request by the CEO.

VOTE: Yea: Code Enforcement – Ricky Haskell; Planner Jeffrey Hinderliter; Fire Chief Fred Lamontagne; Marc Bourassa – Town Business Community Member; Michael Shannon – Alternate Citizen Member of the Town Daniel Blaney – Alternate Town Business Community Member; and Tina Englert – Citizen Member of the Town
Nea: Chief Dana Kelley

The Town Manager ended the meeting with a review of a Consent Agreement between the Town of Old Orchard Beach and Jane Orne, dba/Weekend at Bernie’s Beach Club. This had already been signed by the business owner and her Attorney Neal Weinstein.

MOTION: Marc Bourassa motioned and Dana Kelley seconded to Adjourn the Administrative Review Board.

VOTE: Unanimous.

Respectfully Submitted,

**V. Louise Reid
Secretary to the Administrative Board**

I, V. Louise Reid, Secretary to the Administrative Review Board of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of four (4) pages is a true copy of the original Minutes of the Administrative Hearings held on Tuesday, July 9, 2019.