

**TOWN OF OLD ORCHARD BEACH, MAINE
ADMINISTRATIVE REVIEW BOARD HEARING
Thursday, October 17, 2019**

The Administrative Review Board met at 3:18 p.m. on October 17, 2019 in the Police Community Room. 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
Fire Chief Fred Lamontagne
Marc Bourassa – Town Business Community Member
Daniel Blaney – Alternate Town Business Community Member
Attorney Mary Costigan – Bernstein & Shur
Police Officer Jeffrey Reagan
Keith O’Leary – owner of Pun Saloon, LLC (206-31-9-A)
Attorney Neal Weinstein

Absent: Michael Shannon – Alternate Citizen Member of the Board
Tina Englert – Citizen Member of the Town

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:

Keith O’Leary dba/Pun Saloon, LLC (206-31-9-A)

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 (sub section b, c, and d) of the Town’s Code of Ordinances to review the business license issued to Keith O’Leary dba/Pun Saloon, LLC prior to the Town Council conducting a hearing to consider whether to suspend or revoke the license. The Pun Saloon is designated as a Restaurant because the Ordinance does not permit two liquor establishments in the DD1 Zone. During several visits by law enforcement it was noted that the owner was not conducting the business as a Restaurant but rather as a Bar.

The cause prompting this administrative process stems from an investigation, as reported by the Police Department, that provides evidence that O’Leary’s is not meeting the conditions of its business license that regularly serve full course meals to patrons, but rather is functioning as a drinking establishment. Under the Town of Old Orchard Beach’s Code of Ordinances, Section 78-720, a drinking establishment may not be located in a building
Administrative Review Board Meeting Minutes of 10 17 19 – Uptown O’Leary’s Pub

that is closer than 400 feet to any other establishment which serves alcoholic beverages for consumption on the premises. The building occupied by O'Leary's, 41 Old Orchard Street, is located less than 300 feet from GFB Scottish Pub, located at the corner of Seavey and Imperial Street.

The Town Manager explained that the Board's task is to conduct the fact finding concerning 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.

Keith O'Leary , owner of the business was present as well as his Attorney Neil Weinstein.

The Town Manager presented the ordinance as it related to Section 78-720 – Spacing of Drinking Establishments and also Section 18-39 – Suspension or Revocation.

Section 18-39:

Sec. 18-39. - Suspension or revocation.

(a) The town council, upon notice and after hearing, for cause, may suspend or revoke any license issued pursuant to this article. The term "cause" shall mean the violation of any license condition, any section of this article, any condition constituting a threat to the public health or safety, or the revocation or suspension of any state or local license that is a condition precedent to the issuance of a license pursuant to this article. The term "cause" shall also include any of the grounds for denying a license application under section 18-35.* Licenses may be temporarily suspended without prior notice and hearing if, in the judgment of the building inspector, the town manager or the town council, the continued operation of the licensed business or activity constitutes an immediate and substantial threat to the public health and safety, provided the licensee receives written notification of the suspension and the reasons therefor, prior to its taking effect, and a hearing is scheduled as soon as possible thereafter.

*Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, this amendment shall apply to any actions or proceedings pending on the date of its enactment.

(b) Before the town council conducts a hearing on a suspension or revocation, the town manager will convene an administrative board consisting of the town manager; the police chief; the fire chief; the license administrator; the planning director; a member of the town business community appointed by the town council; and a citizen of the town, not an employee of the town, appointed by the town council, an alternate member of the town business community appointed by the town council; and an alternate citizen of the town, not an employee of the town, appointed by the town council, to discuss with the licensee the situation giving rise to the possible suspension or revocation.

(c) The purpose of the administrative board will be fact finding with the goal of resolving the situation by proposing a consent agreement with the licensee. If the licensee fails to appear before the administrative board or fails to accept a consent agreement proposed by the administrative board, the license administrator shall recommend to the town council that the license be suspended or revoked, as appropriate.

- (d) Action undertaken by the administrative board will be viewed as advisory to the town council. The town manager will place recommendations on the agenda for the next regular meeting of the town council. The town council will act upon such recommendations in the same manner as used for license hearings.

(Ord. of 6-13-1961, § 5(C); Ord. of 2-16-1988; Ord. of 8-7-2001; Ord. of 9-18-2001; Ord. of 4-15-2008; [Ord. of 3-1-2016](#))

Section 78-720:

Sec. 78-720. - Spacing of drinking establishments.

- (a) After November 5, 2003, no new drinking establishment shall be located in a building, structure, or area of land which is closer than 400 feet, measured in a straight line without regard to intervening structures or objects, to any other building, structure, or land which is:
- (1) Occupied by a drinking establishment; or
 - (2) Occupied by any establishment which serves alcoholic beverages for consumption on the premises.
- (b) No drinking establishment shall be located in a building, structure, or area of land which is closer than 100 feet from the boundary of a residential zoning district.
- (c) Any drinking establishment existing on November 5, 2003 may continue to operate in its existing location provided the owner of the establishment registers with the code enforcement officer on a form specified by the code enforcement officer and establishes to the satisfaction of the code enforcement officer that the establishment was lawfully located or has been deemed legally nonconforming as a drinking establishment as of November 5, 2003. Any establishment which does not so register with the code enforcement officer by May 5, 2004 or which the code enforcement officer determines was not lawfully located as of November 5, 2003 shall not qualify as a lawful nonconforming use under section 78-176, and continued operation shall constitute a violation. A drinking establishment which is allowed to operate pursuant to this section is not eligible for an appeal from restrictions on nonconforming uses under section 78-180.
- (d) Any establishment which serves alcoholic beverages for consumption on the premises must, annually at the time of renewal of its license under chapter 18, article II of this Code, provide information to the code enforcement officer on a form specified by the code enforcement officer demonstrating that the establishment continues to operate in a manner which complies with the spacing requirements of subsection (a) of this section or is allowed to continue in a nonconforming location pursuant to subsection (c) of this section. Any establishment which does not provide such information or which has changed its operation so that it no longer complies with such spacing requirements will be in violation.

(Ord. of 11-5-2003(1), § 7.1.3.3)

It was pointed out that Bars are retail business establishments that serve alcoholic drinks for consumption on the premise; a place for locals to hang out, eat and drink. Bars provide chairs up at the counter and high tables with counters. Many bars offer “happy hours” in

order to attract peak crowds. Pubs are drinking establishments and offer a range from beers, wines, spirits and soft drinks. They also have a wide range of food so it can also be called as a restaurant. A restaurant is a place where people pay to sit and eat meals that are cooked and served on the premises.

The Town Manager introduced Detective Corporal Jeffrey Regan who reviewed for the board the investigative process conducted by the Police Department. The Board addressed some of their concerns and sought background information and asked questions of Detective Regan, and subsequently Mr. O'Leary or Attorney Weinstein asked questions of Detective Regan.

The Town Manager reminded everyone that when the information gathering and discussion has concluded the Board will deliberate whether it concludes that there is a violation of the Town's Ordinance or not. If it finds there is a violation the Board will then propose terms of a Consent Agreement to Mr. O'Leary. If Mr. O'Leary does not accept the proposed Consent Agreement then the License Administrator shall recommend to the Town Council that the license be suspended or revoked. It would then place that recommendation on the next Town Council agenda for its consideration.

The Town Manager indicated that the records show this business was open in 2015. He also asked if this address was also Mr. O'Leary's residence and how long had he lived there as his primary residence? The answer was that the information was correct and that he had lived there since 2015. Mr. O'Leary also indicated that the sign permit application for use of his property as a full service restaurant had been signed by him. The Town Manager indicated that in 2017 some improvements to the property including installing a gate at the side alley of the building leading to the rear of the property was made and that at that time Mr. O'Leary made an application to the DRC for a review of this gate. Mr. O'Leary acknowledged that he had a business license for the apartment and that he is living in the apartment at this time. Mr. O'Leary indicated his operating hours are usually 4 p.m. to 1 a.m. on Thursday, Friday, Saturday and Sunday. Meal service is available at that time as well as the opportunity to buy alcoholic beverages. The type of food available is usually the same with some specials offered. Usual service would include Chicken, Steak, Dumplings, Hamburgers, etc. The most popular food are the steak and chicken wings. He indicated that he would feel that in a year the total for food would be about \$12,500 with \$20,000 in liquor and has an employee who also cooks as well as himself. He indicated that approximately 30 to 35% order food during the Thursday through Sunday period. A menu that is provided to the customers was shown indicating Mulligatawny Soup and Soup of the Day; House or Caesar Salad with the ability to add Shrimp or Chicken; Snacks included Wings, Chicken Tenders, Pork Dumplings, Clam Cakes, Nachos, Poutine;

Sandwiches such as Steak and Cheese, Burger, Grilled Chicken, Chicken Parmagiana; and for Supper – New York Strip, Grilled Chicken, Fish and Chips and Chicken Parmagiana. There seemed to be a question as to whether the employees asked customers if they wanted something to eat or whether the customer had to ask for that service. Pricing was included on the Menus that was shown. Occasionally there are special items on the Menus along with the usual items that are popular. Mr. O'Leary indicated that many of the food supplies come from either Sam's or Landry's and that there are receipts for the food purchased. If requested would it be possible for him to provide records to the Town on the revenues reported on the Liquor License application and the owner agreed.

Comments made by Board members included Chief Dana Kelley indicating that in visits by the Police to the establishment there were obvious signs of no food service. The perception is that it is a drinking establishment. Fire Chief Fred Lamontagne indicated that there needed to be measurable and clear objectives which show there is compliance to the Ordinances and it needed to be a fast turnover of information. Board Member Dan Blaney indicated that he felt the business owner was not being forthright in his comments and that he needs to provide the sales figures and how money is spent for the supplies. The Code Enforcement Officer, Ricky Haskell, said that the business owner is not acting in the requirements of the Zoning Ordinance. The Town Manager recognizes that the owner is not in compliance and there has to be proof that this is a Restaurant.

The following Motion was made by Dan Blaney and seconded by Marc Bourassa.

MOTION: To draft a Consent Agreement providing for steps the business will implement to promote its food business and document food sale;, enter into a signed agreement by November 4, 2019; and establish a deadline of January 31, 2020 to demonstrate the business is functioning as a Restaurant as defined by the ordinance.

VOTE: **Yea:** Town Manager Larry Mead
 Assistant Town Manager, Louise Reid
 Code Enforcement – Ricky Haskell
 Fire Chief Fred Lamontagne
 Marc Bourassa – Town Business Community Member
 Daniel Blaney – Alternate Town Business Community Member

Nea: Chief Dana Kelley

The Town Manager asked for a Motion to Adjourn the Board Meeting.

MOTION: Dan Blaney motioned and Marc Bourassa seconded to Adjourn the meeting at 5:30 p.m.

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 five (5) pages is a true copy of the original Minutes of the Administrative Hearings held on Thursday, October 18, 2019.