

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

JOHNNY KENNON and DEBORAH KENNON,
Petitioners,

vs.

CITY OF UNION,
Respondent.

LUBA No. 2024-095

FINAL OPINION
AND ORDER

Appeal from City of Union.

D. Rahn Hostetter represented petitioner.

Paige Sully represented respondent.

RUDD, Board Member; ZAMUDIO, Board Chair; WILSON, Board
Member, participated in the decision.

DISMISSED 03/25/2025

You are entitled to judicial review of this Order. Judicial review is
governed by the provisions of ORS 197.850.

NATURE OF DECISION

Petitioners appeal a city council decision approving a minor partition with conditions.

BACKGROUND

On December 12, 2024, petitioners filed their notice of intent to appeal the city council's decision approving their minor partition with conditions. The petition for review in this appeal was due March 4, 2025. On March 4, 2024, petitioners mailed copies of the petition for review to LUBA's former address via USPS first class mail. On March 19, 2025, USPS returned the envelopes containing the copies of the petition for review to petitioners as undeliverable and unable to forward. On March 19, 2025, petitioners sent the petition for review to LUBA at its current address via UPS Express Courier.

MOTION TO EXTEND TIME TO FILE PETITION FOR REVIEW

On March 19, 2025, petitioners moved to extend the time to file the petition for review from March 4, 2025 to March 21, 2025. Petitioners' counsel argues that they were not aware of LUBA's correct address and had used LUBA's former address for years.

OAR 661-010-0067 provides, in part:

“(2) Except as provided in this section, in no event shall the time limit for the filing of the petition for review be extended without the written consent of all parties. Written consent may include facsimile signatures. The Board may, on a motion of a party or its own motion, extend the deadline for filing the petition for review to allow time to

1 rule on a motion to dismiss or a motion to take evidence. Written
2 consent to extend the deadline for filing record objections shall
3 automatically extend the deadline for filing the petition for review
4 for the same number of days granted to extend the deadline for filing
5 record objections, unless the consenting parties expressly provide
6 otherwise.

7 “* * * * *

8 “(4) *A motion for extension of time* shall state the reasons for
9 granting the extension and *must be filed with the Board within the*
10 *time required for performance of the act for which an extension of*
11 *time is requested.* A motion for extension of time that is not
12 accompanied by a written consent by all parties to the requested
13 extension shall state whether all parties to the appeal have agreed to
14 the motion for extension of time, orally or otherwise.” (Emphases
15 added.)

16 Petitioners’ motion does not include the written consent of the city and was not
17 filed within the time for filing the petition for review.

18 The motion to extend time to file the petition for review is denied.

19 **DISPOSITION**

20 Filing a document with LUBA is accomplished by mail or commercial
21 delivery. OAR 661-010-0075(2)(a)(B). At all material times, LUBA’s mailing
22 address for receiving filings was and is 201 High Street SE, Suite 600, Salem,
23 Oregon 97301-3398. OAR 661-010-0075(7). Prior to November 1, 2024,
24 LUBA’s mailing address for receiving filings was 775 Summer Street NE, Suite
25 330, Salem, Oregon 97301-1283. Effective November 1, 2024, LUBA amended
26 its rules to reflect the changed filing address and provided that LUBA would

1 accept documents filed by mail at either address until December 31, 2024. OAR

2 661-010-0075(7) (Nov 1, 2024) provided:

3 “Address and Hours of the Board: Until October 31, 2024, the
4 Board’s address is 775 Summer Street NE, Suite 330, Salem
5 Oregon, 97301-1283. Effective November 1, 2024, the Board’s
6 address is 201 High Street, SE, Suite 600, Salem Oregon, 97301-
7 3398. Effective November 1, 2024, pleadings filed by commercial
8 delivery service will only be accepted at 201 High Street SE, Suite
9 600, Salem, Oregon, 97301-3398. Until December 31, 2024, the
10 Board will accept as correctly addressed pleadings filed by first class
11 or certified mail that are addressed to either location. * * *.”

12 The petition for review in this appeal was due on March 4, 2025. On March
13 4, 2025, petitioner mailed a copy of the petition for review to LUBA’s former
14 address.

15 ORS 197.830(11) and (13) require that a petition for review be filed within
16 the deadlines established by LUBA’s rules. OAR 661-010-0030(1) provides, in
17 part:

18 “Unless the Board orders otherwise pursuant to ORS
19 197.830(10)(a), the petition for review shall be filed with the Board
20 within 21 days after the date the record is received or settled by the
21 Board. See OAR 661-010-0025(2) and 661-010-0026(6). The
22 petition shall also be served on the governing body and any party
23 who has filed a motion to intervene. *Failure to file a petition for*
24 *review within the time required by this section, and any extensions*
25 *of that time under OAR 661-010-0045(9) or 661-010-0067(2), shall*
26 *result in dismissal of the appeal[.]” (Emphasis added.)*

27 Late filing of a petition for review is not a technical violation. *See* OAR
28 661-010-0005 (“Technical violations not affecting the substantial rights of parties
29 shall not interfere with the review of a land use decision or limited land use

1 decision. Failure to comply with the time limit for filing a notice of intent to
2 appeal under OAR 661-010-0015(1) or a petition for review under OAR 661-
3 010-0030(1) is not a technical violation.”). Failure to file a petition for review
4 within the time required by OAR 661-010-0030(1) or any extensions of that time
5 under OAR 661-010-0067(2) shall result in dismissal of the appeal. OAR 661-
6 010-0030(1); *Conte v. City of Eugene*, LUBA No 2024-096 (Mar 19, 2025);
7 *Towey v. City of Hood River*, LUBA No 2021-057 (Mar 21, 2022), *aff’d*, 321 Or
8 App 414, 516 P3d 738 (2022); *Terrace Lakes Homeowners Assoc. v. City of*
9 *Salem*, 29 Or LUBA 532, 535, *aff’d* 138 Or App 188, 906 P2d 871 (1995).

10 A notice of intent to appeal is considered filed on the date it is mailed by
11 certified mail to LUBA, “if it is placed in an envelope that is addressed to LUBA
12 at the address set forth in LUBA’s rules and mailed to that address.” *Bartlett v.*
13 *City of Portland*, 72 Or LUBA 408, 410 (2015), *aff’d*, 276 Or App 919, 370 P3d
14 565 (2016). Similarly, a petition for review is filed on the date that it is mailed to
15 LUBA only if it is placed in an envelope that is addressed to LUBA at the address
16 set forth in LUBA’s rules and mailed to that address.

17 Since November 1, 2024, OAR 661-010-0075(7) has provided that
18 LUBA’s address is 201 High Street SE, Suite 600, Salem, Oregon, 97301-3398.
19 Our prior rule provided a transition period during which we accepted filings
20 mailed to either address. OAR 661-010-0075(7) (Nov 1, 2024). That period
21 ended on December 31, 2024. *Id.* The petition for review was not timely filed

1 because petitioners did not timely mail the petition for review to the address set
2 forth in OAR 661-010-0075(7) on or before March 4, 2025.

3 This appeal is dismissed.