

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 HOLLYWOOD NEIGHBORHOOD ASSOCIATION,)
5 INC., and GRANT PARK NEIGHBORHOOD)
6 ASSOCIATION,)

7)
8 Petitioners,)
9)

10 vs.)

11) LUBA No. 91-195

12 CITY OF PORTLAND,)

13) FINAL OPINION
14 Respondent,) AND ORDER
15)

16 and)
17)

18 GENERAL HEALTH, INC., an Oregon)
19 corporation dba DELTA CLINIC,)
20)

21 Intervenor-Respondent.)
22

23
24 Appeal from City of Portland.

25
26 Michael E. Haglund, Portland, represented petitioners.

27
28 Ruth Spetter, Portland, represented respondent.

29
30 Steven A. Moskowitz, Portland, represented intervenor-
31 respondent.

32
33 SHERTON, Referee, HOLSTUN, Chief Referee, KELLINGTON,
34 Referee, participated in the decision.

35
36 DISMISSED 02/10/92

37
38 You are entitled to judicial review of this Order.
39 Judicial review is governed by the provisions of ORS
40 197.850.

1 Opinion by Sherton.

2 **FACTS**

3 The Board received the local record in this appeal on
4 December 6, 1991. Accordingly, the petition for review was
5 due on December 27, 1991. OAR 661-10-030(1). Petitioners
6 filed their petition for review on January 17, 1992.

7 **MOTION TO DISMISS**

8 Intervenor-respondent (intervenor) moves that this
9 appeal be dismissed because petitioners failed to timely
10 file the petition for review. Intervenor argues that under
11 OAR 661-10-030(1), an appeal must be dismissed if the
12 petition for review is not filed within the time required by
13 that section and any extensions of that time under OAR
14 661-10-067(2). Intervenor points out that OAR 661-10-067(2)
15 provides:

16 "In no event shall the time limit for the filing
17 of the petition for review be extended without the
18 written consent of all parties."

19 Intervenor represents it has never agreed to an extension of
20 time to file the petition for review nor executed a written
21 consent to such an extension. Intervenor further argues
22 this Board applied its rules and dismissed an appeal in the
23 same circumstances in Ramsey v. City of Portland, ____
24 Or LUBA ____ (LUBA No. 91-127, November 7, 1991).

25 Petitioners argue their late filing of the petition for
26 review should be considered a "technical violation" of this
27 Board's rules and, therefore, should not interfere with the

1 Board's review of the challenged decision. OAR 661-10-005.

2 ORS 197.830(10) provides that a petition for review
3 must be filed within the deadlines established by Board
4 rule. OAR 661-10-030(1) provides, in relevant part:

5 " * * * The petition for review shall be filed with
6 the Board within 21 days after the date the record
7 is received by the Board. * * * Failure to file a
8 petition for review within the time required by
9 this section, and any extensions of that time
10 under OAR 661-10-045(7) or OAR 661-10-067(2),
11 shall result in dismissal of the appeal * * *."

12 In addition, OAR 661-10-005 specifically provides that
13 "failure to comply with the time limit for filing * * * a
14 Petition for Review under OAR 661-10-030(1) is not a
15 technical violation." (Emphasis added.)

16 The petition for review in this appeal was due on
17 December 27, 1991. No extension of time for filing the
18 petition for review was requested or granted. Because
19 petitioners neither filed a petition for review within the
20 time required by our rules, nor obtained an extension of
21 time for filing the petition for review, the above cited
22 statutory and rule provisions require that we grant
23 intervenor's motion to dismiss. Ramsey v. City of Portland,
24 supra; McCauley v. Jackson County, ___ Or LUBA ___ (LUBA No.
25 90-110, October 24, 1990); Piquette v. City of Springfield,
26 16 Or LUBA 47 (1987); Hutmacher v. Marion County, 15 Or LUBA
27 514 (1987).

28 This appeal is dismissed.