

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

3
4 LONNIE R. KNODEL and MARK BENNETT OF
5 B&L INC. CONSTRUCTION,
6 *Petitioners,*

7
8 vs.

9
10 CITY OF GASTON,
11 *Respondent.*

12 LUBA No. 2004-023

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15 FINAL OPINION
16 AND ORDER

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18 Appeal from City of Gaston.

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20 Lonnie R. Knodel, Gaston, and Mark Bennett, Gaston, represented themselves.

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22 David C. Noren, Hillsboro, represented respondent.

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24 BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member,
25 participated in the decision.

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27 DISMISSED 04/13/2004

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

NATURE OF THE DECISION

Petitioners appeal a city decision denying a variance.

FACTS

The subject property is an approximately 9,200-square foot parcel zoned residential (R-1), located in the city of Gaston. Petitioners applied for a permit to replace an existing home located on the property with a larger home and a detached single car garage. Along with this permit application, petitioners requested a variance to Gaston Land Development Code (GLDC) 4.028, which requires the installation of curbs and sidewalks along street frontages as a condition of new construction.

The city held a hearing on the variance request on January 14, 2004. The city council adopted the recommendation of the planning director denying the variance immediately after the hearing. The recommendation of the planning director was based on a determination that none of the criteria for granting variances included in GLDC 6.030-6.034 were met. This appeal followed.

MOTION TO DISMISS

Respondent moves to dismiss this appeal, arguing that petitioners failed to file a notice of intent to appeal with LUBA within the 21-day deadline established by ORS 197.830(9).¹ The city’s decision denying the variance is dated and became final on January 14, 2004. Petitioners’ notice of intent to appeal was mailed by first class mail to LUBA on February 12, 2004 and received at LUBA’s offices on February 13, 2004, 30 days after the decision became final.

The city’s final decision includes a statement that its decision could be appealed to LUBA, but such appeal “must be filed within 21 *working* days of the Date of Decision” (emphasis added). Although petitioners do not make the argument that their failure to meet the deadline imposed by

¹ ORS 197.830(9) provides, in relevant part that “[a] notice of intent to appeal a land use decision * * * shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.”

1 ORS 197.830(9) should be excused by the city's erroneous statement, we address the argument
2 anyway. In *Friends of Jacksonville v. City of Jacksonville*, 44 Or LUBA 379, 385, *aff'd* 189
3 Or App 283, 76 P3d 121 (2003), *rev den* ___ Or ___ (2004), we held that a petitioner cannot
4 rely on a city's misstatement of the deadline for filing a notice of intent to appeal at LUBA. The
5 deadline is statutory and a city's misstatement does not have the legal effect of extending the appeal
6 deadline.

7 Accordingly, because petitioners' petition for review was due on February 4, 2004, and it
8 was not filed until February 13, 2004, when LUBA received it, this appeal must be dismissed.