Boone Board of Adjustment
Thursday, April 2, 2026
Meeting Minutes

Board Members Present: David Welsh-Chair, Benjamin Ray-Vice-Chair, David Luther, Pam Williamson, and Barbara Yale-Read

Town Staff Present: Jane Shook-Director of Planning & Inspections, Brandon Wise-Deputy Director of Planning & Inspections, Luis Aguilar-Zoning Code Compliance Official, and Brenda Henson-Board Clerk

Others Participating: Allison Meade-Attorney to the Board of Adjustment

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Call to Order

Chair Welsh called the Boone Board of Adjustment meeting, held at 1500 Blowing Rock Road, to order at 5:32 p.m. and provided a brief synopsis of the Board of Adjustment, its makeup, and its function.

Approval of Meeting Minutes

Board Member Williamson made a motion to approve the December 4, 2025, Board of Adjustment meeting minutes. Vice-Chair Ray seconded the motion.

VOTE: Aye – 5
Nay – 0

The motion passed.

Case A26-0008 Justin Hal Hodgson – Notice of Appeal

Justin Hal Hodgson, property owner of 136 Ivy Drive, has appealed a notice of violation issued by the Town of Boone on December 9, 2025, regarding compliance with the Town's Use and Parking regulations (UDO Subsections 14.10.02 and 24.01.08).

Justin Hodgson was sworn in by Chair Welsh.

Chair Welsh asked if there were any objections to the materials contained in the agenda packet. Mr. Hodgson replied that he had no objections.

Allison Meade, attorney for the Board of Adjustment, noted that a question had been raised about the timeliness of the appeal. She referred to the timeline in the staff report, noting that the appeal was filed more than 30 days after the notice of violation was issued. Ms. Meade stated that this was a jurisdictional issue, meaning the Board had to find there was a timely appeal before it could proceed to hear the merits of the case. If there was no timely appeal, there was no case to be heard because the Board would have no jurisdiction upon that finding. Ms. Meade noted that this was consistent with the Rules of Procedure, the UDO, and state law. She suggested that the Board first hear testimony related to the issue of a timely appeal and make a decision on that issue before proceeding further. Ms. Meade stated that the Board should hear from and question Mr. Hodgson. She added that she would also like to hear from staff regarding the timeliness of the appeal.

Brandon Wise, Deputy Director of Planning & Inspections, and Luis Aguilar, Zoning Code Compliance Official, were sworn in by Chair Welsh.

Ms. Meade asked Mr. Aguilar when he issued a notice of violation in this case. Mr. Aguilar replied that he issued the NOV on December 9, 2025. Ms. Meade asked how the notice was issued. Mr. Aguilar stated that

it was issued by email and first-class mail. Ms. Meade asked whether the email had been received by the appellant. Mr. Aguilar responded that Mr. Hodgson stopped by the Planning & Inspections office on December 10, 2025, and he called Mr. Hodgson on December 11, 2025. Ms. Meade asked Mr. Aguiar whether the first-class mail had been returned to him, and he stated that it had not. Ms. Meade asked whether Mr. Hodgson had told Mr. Aguilar that he had received the email. Mr. Aguilar explained that Mr. Hodgson had questions about the email when he came to the Planning & Inspections office on December 10, 2025. Ms. Meade referred to Exhibit 3, which contained the Notice of Violation letter. She asked Mr. Aguilar if that letter told Mr. Hodgson that he had to appeal within 30 days. Mr. Aguilar noted that this information was contained near the end of the letter under the "Appeals" heading. Ms. Meade asked when the appeal was filed. Mr. Aguilar replied that the appeal was filed at the end of the day on January 20, 2026. Ms. Meade asked if that was more than 30 days after the applicant received the notice of violation, and he stated that it was. Ms. Meade asked whether the timeline shown in the meeting packet was correct. Mr. Aguilar replied that it was.

Ms. Meade asked Mr. Hodgson if there were any inaccuracies in the timeline in the packet, as described by Mr. Aguilar. Mr. Hodgson was unsure. He stated that he believed he had spoken with Mr. Aguilar about January 20 as the date to submit the appeal, which was why he turned it in on that day. He added that staff told him not to pay the $300 application fee when he submitted his appeal form because the application was late. Ms. Meade asked Mr. Hodgson if Mr. Aguilar told him that January 20, 2026, was the date to file the appeal. Mr. Hodgson replied that Mr. Aguilar had told him that date in an email, but he could not locate it.

Mr. Aguilar stated that the compliance date to remove the parking lot was January 20, 2026.

Mr. Hodgson stated that he received an email from Mr. Wise the day after January 20, 2026, stating that he was in violation and would be fined $100 per day. Mr. Hodgson noted that he had emailed back to say he had turned in his appeal form on January 20, 2026. He stated that he was told his appeal was due by 3:00 p.m., and he submitted it at 4:00 p.m., noting that he was not given a specific time of day for submission. Mr. Hodgson noted that he then paid the $300 application fee and was told by Mr. Aguilar that his appeal would be heard by the Board of Adjustment on April 2, 2026, at 5:30 p.m. He stated that he had no idea why Planning & Inspections accepted his application and his payment if the appeal was filed too late. Ms. Meade explained that the staff had no choice but to accept the appeal because they were not the decision makers; the Board was. Mr. Wise clarified that his email to Mr. Hodgson was to request additional information regarding the appeal and the payment of the $300 application fee, based on Ms. Meade's direction that staff could not deny the appeal.

Chair Welsh stated that Mr. Hodgson missed his 30-day window to file his appeal, it was late, and it was at the Board's discretion not to hear the case. Ms. Meade replied that the appeal was jurisdictional, not discretionary. She added that she was not aware of any exception to allow an appeal to be filed late.

Board Member Williamson stated that she was aware that the parking lot created by Mr. Hodgson was not permitted within the R3 zoning jurisdiction. She noted that the violation could be corrected in two ways: by restoring the property or by seeking conditional district zoning approval from the Town Council.

Board Member Williamson referred to the timeline shown in the meeting packet. She asked Mr. Aguilar if both the January 6 and January 7, 2026, communications listed January 20, 2026, as the appeal deadline. Mr. Aguilar replied that it did. Board Member Williamson asked whether it was correct that the January 20, 2026, date was the compliance date rather than the deadline date. Mr. Aguilar stated that was correct. Board Member Williamson asked Mr. Aguilar if he would agree that these communications could have caused some confusion and would explain why Mr. Hodgson filed his appeal on January 20, 2026. Mr. Aguilar stated that during his initial communication, the appeal deadline was shown as January 9, 2026. He noted that he had several phone and email communications with Mr. Hodgson to explain the procedure and how to file an appeal. During these communications, he accidentally entered incorrect information. Board Member

Williamson asked Mr. Aguilar if he agreed that those communications could have created confusion about the correct deadline, and he responded yes. Board Member Williamson stated that staff did an incredible job, and while this was an unfortunate incident, it happened. She felt that the staff had gone above and beyond to try to guide Mr. Hodgson through the process. She asked whether Mr. Hodgson was responsive during the communications. Mr. Aguilar stated he was pretty responsive. Mr. Wise added that Mr. Hodgson was responsive at times. However, there was no response from September to December, 2025.

Board Member Williamson asked Mr. Hodgson what he understood the appeal deadline to be based on his communications with staff. Mr. Hodgson stated that he received an email that said the date to file his appeal was on or before January 20, 2026. He explained that he received a letter from Mr. Aguilar at the end of August 2025 regarding an occupancy complaint. At that time, he told Mr. Aguilar that he and another person were living in the house, that he had added some gravel to his yard, and that he was renting parking spaces to a few students. Mr. Hodgson stated that Mr. Aguilar told him this was fine. Mr. Hodgson added that he emailed Mr. Aguilar copies of signed contracts and proofs of payment. He stated that he did not hear anything further from Mr. Aguilar until December 2025, when he received the notice of violation for parking. Mr. Hodgson noted that staff had always gotten back with him each time he had called or emailed. Board Member Williamson stated that the Board was not provided a copy of the email which Mr. Hodgson referred to.

Board Member Williamson asked Mr. Hodgson what steps he was considering at this time. Ms. Meade noted that starting tomorrow, Mr. Hodgson would be subject to a $ 100-per-day fine. Vice-Chair Ray asked if the fine would start on January 9 or January 20, 2026. Ms. Meade replied that, despite the confusion, the fines would begin accruing on January 9, 2026.

Board Member Luther referred to the jurisdictional issue. He pointed out that the notice of violation letter in Exhibit 3 under Correction of Violation indicated that Mr. Hodgson needed to apply for a zoning permit to approve the expansion of parking spaces, then in bold underneath that, the letter says that the violations must be corrected by the end of business on January 20, 2026, or he would be subject to penalties as provided below. Board Member Luther stated that UDO Section 6.04.06 indicated that Mr. Hodgson's rights could have been prejudiced because of their decisions, they were inconsistent with the applicable procedures, or affected by an error of law. He asked whether these items would apply to this situation, and because of the miscommunication and misunderstanding of the deadline, the Board would be allowed to hear the case. Ms. Meade believed that the answer was no. She noted that the correct deadline was stated in the original notice of violation, and the ordinance was clear about deadlines. Ms. Meade added that folks were impugned with knowledge of when they have to file their appeal. She acknowledged that there had been cases in which courthouse staff had given out incorrect information, and the courts found that this could not be taken into account. The 30 days applied, and the court mandated dismissal if the deadline was not met, because it was jurisdictional. Ms. Meade stated that this case would be troubling if the original notice of violation had stated the wrong date from the very beginning. She understood that this seemed unfair, but once someone was issued a serious document, whether it was a notice of violation or a complaint in the local courts, they were charged with complying with the appeal deadline. If there was subsequent miscommunication with staff, it did not allow what lawyers called equitable tolling of the appeal period.

Mr. Wise stated that individuals were typically given 30 business days to come into compliance. Mr. Hodgson was given additional time to comply because removing the gravel during the winter months would have been difficult, and Town offices were closed for the holidays.

Board Member Williamson asked the Board to consider whether Mr. Hodgson truly missed the deadline or relied on a deadline the town had given him. She cited UDO Section 6.04.06(a)(1), which said the Board had to ensure the appellant's rights were not prejudiced in violation of constitutional provisions, and that included procedural provisions. Board Member Williamson also cited UDO Section 6.04.08(a), which said that the Board may reverse or affirm wholly or in part, or may modify the decision appealed from, and shall

make any order, requirement, decision, or determination that ought to be made. She asked whether the conflicting information that Mr. Hodgson received affected his ability to meet the deadline. Ms. Meade explained that the Board would not get to this section unless it had jurisdiction.

Chair Welsh stated that Mr. Hodgson received a notice of violation with the correct appeal date, but he missed the 30-day window to file an appeal. During that time, he made no effort to come into compliance. Chair Welsh acknowledged that an error was made, but, based on the Board attorney's guidance, it did not apply. He felt the Board lacked jurisdiction to hear the case and asked Ms. Meade what the next step would be. Ms. Meade advised Chair Welsh that a motion to dismiss the case for untimely filing would be required.

Board Member Luther referred to the December 1, 2025, letter, which suggested that applying for a zoning permit to expand parking spaces would correct the violation.

Board Member Williamson believed that the Board should hear the appeal, Mr. Hodgson should come into compliance, and he should be treated fairly. She stated that it was clear that Mr. Hodgson was confused between the appeal and compliance dates. Board Member Williamson appreciated the staff's honesty in bringing the issue of the incorrect dates to the Board's attention. She felt that the Board was responsible for considering whether Mr. Hodgson's rights were prejudiced by that incorrect information and other issues. Board Member Williamson noted that Mr. Hodgson submitted his appeal on January 20, 2026, because he had been inadvertently led to believe that that was when his appeal was due. The record revealed that Mr. Hodgson received conflicting information from staff regarding the applicable deadline and that he was trying to figure out how to navigate the process. She felt that this was not a situation in which the appellant was trying not to act or follow the process. She stated that the issue before the Board was not simply whether a deadline was missed, which it was, but whether the process provided clear and consistent information regarding how the appellant could remedy the violation and take care of his property. Board Member Williamson felt that the applicant's rights had been affected and that the appeal could be heard under the standard set out in the ordinance.

Board Member Luther stated that it did not appear that a complete email representation was included in the meeting packet. He asked if there had been any communication after January 6, 2026. Mr. Aguilar replied that the only communication after that date was his sending the meeting agenda to Mr. Hodgson. Mr. Wise noted that he emailed Mr. Hodgson on January 20, 2026, requesting more information about the appeal and payment. Board Member Luther asked if the January 6, 2026, email listed the appeal deadline as January 20, 2026. Mr. Aguilar replied that it did.

Vice-Chair Ray noted that an email was sent on January 20, 2026, requesting payment for the appeal, and payment was received three days later. Mr. Wise stated that January 20 was a Friday, and payment was received on the following Monday. He explained that because the appeal was filed after the deadline, staff had to determine whether it could be accepted. After the attorney clarified that it was not the staff's decision, they processed the appeal.

Board Member Williamson stated that the Board had the opportunity to do the right thing by hearing the case and ensuring that Mr. Hodgson corrected the violation. She noted that the UDO allowed the Board to modify penalties or change deadlines. Board Member Williamson stated that if the case were dismissed, the administrative decision would stand, and the fees would start tomorrow.

Chair Welsh noted that the correct date was given and that the burden was on the applicant to understand the rules and timelines and to call the town to confirm the correct dates. He stated that the Board needed to follow the letter of the law and listen to their attorney.

Board Member Luther asked Ms. Meade whether it was relevant that the incorrect deadline had been given to Mr. Hodgson three days before the actual deadline. Ms. Meade replied that this was a matter of subject matter jurisdiction. She agreed it seemed unfair, but noted that the law was clear: if there was no timely

appeal, the case should be dismissed. Ms. Meade advised the Board that they needed to proceed according to law.

Board Member Williamson stated that this was a situation in which the applicant relied on a deadline the town had given and attempted to act on it, and that his due process rights regarding what was specified in the UDO would be violated if the Board did not hear this case.

Mr. Hodgson stated that he did not come up with the January 20, 2026, date on his own. It was given to him by the town, so that was what he had to go by. Mr. Hodgson stated that he clarified it and got an email back confirming that date. He added that he would eliminate the parking area.

Board Member Williamson made a motion that the Board finds the applicant's rights were prejudiced by conflicting information in the record regarding the appeal deadline and that the Board therefore has jurisdiction to hear the appeal under UDO Section 6.04.06. Board Member Luther seconded the motion.

VOTE: Aye – 2 (Williamson, Luther)
Nay – 3 (Welsh, Ray, Yale-Read)

The motion failed.

Chair Welsh made a motion to dismiss the appeal because a notice of violation was issued, and a timely appeal was not filed. The motion was seconded by Vice-Chair Ray.

VOTE: Aye – 3 (Welsh, Ray, Yale-Read)
Nay – 2 (Williamson, Luther)

The motion passed, and the appeal was dismissed.

Ms. Meade informed Mr. Hodgson that penalties would begin tomorrow and would continue until he came into compliance. She explained that the appellant had the right to apply for a Conditional District that might allow the parking use. However, the parking lot was not currently permitted.

Other Matters

No other matters were discussed.

Adjournment

Chair Welsh adjourned the meeting at 6:25 pm.

David Welsh, Chair

Brenda Henson, Board Clerk