BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DAVID SIMONSON, DONNA SIMONSON, CLARENCE FELLER and GEORGIA FELLER, Petitioners, vs. MARION COUNTY, Respondent, and PHILLIP COLE and DENNY MOORE, Intervenors-Respondent.	LUBA No. 90-171 FINAL OPINION AND ORDER

Appeal from Marion County.

Richard C. Stein, Salem, filed the petition for review and argued on behalf of petitioners. With him on the brief was Ramsay, Stein, Feibleman, P.C.

Jane Ellen Stonecipher and Robert C. Cannon, Salem, filed the response brief, and Jane Ellen Stonecipher argued on behalf of respondent.

Phillip Cole, Aumsville, and Denny Moore, Salem, represented themselves.

HOLSTUN, Referee; KELLINGTON, Chief Referee; SHERTON, Referee, participated in the decision.

AFFIRMED 06/21/91

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county decision denying their application for conditional use and flood plain development permits to develop a concrete and asphalt batch plant.

MOTION TO INTERVENE

Phillip Cole and Denny Moore move to intervene on the side of respondent in this appeal. There is no objection to the motion, and it is allowed.

FACTS

Petitioners currently operate a concrete batch plant on South River Road at its intersection with Minto Brown Road in Salem. Petitioners propose to relocate that operation to a 14.49 acre parcel zoned Residential Agriculture (RA) and to add an asphalt batch plant to the operation.[1] The subject parcel is part of a gravel quarry that has existed since before 1972. Petitioners describe the surrounding uses as follows:

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[1]Petitioners' application for conditional use and flood plain development permits to allow development of the proposed batch plant was filed on May 2, 1990. On the date the application was filed, batch plants were allowable as a conditional use in the RA zone. On May 30, 1990, the county adopted a new urban zoning ordinance and applied an Urban Transitional - 10 Acre Density (UT-10) zoning designation to the subject property. Batch plants are not allowable as a conditional or permitted use in the UT-10 zone. However, because petitioners' application was filed before the UT-10 zoning of the subject property became effective, and the application was complete when filed, it is entitled to be reviewed under the plan and zoning ordinance standards in effect on the date the application was filed. ORS 215.428(3); Kirpal Light Satsang v. Douglas County, 96 Or App 207, 212, 772 P2d 944, modified 97 Or App 614, rev den 308 Or 382 (1989).

> "The property is bounded on the east by the former Brown's Island Landfill, and now demolition dump site and farm land. To the west is the Willamette River and the Eola Bend Boaters' Tract, consisting of five residences. To the north is the existing gravel operation and the Willamette River. To the south is also a gravel pit and more farm land. * * *." (Record citations omitted.) Petition for Review 3.

After several continuances, a public hearing was held before the county land use hearings officer on September 12, and October 17, 1990. On November 27, 1990, the hearings officer issued a decision denying the application. On appeal, the board of commissioners conducted an on the record review of the hearings officer's decision. On January 3, 1991, the board of commissioners issued its decision affirming the hearings officer's denial of the requested conditional use and flood plain development permits. This appeal followed.

FIRST ASSIGNMENT OF ERROR

> "Respondent Marion County erred when it found that it did not have jurisdiction to decide Petitioners' application."

Marion County Zoning Ordinance (MCZO) § 119.020 provides as follows:

> "APPLICATION. An application for a conditional use may be filed by the following only:
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> "(a) the owner of property;
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> "(b) a purchaser thereof under a duly executed written contract when he states that he is the contract purchaser on the application and the seller consents in writing to such application;

> "(c) a lessee in possession of the property and the owner consents in writing to such application;
>
> "(d) or the agent for any of the foregoing when duly authorized in writing by the property owner and the agent states on the application that he is the duly authorized agent.
>
> "* * * * *."

The May 2, 1990 application for conditional use approval challenged in this proceeding is signed by, and lists as property owners, David and Donna Simonson. Clarence and Georgia Feller are listed as "[c]ontract * * * holders." Record 259. The record also includes a letter dated May 2, 1990, signed by Clarence Feller, which states in part as follows:

> "Please be advised that I, Clarence Feller, am the legal owner of [the subject property]. I have entered into a contract of sale for said property with David Simonson and Donna Simonson, to be closed on or about June 1, 1990." Record 234.

The hearings officer concluded that on the date the application was submitted applicants David and Donna Simonson, although they claimed to be the owners of the property, were not the legal owners of the property. In addition, the hearings officer concluded that on the date the application was filed the applicants were not yet contract purchasers and did not submit with the application written permission from the legal owners of the property authorizing them to submit the application as their agents.

Based on the above, the hearings officer concluded that

on the date the application was filed the applicants failed to qualify as persons entitled to submit a conditional use permit under MCZO § 119.020 and, therefore, she lacked jurisdiction to consider the application.[2]

We agree with the hearings officer that, as far as the record in this proceeding discloses, when David and Donna Simonson submitted the application on May 2, 1990 they did not qualify under MCZO § 119.020(a) as legal owners of the property or under MCZO § 119.020 (b) or (c) as contract purchasers or lessees of the property authorized to submit the conditional use application.[3] However, we do not agree with the hearings officer that David and Donna Simonson failed to qualify under MCZO § 119.020(d) as duly authorized agents of the property owners.

On August 14, 1990, petitioners' attorney submitted a statement, signed by Clarence and Georgia Feller to clarify Mr. Feller's May 2, 1990 letter, quoted in part above. The statement provides in part:

> "This is to clarify [the May 2, 1990 letter] and to make it clear that David and Donna Simonson did have at that time, and do have at this time, our authority as our agents to make the * * * conditional use application in their own names and on our behalf, to present testimony and exhibits,

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[2]Although the hearings officer found she lacked jurisdiction to consider the application, she also denied the application on the merits, finding that the application fails to comply with a number of approval standards.

[3]The record only shows that, on May 2, 1990, the Simonsons planned to become contract purchasers of the property.

> and to do all things necessary to have said application duly considered and approved." Record 204.

Respondent contends the applicants cannot qualify under MCZO § 119.020(d) because when the application was filed on May 2, 1990, they did not state on the application that they were the property owners' agents. Respondent argues the above quoted statement by the Fellers, which was submitted months after the application was filed, cannot cure the defect in the application filed on May 2, 1990. Respondent argues the application therefore was filed in violation of MCZO § 119.020, and the hearings officer correctly concluded she lacked jurisdiction to review the application.

A zoning ordinance requirement may be jurisdictional, in the sense that failure to comply with the requirement may not be waived by the local government or cured by later performance of the requirement. McKay Creek Valley Assoc. v. Washington County, 16 Or LUBA 690, 692-93 (1988); Beaverton v. Washington County, 7 Or LUBA 121, 127 (1985). However, the code language must clearly express that the requirement is jurisdictional. See Rustrum v. Clackamas County, 16 Or LUBA 369, 372 (1988); Beaverton v. Washington County, supra.

The language of MCZO § 119.020 may be such that the county could, in an appropriate case, dismiss an application for a conditional use permit where it determines that an applicant was not the property owner, contract purchaser,

lessee or agent at the time the application was filed.[4] However, because the Simonsons were the Fellers' agents when the application was submitted on May 2, 1990, such an interpretation of MCZO § 119.020 would provide no basis for dismissing the application.[5]

Here the county seeks to go significantly further and impose as a jurisdictional requirement under MCZO § 119.020 not only the existence of the agency relationship, but also the manner of creating and disclosing that agency relationship. We do not believe the code language is sufficient to establish that these latter requirements are jurisdictional. The petitioners have established in writing that the Simonsons were agents for the Fellers when the application was submitted and that the application was submitted by the Simonsons on behalf of the Fellers. The county erred in interpreting MCZO § 119.020 as providing a basis for dismissing the application simply because (1) the

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[4]However, in Beaverton v. Washington County, supra, the relevant code requirement explicitly provided that timely payment of the local appeal fee was jurisdictional. Although MCZO § 119.020 does suggest that the applicant must be the property owner, contract purchaser, lessee or agent on the date the application is filed, it neither imposes that requirement explicitly nor states that such a requirement is jurisdictional.

[5]The May 2, 1990 letter by Clarence Feller, quoted above, does not expressly state that the Simonsons were agents for the Fellers, authorized to submit the challenged application on their behalf. However, the subsequent clarification submitted by the Fellers states that the Simonsons were their authorized agents at the time the application was filed. Respondent offers no reason to question this latter statement by the Fellers.

Simonsons did not state on the application that it was submitted in their capacity as agents for the Fellers, and (2) the first writing which clearly establishes the Simonsons were the Fellers' agents on May 2, 1990 was not submitted to the county until August 14, 1990.

In accordance with the above, the first assignment of error must be sustained. However, as noted earlier in this opinion, the hearings officer also denied the requested application on the merits. If the application was properly denied on the merits, our decision to sustain the first assignment of error provides no basis for reversal or remand.[6] We therefore turn to petitioners' challenges to the hearings officer's decision on the merits.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

> "Respondent erred by refusing to determine whether Petitioners' proposed use could be accommodated to the zone by imposition of approval conditions because of Petitioners' alleged prior land use/permit violations."

MCZO Chapter 119 establishes procedures and requirements applicable to all requests for conditional

[6]Petitioners urge that we remand this case to the county for further proceedings if the first assignment of error is sustained, because the board of commissioners did not hear the appeal on the merits. However, we see nothing in the board of commissioners' decision to suggest that its decision was based solely on the erroneous jurisdictional ground rejected in the first assignment of error.

uses.[7] MCZO § 119.070 provides as follows:

> "Before granting a conditional use, the Planning Commission or Hearings Officer shall determine:
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> "(a) That it has the power to grant the conditional use;
>
> "(b) That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
>
> "(c) That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood."

The hearings officer's findings include the following addressing the above quoted requirement of MCZO § 119.070(c):

> "If this application were to be approved, numerous conditions would be imposed, pursuant to MCZO 120.420. However, the Department of Geology and Mineral Industries October 22, 1990 site inspection report, and Exhibit 24, consisting of photos of a gate, fence, and piles of dirt when no permit is on file, indicate that the applicants do not have a history of respect and compliance with the permit and conditional use process." Record 20-21.

Based on the above finding, petitioners contend that although the hearings officer recognized it might be possible to approve the application if appropriate conditions were imposed, she refused to even consider

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[7]Other chapters of the MCZO establish standards applicable to particular types of conditional uses.

imposing conditions of approval as a means of granting approval of the requested application. Petitioners contend this refusal to entertain imposition of conditions, as a means of assuring compliance with applicable standards and granting approval, was improperly based on alleged prior land use violations. See Stephens v. Multnomah County, 10 Or LUBA 147, 152 (1984).

Petitioners read far too much into the above quoted finding. The challenged finding does not state that the hearings officer refused to consider imposition of conditions based on prior land use violations. Without a clearer statement in the decision or findings that prior alleged land use violations were the basis for denying the application or refusing to consider imposing conditions where appropriate, we will not assume such was the case.[8]

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

> "Respondent erred in not issuing the petitioners permits in that the findings asserted to support the denial were inadequate, not supported by substantial evidence in the whole record, and, in some cases, were based on an erroneous interpretation of applicable law."

[8]Under the third and fourth assignments of error, we discuss petitioners' related argument that under applicable MCZO standards the county was obliged to impose conditions to assure compliance, rather than deny the application based on findings that the proposal violates those standards.

FOURTH ASSIGNMENT OF ERROR

> "Respondent erred in not issuing petitioners permits and not imposing conditions of approval to meet performance standards."

A. Introduction

Petitioners contend throughout their arguments under the second, third and fourth assignments of error, that the county erred by denying the requested conditional use and flood plain development permits, rather than imposing conditions of approval to assure applicable approval standards are met. Petitioners make essentially two arguments in support of this position.

First, petitioners contend some of the standards applied by the county are what petitioners describe as "performance standards." Petition for Review 12. Citing Zusman v. Clackamas County, 13 Or LUBA 39 (1985), and Stephens v. Multnomah County, supra, petitioners argue the county may require compliance with such performance standards by imposing conditions of approval to the requested conditional use and floodplain development permits, but may not properly require that petitioners demonstrate compliance with those performance standards prior to granting approval of the requested permits.

Secondly, petitioners argue that even when applying standards that are properly classified as mandatory approval standards, "[a]s the name 'conditional use' implies, it is through imposition of conditions that a particular permitted

conditional use is accommodated to the zone." Petition for Review 12. We understand petitioners to argue that even though the application for conditional use and flood plain development approvals may fail to demonstrate that applicable standards are met, rather than deny the application on that basis, the county is required to impose conditions to achieve compliance with the approval standards.[9] We address these arguments in turn below.

1. Performance Standards versus Mandatory Approval Standards

In Zusman v. Clackamas County, supra, we explained that where a local government's code simply imposes an "operational requirement" or "performance standard" to be satisfied during operation of a use, "[s]uch performance standards are not necessary prerequisites to issuance of a permit * * *." Id. at 45. However, this point begs the question of whether a standard is a performance standard, a

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[9]In support of this argument, petitioners cite MZCO § 119.010, which provides as follows:

> "General Concept. A conditional use is an activity which is basically similar to other uses permitted in the zone, but due to some of the characteristics of the conditional use, which are not entirely compatible with the zone, such use could not otherwise be permitted in the zone. A public hearing and review of the proposed conditional use by the planning commission or hearings officer will insure that the use will be in consonance with the purpose and intent of the zone."

Petitioners also cite MCZO §§ 119.060 and 120.435(b), which empower the county to prescribe conditions of approval when granting conditional use permits generally and when granting conditional use permits for mineral resource development sites specifically.

permit approval standard, or some combination of the two. As we have made clear in other decisions, some local codes require a finding, at the time a local government grants discretionary approval, that the use will be able to comply with standards that by themselves might be termed "operational requirements" or "performance standards."[10] See Vizina v. Douglas County, 16 Or LUBA 936, 941-42 (1988); Lousignont v. Union County, 16 Or LUBA 272, 278 (1987).

Although some of the standards cited by petitioners, if viewed in isolation, might accurately be described as performance or operational requirements, when read in context with other applicable MCZO provisions, they are not solely performance or operational standards. For example, MCZO § 120.420(g) imposes the following noise standard on mineral resource development sites:

"NOISE STANDARDS.

"Noise shall not exceed DEQ standards."

However, the first sentence of MCZO § 120.420 provides that the standards in that section "shall apply to the establishment, maintenance, and operation of mineral resource sites within Marion County * * *[.]" In addition,

[10]Our decision in Stephens v. Multnomah County, supra, addresses a somewhat related, but different, question. In Stephens we held that in demonstrating compliance with a code standard requiring that the proposed use not "create hazardous conditions or adversely affect natural resources in the area," the county could properly determine the code requirement was met based on a finding that DEQ requirements would be met.

MCZO § 120.435(a) provides that in issuing mineral resource site permits the county "shall make such investigations as are necessary to determine whether the proposed site conforms fully to the regulations set forth [in the MCZO]." The county correctly determined that it was required to determine, prior to granting approval of the requested permits, that the proposal complies or will comply with the standards of MCZO § 120.420. Vizina v. Douglas County, supra; Lousignont v. Union County, supra.

It is less clear at what point an applicant must satisfy or demonstrate that a proposal will comply with the standards of MCZO § 178.070, which govern decisions concerning flood plain development permits. However, we conclude MCZO § 178.060 requires that, prior to approval of a flood plain development permit, the applicant must demonstrate compliance with the flood protection standards of MCZO § 178.070. Specifically, MCZO § 178.060 requires that in issuing a flood plain development permit, it must be determined "that the requirements of this chapter have been satisfied * * *[.]"

We tend to agree with petitioners that at least some of the requirements of MCZO § 178.070 very likely will require preparation of the kinds of detailed plans or studies that typically are not required until applications for building permits are submitted. Where that is the case, it may be possible for the county to approve the floodplain

development permits based on findings that it is feasible to comply with the standards and defer selection of the particular technical solution to achieve the standard to a later stage of the development process. See Meyer v. City of Portland, 67 Or App 274, 280 n3, 678 P2d 741, rev den 297 Or 82 (1984); Southwood Homeowners Assoc. v. City of Philomath, ___ Or LUBA ___ (LUBA No. 90-103, June 12, 1991), slip op 17; Margulis v. City of Portland, 4 Or LUBA 89, 98 (1981). However, in challenging the county's findings of noncompliance with these standards on evidentiary grounds, petitioners must carry the difficult burden of showing, as a matter of law, that the application demonstrates compliance with the applicable standards. Forest Park Estate v. Multnomah County, ___ Or LUBA ___ (LUBA No. 90-070, December 5, 1990), slip op 30; McCoy v. Marion County, 16 Or LUBA 284, 286 (1987); see Jurgenson v. Union County Court, 42 Or App 505, 510, 600 P2d 1241 (1979).

2. Denial versus Imposition of Conditions

With regard to petitioners' argument that the county should be required to limit its consideration of the requested permits to imposition of conditions to mitigate impacts, we see no reason why a code could not contain provisions limiting decision making authority over conditional uses in the manner petitioners suggest. Specifically, we see no reason why conditional uses could not be treated under the code as uses permitted outright

which must be approved, subject only to the local government's authority to impose conditions to modify the proposal to achieve particular planning objectives specified in the code. See Anderson v. Peden, 284 Or 313, 318, 587 P2d 59 (1978); Coffee v. City of North Bend, 17 Or LUBA 527, 530-536 (1989). However, we do not agree that the MCZO so limits the county's decision making concerning conditional use and flood plain development permits. To the contrary, the MCZO clearly imposes standards that must be satisfied before the county may grant approval of such permits.

With regard to conditional uses, MCZO § 119.110 specifically provides that applications for conditional use approval may be "approved or denied based on the Marion County Comprehensive Plan and applicable criteria in the [MZCO]." (Emphasis added.) MCZO § 119.060 provides, in part:

> "The planning commission or hearings officer may prescribe restrictions or limitations for the proposed conditional use but may not reduce any requirement or standard specified by this ordinance as a condition to the use. Any reduction or change of the requirements of this ordinance must be considered as varying the ordinance and must be requested and viewed as such. * * *" (Emphasis added.)

With regard to flood plain development permits, MCZO § 178.060 specifically provides that flood plain development permits may be granted or denied in accordance with the provisions of MCZO Chapter 178, and MCZO § 178.070 establishes "Flood Protection Standards." Because the MCZO

provides that conditional use and floodplain development permits may be denied if applicable standards are not met, petitioners' contention that the county is limited to imposing conditions in reviewing applications for such permits is without merit.

Where a local government imposes standards that must be met to obtain approval of permits, the local government must find that those standards are met before granting approval. If the permit applicant fails to demonstrate that applicable approval standards are met, the local government must deny the application.[11] Of course, a local government also may, in an appropriate circumstance, impose conditions and rely on those conditions in determining that the application, as conditioned, meets the applicable approval standards. Lousignont v. Union County, supra; Sigurdson v. Marion County, 9 Or LUBA 163, 170 (1983); Margulis v. City of Portland, supra. However, we are aware of no general requirement that a local government must apply conditions to modify a proposal for conditional use approval so that it meets applicable standards.[12] See Byrnes v. City of

[11]In Holland v. Lane County, 16 Or LUBA 583, 596 (1988), we explained that a local government may be able to defer a determination of compliance with a discretionary approval standard to a later stage of the development process, where the code does not prohibit such deferral and the requisite notice and public hearing or notice and opportunity for an appeal is provided. Compare Storey v. City of Stayton, 15 Or LUBA 165, 184 (1986); Spalding v. Josephine County, 14 Or LUBA 143, 147 (1985).

[12]Although applicants for conditional use approval might prefer approval with conditions over denial, such may not always be the case. Where there

Hillsboro, 101 Or App 307, 790 P2d 552, adhered to 104 Or App 95 (1990). We reject petitioners' arguments that the MZCO imposes such an obligation on the county in this case.

B. Conditional Use Permit

In the challenged decision, one of the bases specified for denying the requested conditional use permit is noncompliance with the screening requirement of MCZO § 120.420(a), which provides as follows:

> "The site shall be reasonably screened from adjoining properties and public streets, by placement of landscaped yard areas adjacent to every property line within which will be placed an ornamental fence, wall, or hedge or landscaped berm in addition to such natural desirable vegetation in the landscaped area. This landscaping shall obscure view of the site whenever possible, and shall be maintained by the permit holder." (Emphasis added.)

The findings in support of the county's decision that MCZO § 120.420(a) is not satisfied by the proposal include the following:

> "The applicants plan a buffer zone [on] the site, which consists of 50' of piled up gravel or aggregate, 20' high on the 14.49 acre subject parcel. The remainder of the planned buffer and screening consists of the public dedicated road * * *, a body of water and a few taller trees, but all of this buffer is on property that is not a part of this application. * * *

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are a variety of ways a proposal could be modified to achieve compliance with a particular standard, an applicant may prefer to retain the option to select the least expensive approach rather than having a more expensive, and no more effective, approach imposed by the local government through a condition of approval.

> "* * * * *
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> "The applicants did not present data on height and it is difficult to tell the exact height of the proposed structure from Exhibit Z, which is the only hint of what the height might be. * * * But, ignoring height and concentrating on screening, MCZO 120.420(a) states that screening must be an ornamental fence, wall or hedge or landscaped berm in addition to natural vegetation. The applicants plan a stockpile of gravel on the 14 acre parcel, which is not an acceptable or allowable screening medium as itemized in MCZO 120.420(a). Therefore, applicants have not proposed to comply with height and screening criteria.
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> "* * * * *" Record 21-22.

Petitioners do not specifically claim their proposal includes "an ornamental fence, wall, or hedge or landscaped berm in addition to such natural desirable vegetation in the landscaped area," as required by MCZO § 120.420(a). Petitioners suggest the county should simply have imposed the requirement as a condition of approval. For the reasons explained above, we do not believe the county was required to select among the specified screening method options and impose that selection as a condition of approval. Because the application does not propose an ornamental fence, wall, hedge or landscaped berm in addition to natural desirable vegetation in the landscaped area, as required by MCZO § 120.420(a), the county properly denied the requested conditional use permit.

A finding of noncompliance with a single mandatory approval standard is sufficient to support a decision to

deny an application for land use approval. McCaw Communications, Inc. v. Polk County, ___ Or LUBA ___ (LUBA No. 88-083, February 25, 1991), slip op 6; Van Mere v. City of Tualatin, 16 Or LUBA 671, 687 n 2 (1988); Weyerhauser v. Lane County, 7 Or LUBA 42, 46, (1982). Although the county also found a number of other standards applicable to its decision concerning the conditional use permit were not met, and petitioners challenge those findings, we do not consider the parties' arguments concerning those findings.

C. Flood Plain Development Permit

MCZO § 178.070 establishes a variety of requirements for development within a floodplain. The hearings officer found that the applicant failed to demonstrate compliance with a number of the requirements of MCZO § 178.070.[13]

Petitioners first contend the standards of MCZO § 178.070 are performance standards, and the county erred by not simply requiring compliance with these standards in the future at the time building permits are granted. For the reasons explained above, we reject this argument.

Petitioners also argue the county improperly ignored

[13]MCZO § 178.070(B) requires that non-residential construction be elevated one foot above base flood elevation or that certain floodproofing structural requirements be met. MCZO § 178.070(D) requires that all new construction "be anchored to prevent flotation, collapse or lateral movement of the structure." MCZO § 178.070(E) imposes requirements regarding construction materials and methods. MCZO § 178.070(H) prohibits storage of certain materials and equipment in the floodway. MCZO § 178.070(J) imposes restrictions on construction in floodways. The hearings officer found the applicant either failed to address or had inadequately addressed each of these requirements.

evidence in the record addressing MCZO § 178.070(H).

Respondent contends the standards of MCZO § 178.070 require "more than mounting equipment on trailers and not operating during winter months." Respondent's Brief 13. Respondent argues petitioners' proposal does not even address many of the requirements, and the application was, therefore, properly denied.

We agree with respondent. Certainly the evidence petitioners cite is inadequate to demonstrate as a matter of law that the detailed requirements of MCZO § 178.070 are met. Jurgenson v. Union County, supra; Forest Park Estate v. Multnomah County, supra; McCoy v. Marion County, supra. The county's findings are adequate to show that the applicant failed to demonstrate compliance with MCZO § 178.070 and we conclude that those findings are supported by substantial evidence in the record.

D. Conclusion

For the reasons explained above, petitioners' third and fourth assignments of error are denied.

The county's decision is affirmed.