

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county order denying her
4 application for a major partition and conditional use permit
5 for a nonfarm dwelling.

6 **FACTS**

7 The subject property is designated Primary Agriculture
8 by the Marion County Comprehensive Plan and is zoned
9 Exclusive Farm Use (EFU). The subject property consists of
10 8.87 acres and contains one dwelling.¹ The parcel is
11 composed of Class III soils and lies within the flood plain
12 of Mill Creek. The subject property is adjacent to a state
13 highway.

14 All surrounding property is also designated Primary
15 Agriculture and zoned EFU. The adjoining parcel to the
16 north and the parcel to the east, across the state highway,
17 are in commercial farm use. To the south is a nonfarm
18 parcel, beyond which is property in commercial farm use. To
19 the west are one nonfarm parcel and several parcels in
20 woodlot use.

21 Petitioner proposes to divide the subject parcel into a
22 3.0 acre parcel and a 5.87 acre parcel and to place a new
23 nonfarm dwelling on the 3.0 acre parcel. The existing

¹The record indicates this dwelling has been on the subject property for about 18 years. Record 22. In all likelihood, this dwelling predated EFU zoning. In any case, characterization of the existing dwelling as a farm or nonfarm dwelling makes no difference in this appeal.

1 dwelling would be located on the 5.87 acre parcel.

2 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

3 Marion County Zoning Ordinance (Rural) (MCZO)
4 136.070(b)(2) provides as follows with regard to the
5 creation of nonfarm parcels in the EFU zone:

6 "The criteria in [MCZO] 136.040 applicable to the
7 proposed use of the parcel shall apply to the
8 creation of the parcel."

9 In the EFU zone, dwellings not in conjunction with farm use
10 are conditional uses that are required to meet the criteria
11 in MCZO 136.040(a)(1), (b)(7), (c) and (i).
12 MCZO 136.030(b). As relevant here, MCZO 136.040(a)(1)
13 provides:

14 "The proposed dwelling shall be the only dwelling
15 on the subject property and contiguous property in
16 the same ownership[.]"

17 In the challenged decision, the county applied these
18 standards as follows:

19 "In order to approve the creation of a non-farm
20 parcel and subsequent non-farm dwellings in the
21 EFU zone, the applicant must demonstrate and carry
22 the applicant's burden of proof to meet * * * the
23 following criteri[on]:

24 "* * * The dwelling will be the only dwelling on
25 the property and contiguous property in the same
26 ownership.

27 "The proposal is to divide the parcel into two
28 parcels and to place a non-farm dwelling on the
29 undeveloped 3 acre parcel. This will be the
30 second dwelling on contiguous parcels in the same
31 ownership. This criteria [sic] has not been met."
32 Record 5.

1 Petitioner argues the county misinterpreted the
2 applicable code provisions, and made a decision not
3 supported by substantial evidence, in concluding that
4 petitioner's proposal would result in a second dwelling on
5 contiguous parcels in the same ownership. Petitioner argues
6 she testified that once the partitioning was accomplished,
7 she would transfer the 5.87 acre parcel and the existing
8 residence to her son, retaining the 3.0 acre parcel and new
9 dwelling as her own residence. Petitioner contends she
10 cannot proceed otherwise, because it would be illegal to
11 transfer the 5.87 acres to her son prior to approval of the
12 partition.

13 The county argues that petitioner owns the 8.87 acre
14 property. Therefore, if it approves the partition and
15 nonfarm dwelling permit, petitioner would own both parcels
16 and the nonfarm dwelling would not comply with
17 MCZO 136.040(a)(1). According to the county, because the
18 proposed nonfarm dwelling does not comply with
19 MCZO 136.040(a)(1), the county also cannot approve the
20 partition. MCZO 136.070(b)(2). The county maintains
21 petitioner's desire to transfer one of the newly created
22 parcels to her son in the future does not alter the current
23 ownership.

24 The county's decision interprets the relevant MCZO EFU
25 zone provisions identified above as not allowing approval of
26 a nonfarm dwelling on a parcel that already has a dwelling

1 or approval of a partition to allow a nonfarm dwelling if
2 the parent parcel already has a dwelling. This
3 interpretation is not inconsistent with the language,
4 context or policy of the MCZO provisions and, therefore, we
5 must defer to it. Clark v. Jackson County, 313 Or 508,
6 514-15, 836 P2d 710 (1992). Under this interpretation, the
7 county properly denied petitioner's application because the
8 proposed partition and conditional use permit would result
9 in a second dwelling on contiguous parcels in common
10 ownership.

11 The first and second assignments of error are denied.

12 In the third through sixth assignments of error,
13 petitioner challenges four additional bases relied on by the
14 county in denying her application. However, to support a
15 denial, the county need only establish the existence of one
16 adequate basis for denial. Roizenboom v. Clackamas County,
17 24 Or LUBA 433, 437 (1993); Garre v. Clackamas County, 18
18 Or LUBA 977, 981, aff'd 102 Or App 123 (1990). Here, as
19 explained above, the county's decision establishes an
20 adequate basis for denial under MCZO 136.070(b)(2) and
21 136.040(a)(1).

22 The county's decision is affirmed.