

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO. 24-027**

APPLICATION: Application of Andrey and Claudia Kaya for an administrative review to replace a dwelling on a 0.44-acre parcel in an EFU (Exclusive Farm Use) zone located at 18926 Butteville Rd NE, Aurora (T4S; R1W: Section 30C; Tax Lot 200).

DECISION: The Planning Director for Marion County has determined that the residence was legally established and can be replaced.

EXPIRATION DATE: This decision is valid only when exercised by **December 2nd, 2028** (four years) unless an extension is granted. The effective period may be extended for two years subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to the expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS:

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Prior to the issuance of any building permit for a new dwelling, the applicants shall sign and submit a Declaratory/Farm-Forest Statement to the Planning Division. This Statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Replacement Residence Declaratory Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #4 & #5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. Applicants should contact the Woodburn Fire District and obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
5. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in finding #6 below, that may be required.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to the Marion County Hearings Officer. The applicant may also request reconsideration (one time only and a \$250.00 fee) on the basis of new information subject to signing an extension of the 150-day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **December 2nd, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 3rd, 2024**, unless appealed.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations.
2. The subject parcel is located on the east side of Butteville RD NE about 500 feet south of the intersection with St. Paul Highway. The parcel contains a 1901 single family dwelling as well as several accessory structures, a well, and a septic system. The subject property is described in a 2006 Measure 37 case (M06-295), and a 2016 Property Line Adjustment case (PLA16-021). The parcel was described by deed (Reel 64, page 1193) recorded on December 3, 1976, and considered a legally created parcel for land use purposes.
3. Surrounding uses consist of EFU (Exclusive Farm Use) zoned lots showing evidence of large-scale agriculture and some small acreage residential mainly concentrated along Wiseacre LN NE and Broadacres RD NE. Immediately to the west is a large agri-business and the Portland & Western Railroad rail line.
4. The Marion County Soils Analysis tool indicates that the subject parcel is 100% high value soils.
5. The applicant is proposing to demolish an existing dilapidated dwelling that and reserve the right to replace the dwelling at a later date.
6. Several agencies were contacted about the proposal and given the opportunity to comment.

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Engineering Requirements:

- A. At the time of application for building permits an Access Permit will be required. Direct access from Butteville Road is to be derived via a tentative shared access easement across the subject property being created by partition case #24-004, with the name Fisherman Lane NE. No direct separate secondary vehicular access point to Butteville Road will be allowed.
- B. Transportation System Development Charges (TSDCs) and Parks fee will be assessed at the time of application for building permits.
- C. Utility service extensions such as electric power originating from within the public right-of-way require permits from MCPW Engineering.

Marion County Building Inspection commented:

“No Building Inspection concerns. Permit(s) are required to be obtained prior to structures development and/or utilities installation on private property.”

Marion County Septic commented:

“Marion County does not have history/records of the existing septic system. An authorization is required to connect the existing septic system for the replacement dwelling.”

All other agencies either failed to comment or stated no objection to the proposal.

7. The replacement dwelling criteria are listed in Section 17.136.030(D) of the Marion County Code (MCC). The criteria are:

D. Dwelling Alteration and Replacement. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.136.100(C), other than as permitted in MCC 17.136.020(D), when:

- 1. The dwelling to be altered, restored or replaced has or formerly had:*
 - a. Intact exterior walls and roof structure;*
 - b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
 - c. Interior wiring for interior lights; and*
 - d. A heating system; and*

The applicant provided photographic evidence of a still intact dwelling with intact exterior walls and roof. Aerial imagery from Marion County GIS tools shows an intact building in the same location dated to 2016. Commercially available aerial imagery from companies such as Google Maps show the dwelling in its current location and provides some evidence about condition of the dwelling.

The applicant's photographic evidence indicates that the dwelling may have had an electrical connection, and a form of internal heating as evidenced by a chimney/furnace vent. No information was provided about the sanitary system on the property. The criterion is met.

- 2. In addition to the provisions of subsection (D)(1) of this section, the dwelling to be replaced meets one of the following conditions:*
 - a. If the dwelling was removed, destroyed or demolished:*
 - i. The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and*
 - ii. Any removal, destruction, or demolition occurred on or after January 1, 1973.*
 - b. If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or*
 - c. A dwelling not described in subsection (D)(2)(a) or (b) of this section was assessed as a dwelling for the purposes of ad valorem taxation:*
 - i. For the previous five property tax years; or*
 - ii. From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010;*

The subject dwelling to be replaced is still erect and has not been demolished or removed from the property. The Marion County Tax Office provided no comment about the taxes on the property or dwelling, and the dwelling is currently listed by the Tax Accessors office as a 1901 built residence. The criterion are met.

- 3. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:*
 - a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or*
 - b. If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and*
 - c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location;*

The dwelling is still intact and on the property. The applicants state that they want to demolish the dwelling and hold the right to rebuild at a later date. The criterion are met.

4. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted;

This will be made a condition of approval.

5. As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, Chapter 462, Section 2 and either ORS [215.213](#) or [215.283](#) regarding replacement dwellings have changed to allow the lawful siting of another dwelling;

The entire area of the parcel is zoned EFU, therefore the criterion does not apply.

6. A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling;

This shall be made a condition of approval.

7. The replacement dwelling must be sited on the same lot or parcel consistent with the following:
a. Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and
b. If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.

The applicant states that they intend to site the replacement dwelling at a later date and have not indicated where on the lot they plan to reestablish the dwelling. The conditions will be addressed at the time building permits are applied for. The criterion is met.

8. Based on the above findings, it has been determined that the existing dwelling was legally established and may be altered, restored and/or replaced.
9. At the time of replacement, the applicant will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval. This acknowledges that farm and forest practices conducted in the area may have an adverse impact on a residence.
10. At the time of replacement, the applicant will be required to sign and record a Replacement Residence Declaratory Statement. This acknowledges that the dwelling is a replacement for the previous dwelling and is a condition of approval.
11. Based on the above findings, it has been determined that the proposal complies, or can be conditioned to comply, with the criteria in the Marion County Code and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: November 15, 2024

If you have any questions regarding this decision contact George Brandt at (503) 566-3981.

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.





ZONING MAP

Input Taxlot(s): 041W30C000200

Owner Name: KAYA, ANDREY KAYA, CLAUDIA

Situs Address: 18926 BUTTEVILLE RD NE
City/State/Zip: AURORA, OR, 97002
Land Use Zone: EFU
School District: NORTH MARION
Fire District: WOODBURN

<p>Legend</p> <ul style="list-style-type: none"> Input Taxlots Lakes & Rivers Highways Cities 		
<p>N</p>  <p>scale: 1 in = 634 ft</p>	<p><small>DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.</small></p>	