



FROEHLING HENDRICKS

A T T O R N E Y S A T L A W

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November 1, 2023

Kim Agfalvi, CMC
City Clerk
PO Box 489
Orting, WA 98360

Re: Abundant Life Church Variance

Dear Kim:

Please find the original of Mr. Froehling decision on the above referenced matter.

I will forward his invoice for this hearing in a day or so.

Very truly yours,

Betty Hendricks
Paralegal

OFFICE OF THE HEARING EXAMINER

CITY OF ORTING

FINDINGS, CONCLUSIONS AND DECISION

CASE: Abundant Life Church Application for Variance

APPLICANT: Mr. Brad Grasley

OWNER: Abundant Life Church

LOCATION: 1005 Orting Kapowsin Hwy East, Orting, WA 98360

DATE OF APPLICATION: July 23, 2023

SUMMARY OF REQUEST AND BACKGROUND

Abundant Life Church has initiated a project many years ago to develop a site to construct a 28,772 foot church in two phases. The first phase would essentially include the main building, parking, utilities, erosion control, an entry drive and a western expansion for the main building. The second phase, much smaller, would include an eastern expansion of the main building and more parking. A SEPA Determination of Non Significance has been issued.

The Wetland Delineation Report was dated back in October, 2015 and had revisions in June, 2019. A wetland buffer establishment and enhancement program was dated February, 2022.

Civil plans were dated in August, 2022 and a landscape plan was dated in June, 2022.

This project is close by the Puyallup River, which is a habitat to at least to threatened species: Puget Sound Chinook Salmon and Puget Sound Steelhead. This project is home to two separate wetlands, A and B that have buffers which extend into the project. Wetland A is a small swale and is not an issue. Wetland B is not on the project, but the buffer for it is. The issue here is the size of that buffer. According to current standards, it is a Category 2 Wetland, which is subject to a 150' buffer, rather than a 50' buffer, which according to the applicant, was the standard when the project was first started. The applicant essentially makes the argument that it is being forced to hit a moving target. The City's position would be that such a problem could be mitigated by averaging or offsite mitigation, which is not in the proposal. The City believes that the applicant has not taken advantage of some suggestions make that could make the project feasible without the requested variance and therefore recommends against the request, primarily by pointing out that the request reduces one buffered area by more than 75%, rather than the 25% allowed. The applicant believes it meets the requirements of OMC 11-1-8, and the City does not.

STANDARD FOR VARIANCE

OMC 11-1-8 allows for the granting of a variance if the following 2 criteria are established:

A Because of special circumstances applicable to the property, including size, shape topography, location or surroundings, or the size or nature of the critical area, the strict application of this title would deprive the property owner of reasonable use of their property, and

B The granting of the variance is the minimum necessary to accommodate the development proposal and will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated or contrary to the goals and purposes of this title.

ANALYSIS

A. This is tough. The City's position is essentially that, look, you're encroaching on a wetland buffer that has been identified on the dates mentioned above and you have large, flat areas you could use for entrance drives instead, so you don't need the variance. And besides, you haven't done what you could by way of wetland buffer on your property. And, a 75% reduction in buffer is simply not allowed.

The applicant says, wait, we have worked with the City since the beginning. We have done all that we could and all that was required and now the standards have changed, the buffer is larger than it was originally, why was 50' fine at one time and now it's not? Establishing wetlands and wetland buffers is not an exact science especially when you are not on the site examining the soils and concludes by saying that "strict application of the wetland buffer requirements would result in the inability to construct the necessary facilities.

B The City suggests that the variance is simply not the minimum necessary to accommodate the development of a large church facility. It is a big enough facility to accommodate the project without the variance.

As might be anticipated, the applicant indicates that the variance is necessary to accommodate the project and it would not be "materially detrimental to the public welfare, would not be injurious to the property or improvements within the vicinity and would not be contrary to the goals and purposes of the City of Orting municipal code.

PUBLIC HEARING

A public hearing was held on October 24, 2023. A number of people attended but there were only 2 supporting comments in favor of the project.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

Documentary evidence included the City of Orting Staff report, which was comprehensive and included the submissions for the variance by Abundant Life Community Church with supporting documents, including reports from Habitat Technologies originally authored in 2015 and supplemented in 2023.

In addition, supplemental emails were submitted by city staff clarifying statements made at the hearing in response to some colloquy near the end of the hearing.

Notice of the hearing was properly distributed in accordance with OMC 15-5

All parties and interested witnesses were given opportunity to present testimony or submit written materials.

That the Hearings Officer personally viewed the property and the surrounding area, which is located in an area he is quite familiar with.

That based on the information submitted and considered, the Hearings Officer finds as follows:

While it may be true that the applicant could amend its plan to come into compliance with the City's recommendation, the Hearings Officer finds that the arguments submitted by Habitat Technologies in 2015 and supplemented in 2023 to be persuasive.

That given the time that this project has been in the planning stages, with the applicant working to be in compliance with city requirements, constructing this church projects in the two planned phases does constitute the "reasonable use" of the applicant's property.

That taking into account the history of this particular piece of property, it's location relative to the Puyallup River, the history of the applicant's efforts to construct a church on the property and the history of the applicant's efforts to be compliant with what have been changing standards insofar as wetland buffer setback, there are special circumstances applicable to the property, in particular the size of the critical area, such that the strict application of this title would deprive the property owner of reasonable use of their property.

That the granting of the requested variance will be the minimum necessary to accommodate the development proposal. This finding is consistent with the review and recommendations found in the reports of Habitat Technologies from 2015 and 2023 and will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated or contrary to the goals and purposes of this title.

That viewing the property confirms that the plan to construct a church and related facilities at this location not only is not detrimental to the public welfare or property in the area, but should serve as a noticeable improvement and enhancement to the goals and purposes of the City. In other words, it fits the area. The designated area for the setback appears not be detrimental to the public. It is difficult for the Hearings Officer to comprehend how a setback that was fine a few years ago, would suddenly be detrimental, and nothing in the City's recommendation to deny the variance request addresses that issue. The City's position is conclusory and says that because the project does not meet its requirements, it will negatively impact nearby aquatic resources (wetlands). While I appreciate the advocacy for the environment, I find that the analysis provided by the applicant to be more persuasive. I want to

emphasize that I am not being critical of the City, just that I find the applicant's analysis to be more persuasive.

CONCLUSIONS:

The Hearings Officer has authority to conduct this hearing pursuant to OMC 11-1-8, 15-3-5, 15-4-1, RCW 35A. 63.170

The proposed application for a critical area variance meets the requirements of OMC 11-1-8 because of special circumstances applicable to the property, and that granting of the variance is the minimum necessary to accommodate the planned development proposal and will not be materially detrimental to the property in the vicinity, or contrary to the goals and purposes of Title 11 of the Orting Municipal Code.

DECISION:

The request for a critical area variance by the applicant is granted.

Dated this 1st of November, 2023



Antoni H. Froehling
Hearings Officer for the City of Orting.

From: [Margaret Starkey](mailto:Margaret.Starkey@kenyondisend.com)
To: Betty@froehlinglaw.com
Cc: [Kendra Rosenberg](mailto:Kendra.Rosenberg@cityoforting.org)
Subject: City of Orting - Appeal - Abundant Life Church Hearing
Date: Tuesday, January 2, 2024 2:01:50 PM

Hi Betty –

Thank you for speaking with me on the phone today. As we discussed, Kendra Rosenberg is representing the Orting City Council in an appeal of the decision in the above matter. She needs Mr. Froehling to (1) re-provide a copy of his decision in the matter to Kim Agfalvi KAgfalvi@cityoforting.org, the Orting City Clerk; and (2) confirm in an e-mail that he has sent his entire file. If he has any questions, he should feel free to call Kendra directly ((425) 392-7090, Ext. 2205).

Thank you for your assistance!

Best,

Margaret C. Starkey

Margaret C. Starkey
Paralegal/Manager
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
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From: [Margaret Starkey](mailto:Margaret.Starkey@kenyondisend.com)
To: Betty@froehlinglaw.com; toni@froehlinglaw.com
Subject: City of Orting - Appeal - Abundant Life Church Hearing
Date: Tuesday, January 9, 2024 11:21:24 AM

Good morning –

In follow-up to my voice mail message left this morning to Betty, we understand a large file was submitted to the Hearing Examiner for the consideration in the above matter, but was not transmitted to the City in Betty's January 2 email to Kim Agfalvi. Please provide the large document provided to you by the City's Planning Director (AHBL). It is 66 MB and consists of the following:

1. Staff report (4 pages)
2. Letter dated 7.28.2023 from Habitat Technologies (1 page)
3. Letter dated 7.27.2023 from Habitat Technologies (3 pages)
4. 2015 Wetland Delineation Report by Habitat Technologies with attachments (69 pages)
5. Wetland Buffer Establishment and Enhancement Program dated Feb. 22, 2022 (with attached plans) (50 pages)
6. List of parties who received mailed notice (2 pages)

If you have any questions, please do not hesitate to contact me. Thank you.

Margaret C. Starkey

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