

BOARD OF ZONING APPEALS



STAFF REPORT DEPARTMENT OF GROWTH MANAGEMENT

MEETING DATE:	May 6, 2025
PROJECT:	Tri Pointe Homes Able Street – Variance Request
PROJECT MANAGER:	Dan Frazier, Planning Manager

APPLICATION REQUEST: The Applicant, John Hoff with Tri Pointe Homes, on behalf of the owner New South Living, LLC, is requesting a variance for the following application (Attachment 1):

ZONE-04-25-019696 - The Applicant, John Hoff, requests a variance from the recently approved pending ordinance doctrine amending Section 5.10.7 of the Unified Development Ordinance (UDO) requiring a 50-foot wetland buffer to impact 0.256 acres of jurisdictional wetlands and 0.109 acres of non-jurisdictional wetlands within the proposed single-family detached residential development.

The property is located in the Residential General (RG) and Neighborhood Core (NC) districts identified by tax map numbers R610 039 000 0745 0000 (NC), R610 039 000 1588 0000, R610 039 000 0179 0000, and R610 039 000 0202 0000 and is located north of May River Road west of Red Cedar Street (Attachment 2). The BZA hearing was advertised in The Island Packet on April 20, 2025 (Attachment 3), the property was posted, and adjacent property owners were notified via certified mail.

INTRODUCTION: The subject property consists of 7.5 acres located at the intersection of Red Cedar Street and Able Street. The Applicant previously submitted a Preliminary Development Plan application on March 19, 2025. It was subsequently withdrawn on April 7, 2025. The Applicant is requesting relief from the fifty (50)-foot wetland buffer to impact a total of 0.365 acres of jurisdictional and non-jurisdictional wetlands.

BACKGROUND: On March 11, 2025, the Town of Bluffton Town Council approved via pending ordinance doctrine an amendment to Section 5.10.7 of the Unified Development Ordinance (UDO) to establish a fifty (50) foot buffer on jurisdictional and non-jurisdictional wetlands. This ordinance is a response to the U.S. Supreme Court's Sackett case which weakened federal wetlands protections, resulting in a need for more regulatory control at the state and local government level.

The following activities are specifically prohibited within a Wetland Buffer unless expressly authorized herein or elsewhere within the UDO.

- a. Removal, excavation, or disturbance of the soil, except for minimal disturbance associated with the installation of trees and plants as approved by the UDO Administrator, where a Wetland Buffer is re-established;

- b. Dumping or filling with any materials;
- c. Placement of any sod or garden of any type;
- d. Placement of structures or other pervious or impervious surfaces; and,
- e. Removal or destruction of trees, plants, grasses, or vines.

The 7.5-acre subject property includes 5.9 acres of upland, and 1.6 acres of wetlands. The wetlands requested to be impacted are in the northwest and southeast quadrants of the property being proposed for development, as reflected on the ALTA/NSPS Land Title Survey (Attachment 1.D.).

A pre-application meeting was held on January 9, 2025. The Preliminary Development Plan Application was submitted on March 19, 2025, which was 8 days after the approval of the UDO amendments. The Applicant does not currently have an active wetland impact permit from the U.S. Army Corps of Engineers.

VARIANCE REQUEST: The Applicant requests a variance to UDO Section 5.10.7 to impact/fill approximately 0.365 acres of wetlands and to encroach into the entire fifty (50)-foot wetland buffer.

BOARD OF ZONING APPEALS ACTIONS: As granted by the powers and duties set forth in Section 2.2.6.D.2 of the Unified Development Ordinance, the Board of Zoning Appeals has the authority to take the following actions with respect to this application:

1. Approve the application as submitted by the Applicant;
2. Approve the application with conditions; or
3. Deny the application as submitted by the Applicant.

REVIEW CRITERIA & ANALYSIS: In assessing an application for a Variance, the Board of Zoning Appeals is required to consider the criteria set forth in Section 3.7.3 of the UDO. The seven criteria are provided below followed by a Staff Finding for each criterion.

As expressed in Section 3.7.3.B.1., a variance may be granted as applicable, and the application must comply with the following:

Unnecessary Hardship. A Variance from a dimensional or design standard may be granted by the Board of Zoning Appeals in an individual case of unnecessary hardship upon a finding that all the following standards are met:

1. Section 3.7.3.B.1.a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;

Finding. There are no extraordinary or exceptional conditions pertaining to this particular piece of property. The property is vacant. Each parcel currently conforms with the ordinance, and each could be developed as is.

2. Section 3.7.3.B.1.b These conditions do not generally apply to other property in the vicinity, particularly those in the same zoning district;

Finding. Similar properties in the vicinity, particularly those in the same zoning districts, Residential General and Neighborhood Core, are subject to the same UDO Wetlands Buffer requirements. The developed properties were constructed prior to the most recent amendment to UDO Section 5.10.7. There is not a unique circumstance or exceptional condition that applies to the subject parcels compared to any other parcel in the same zoning district.

3. Section 3.7.3.B.1.c Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property in a manner consistent with others in the zoning district;

Finding. A strict application of the Ordinance to this particular piece of property would reduce the number of units that can be constructed on the property, however, it does not effectively prohibit or unreasonably restrict the utilization of the property in a manner consistent with others in the zoning district.

4. Section 3.7.3.B.1.d The need for the Variance is not the result of the Applicant's own actions;

Finding. The need for the Variance is the result of the Applicant's own actions. While the granting of the Variance would result in a greater lot yield, the Applicant can develop the subject properties at a lesser lot yield without the requested variance.

5. Section 3.7.3.B.1.e The authorization of a Variance does not substantially conflict with the Comprehensive Plan and the purposes of this Ordinance;

Finding. The approval of the requested Variance does not substantially conflict with the Comprehensive Plan, *Blueprint Bluffton*; however, it does conflict with the purposes of the Unified Development Ordinance Section 5.10.7, requiring a fifty (50) foot undisturbed buffer from wetlands. The UDO contemplates exceptions for existing residential developments; however, the subject property is vacant.

6. Section 3.7.3.B.1.f The authorization of a Variance will not result in a substantial detriment to adjacent property or the public good, and the character of the District will not be harmed by the granting of the Variance;

Finding. The approval of the requested Variance would impact jurisdictional and non-jurisdictional wetlands, which may result in substantial detriment to adjacent property owners or the public good.

7. Section 3.7.3.B.1.g The reason for the Variance is more than simply for convenience or to allow the property to be utilized more profitably.

Finding. The reason for the Variance is for convenience or to allow the property to be utilized more profitably. The Applicant has stated 'the reason for this Variance is out of necessity for development, not for convenience or

profitability,' however, the property can still be developed with the required wetland buffers in place.

CONCLUSION: Applying the seven variance criteria, the Board of Zoning Appeals must determine if the literal interpretation and enforcement of the UDO and provisions of the Ordinance would result in unnecessary hardship to the property owner(s). Findings of fact and using the criteria will be required.

ATTACHMENTS:

1. Variance Application Submittal Items:
 - A. Application
 - B. Letter of Agency
 - C. Narrative
 - D. Survey
 - E. Site Plan
2. Vicinity Map
3. BZA Island Packet Public Notice 04 20 2025