



36 *Morse, who owned the BLMW property, went to the Fish and*  
37 *Game Commissioner, Al Helsner and negotiated an*  
38 *agreement. They agreed to preserve approximately a 300-*  
39 *foot corridor along Alder Brook in exchange for allowing*  
40 *development of the remainder of the Pinewood land and the*  
41 *remainder of the BLMW land across from the Circ. Highway.*  
42 *They then went to the District 4 Commission and were given a*  
43 *permit.*

44  
45 *They proceeded with designing Section H and obtained a*  
46 *Storm Water Permit and a Use Determination Permit. When*  
47 *they got to ACT250, Fish and Wildlife stated the agreement*  
48 *was still in force and Pinewood was all set. However, the*  
49 *District 4 Commission stated they were under no obligation to*  
50 *live up to the terms of the agreement that Pinewood entered*  
51 *with Fish and Wildlife, and decided to address the wildlife*  
52 *criteria. The first of the criteria asks if there would be*  
53 *significant impact on any wildlife habitat and the District 4*  
54 *Commission concluded there was impact mostly located*  
55 *around the wetland area. The sub-criteria for this required*  
56 *that the applicant show that they've minimized the potential*  
57 *impact to wildlife in the area, which they ruled had not been*  
58 *done. Mr. O'Leary stated the applicant was now trying to*  
59 *minimize the impact by pulling Stonebrook Circle away from*  
60 *the wetland and readjusting Evergreen Drive to get more*  
61 *space between it and the wetland. They've also eliminated two*  
62 *lots on each side of Evergreen Drive to increase the buffer*  
63 *away from that wetland corridor. Essentially the only changes*  
64 *to the plan was having two less lots and more buffer area*  
65 *surrounding the class II wetlands, which averaged about 75-*  
66 *100 feet. They are back in front of the District 4 Commission*  
67 *and hope that they are allowed to move forward with the*  
68 *project.*

69 On May 24, 2006, re-approval was granted to reduce the lots to 31-  
70 lots. (The mylar validating the subdivision was not recorded in  
71 2004).

72

73 On October 13, 2011, approval was granted to change a stipulation  
74 related to the timing of construction of a non-motorized/multi use  
75 path.

76

77 Staff presents the following Findings and Conditions for the  
78 ZBA's consideration:

79

80

81 **FINDINGS:**

82

83 1. The applicant and landowner is Brian Marcotte, d/b/a Pinewood  
84 Development, LLC.

85

86 2. This is a 43.7-acre parcel, known as Pinewood Phase H, located in  
87 the Medium Density Residential (R2) Zoning District. The existing  
88 approval accommodates 39 lots created through conventional  
89 subdivision. The lot size requirement for the R2 zone, serviced by  
90 town water and town sewer, is 20,000 sq. ft., with 100 feet of  
91 frontage. The setback requirements of the R2 zone are 40' from the  
92 front yard, 15-feet from the side yard and 20-feet from the rear  
93 yard. 9 building permits have been issued to date and they meet all  
94 setback requirements. Planning Commission approval is required  
95 for any future development on the remaining 118 acres.

96

97 3. The proposal is to reduce the frontage requirements on the  
98 remaining lots to be constructed from 40' to 25'. No changes are  
99 proposed to the side and rear yard setbacks.

100

101 4. The applicant submitted a plan entitled, "Pinewood Manor, Section  
102 H, Final Plan", as drawn by O'Leary-Burke Civil Associates, PLC.

103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135

5. This application is being reviewed by the Zoning Board of Adjustment under the *Town of Essex Official Zoning Regulations, Section 7.5- Variance.*
6. Pursuant to state statute a ‘Notice of Hearing’ was provided to the applicant for posting on the property.
7. The abutting property owners were notified of this meeting by certified mail.
8. The applicant and engineer were mailed a copy of this Staff Report prior to the meeting.
9. \_\_\_\_\_ spoke on behalf of this application. \_\_\_\_\_ made the following public comments on the application OR No one from the public commented on this application.
10. In an email dated November 6, 2015, Public Works stated,  
*Reducing the front yard setback from 40’ to 25’ does not have any impact on water/sewer utilities or the proposed Town ROW. Public Works takes no exception to reducing the setback distance.*
11. In an email dated 11/10/15, the Fire Chief stated,  
*The Fire Department is agreeable to reducing the front yard set backs from 40 feet to 25 feet. It makes the houses closer to fire trucks when we need to be there.*
12. The Police Chief has no concerns with this proposal.

136 13. In an email dated 11/4/15, the Recreation Director noted that  
137 “all residences are still assessed an impact fee upon completion.”  
138

139 **[FINDINGS OF FACT ANALYSIS FOR VARIANCES-**  
140 **SECTION 7.5:** In granting any request for a variance, the Board must  
141 find that all of the criteria contained in Section 7.5 are met, and the  
142 findings must be specified in its decision.]  
143

144 14. 7.5(A)(1): **There are unique physical circumstances or**  
145 **conditions, including irregular topography, narrowness, or**  
146 **shallowness of lot size or shape, or exceptional topographical or**  
147 **other physical conditions peculiar to the particular property,**  
148 **and that unnecessary hardship is due to such conditions, and**  
149 **not the circumstances or conditions generally created by the**  
150 **provisions of the Zoning Regulations in the neighborhood or**  
151 **district in which the property is located.**  
152

153 **APPLICANT’S RESPONSE:** “Pinewood Manor – Section  
154 H contains class III wetlands and a large class II wetland that  
155 are located generally north to south across the entire project.  
156 Many of the building envelopes have been located as close to  
157 the road as possible in order to not impact the wetland buffer  
158 limits. The clearing limits, for the lots most affected by the  
159 wetland buffers, have been proposed as close as possible to  
160 the existing wetlands. If the building envelopes are moved  
161 15 ft closer to the road the amount of incidental wetland  
162 buffer impacts by the future homeowners could be reduced.  
163 The topography of the site is 47.7% 0.00-0.15 slopes, 35.3%  
164 0.15-0.30 slopes, and 17.0% >0.30 slopes. The larger  
165 building envelopes will also to decrease the amount of  
166 potential erosive impacts to steep slopes. The approval of the  
167 variance would also decrease the potential for future

168 homeowners to impact the steep slopes in the rear of the  
169 lots.”

170  
171 **The Zoning Board** finds that there are unique physical  
172 circumstances or conditions, including wetlands, wetland buffers,  
173 steep slopes and potential erosion impacts particular to the property  
174 that could cause future hardships for the landowner without a  
175 variance.

176  
177 **OR**

178  
179 **The Zoning Board** finds that although some of the proposed lot  
180 may have some unique physical circumstances or conditions,  
181 including irregular topography, narrowness, or shallowness of lot  
182 size or shape, or exceptional topographical or other physical  
183 conditions peculiar to the particular property, the unnecessary  
184 hardship was created by the landowner when determining how to  
185 develop the land and layout the lots and its size.

186  
187 **15) 7.5(A)(2): Because of such physical circumstances or**  
188 **conditions, there is no possibility that the property can be**  
189 **developed in strict conformity with the provisions of the**  
190 **zoning regulation and that the authorization of a variance**  
191 **is therefore necessary to enable the reasonable use of the**  
192 **property.**

193  
194 **APPLICANT’S RESPONSE:** “The proposed variance  
195 would decrease the potential for future homeowners to  
196 impact existing wetlands and steep slopes. The reduction in  
197 the front yard setback will also decrease the amount of  
198 impervious coverage produced by driveways.”

199

200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232

**The Zoning Board** finds that because of such physical circumstances or conditions and for the potential increased impacts to the wetlands and/or erosion on the lands, the property would be better served to reduce the front yard setback in order to create a larger and more protective wetland buffer. The authorization of a variance is a reasonable use of the property.

OR

**The Zoning Board** finds that because the lot is undeveloped, the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is therefore not necessary to enable the reasonable use of the property.

**16) 7.5(A)(3): Unnecessary hardship has not been created by the applicant.**

**APPLICANT’S RESPONSE:** “The road for the first phase of the project has already been constructed in accordance with the approved plans. The layout of the Section H phase was done in order to minimize the amount of wetland and steep slope impacts.”

**The Zoning Board** finds that although a few houses have already been constructed on the property, the reduced front yard setback will eliminate any potential unnecessary hardships for future landowners as well as provide a larger wetland buffer and erosion control for environmental protections.

233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265

OR

**The Zoning Board** finds that the unnecessary hardship has been created by the applicant.

17) 7.5(A)(4): **The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially nor permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.**

**APPLICANT’S RESPONSE:** “The approval of the variance will not alter the essential character of the neighborhood. Only a few of the houses along Stonebrook Circle have been constructed, with the 40ft front yard setback, on lots that are not laden with wetland buffers or steep slopes.”

**The Zoning Board** finds that the variance will not alter the essential character of the neighborhood or district in which the property is located, substantially nor permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

OR

**The Zoning Board** finds that the variance will alter the essential character of the neighborhood or district in which the property is located, substantially nor permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be

266 detrimental to the public welfare.

267

268 18) 7.5(A)(5): **The variance, if authorized, will represent the**  
269 **minimum variance that will afford relief and will**  
270 **represent the least deviation possible from these**  
271 **Regulations and from the plan.**

272

273 **APPLICANT’S RESPONSE:** “The Essex Zoning  
274 Regulations allow the Planning Commission to approve the  
275 reduction of the minimum front yard setback to 20ft for a  
276 PUD-R in the medium density residential district (R2). We  
277 are requesting a 25ft front yard setback to give the future  
278 homeowners extra space from the home to the wetland buffer  
279 or steep slopes in the rear of the property. The reduction in  
280 the front yard setback will also decrease the amount of  
281 impervious coverage produced by driveways.”

282

283 **The Zoning Board** finds that the variance will represent the  
284 minimum variance that will afford relief and will represent  
285 the least deviation possible from these Regulations and from  
286 the plan.

287

288 OR

289

290 **The Zoning Board** finds that the variance will not represent  
291 the minimum variance that will afford relief and will not  
292 represent the least deviation possible from these Regulations  
293 and from the plan.

294

295 **CONDITIONS:**

296

297 1. A revised mylar, showing building envelopes decreasing the front  
298 yard setback to 20’ and increasing the rear yard setback to 35’

299           thereby protecting the wetland buffer, shall be signed by the  
300           Zoning Board Chair and recorded in the Land Records.

301

302           2. All other conditions not affected by this approval shall remain in  
303           effect as they may still apply.

304

305           3. By acceptance of the conditions of this approval without appeal,  
306           the applicant confirms and agrees for himself and all assigns and  
307           successors in interest that the conditions of this approval shall run  
308           with the land and the land uses herein permitted, and will be  
309           binding upon and enforceable against the applicant and all assigns  
310           and successors in interest.

311

312

313