Call to Order: **K. Gubner Called the Meeting to Order at 3:04pm.**

Alternate D. Raines remained elevated to Voting Status in the absence of J. Bonner.

Due to an emergency phone call, there was a Motion to recess the Meeting from 3:05pm to 3:10pm.

**K. Gubner Moved** to recess the Meeting for 5 minutes, beginning at 3:05pm.

**Seconded by:** K. Fazzone  
**Vote:** For: Unanimous

**D. Raines Moved** to reconvene the Continuation of ZBA Case 701 Brown, Avery-6 Pond View Lane (M-37, L-75) at 3:10pm.

**Seconded by:** K. Fazzone  
**Vote:** For: Unanimous

**Continuation of Public Hearing:**

ZBA Case # 701- Brown, Avery-6 Pond View Lane (M-37, L-75) Requesting Variance of Section 331.5 Minimum Setback Requirements, Side Yard Setback, from 25’ to 19.1’ to make an existing swimming pool Legal - non Conforming, all in accordance with submitted A-2 survey entitled “Property Survey Prepared for Fairway to Heaven, LLC, 6 Pond View Lane, Sherman, Connecticut”. Dated: 05/08/19. Prepared by: CCA, LLC. Zone A.

Chair, K. Gubner opened the Continuation of the Public Hearing. Clerk, C. Branson read the Legal Warning into record. Appointed Agent Ellen Cavallo Buccitti was present to speak on behalf of the application. Ms. Cavallo Buccitti addressed the Board with a brief timeline of events that led up this case being heard today. Ms. Cavallo Buccitti stated her client purchased this home while the pool was under contract with the previous owner Mr. Funk. Mr. Funk hired Dobson Pools to construct the pool. Ms. Cavallo Buccitti reviewed the files in the Building Department previous to listing the property for sale and found there was a pool permit granted with a septic plan showing the pool. Ms. Cavallo Buccitti stated that was when it came to light that the pool never received a Certificate of Occupancy. The Board asked if the pool received a Certificate of Occupancy since completion. Ms. Cavallo Buccitti stated no C.O. has been issued. Ms. Cavallo Buccitti was told an A-2 survey would need to be done showing the location of the swimming pool. When she brought the survey to the Zoning Department it became apparent there was a portion of the pool that was not in a compliant location. The Board had no additional questions or comments.

**D. Raines Moved** to close the Public Hearing for ZBA Case 701 Brown, Avery-6 Pond View Lane (M-37, L-75).

**Seconded by:** K. Fazzone  
**Vote:** For: Unanimous

**Deliberation of Public Hearing:**

ZBA Case # 701- Brown, Avery-6 Pond View Lane (M-37, L-75)

Chair, K. Gubner opened the deliberation portion of ZBA Case # 701- Brown, Avery-6 Pond View Lane (M-37, L-75). Mr. Gubner stated that he consulted the Land Use Attorney in reference to referring to case law to base a decision. Mr. Gubner stated the use of case law is sometimes contradictory. In terms of looking at this Variance request, it is clear a decision can be made by the ZBA. Mr. Gubner stated based on all of the facts presented, it is still unclear as to the fact that the current owner was aware that the pool was in a non-compliant location. Mr. Gubner stated he felt the percentage of the non-compliant portion of the pool has such little impact on the neighboring property he feels he has
enough information to make a decision. K. Fazzone stated she felt she was unable to determine the actual hardship of the non-compliant portion of the pool, weather it is a small portion or larger. Mr. Raines stated he looked at the fact that the pool is already built. Mr. Raines stated he feels perhaps there was a failure of the application procedure by not requiring a location survey previous to permitting the application. Mr. Raines stated his opinion is the pool location could not have met compliance, there is only 12 feet of usable space between the corner of the house and the setback line, the pool could not have met the required setback based on the proposed dimensions. In Mr. Raines’ opinion, this variance has such little impact to the abutting neighbor, and based on the fact that the abutting neighbor wrote a letter of support in granting the variance, he has enough information to make a decision. Mr. Raines stated he feels this property is unique in the fact that there are not only the Town’s setback requirements but there are also several easements held by the golf course creating limitations of the use of this property. Mr. Gubner stated he agreed with the fact that the easements, and slope of the property were limiting and added that there could be conditions imposed if the Board felt necessary. Mrs. Chiaramonte stated in her opinion the Board was overthinking this application and what should be considered. Mrs. Chiaramonte stated she feels there were other options that could have been explored regarding the pool location, she feels this is a self-imposed hardship. Mrs. Chiaramonte stated she does not support this variance, she feels it is the duty of the ZBA to not undermine the spirit of the Regulations. Mr. Raines stated he does not agree with Mrs. Chiaramonte’s statement he does not see it as undermining the spirit of the Regulation, he feels this property is very unique given the limitations already imposed on this property and the proximity to the setback line there were no other options than to put the pool in the location that it currently exists. K. Fazzone stated she also believes the hardship is self-imposed, the owner has reasonable use of their property. Mr. Gubner stated he did not think the owner wanted to construct a non-compliant pool. Mr. Gubner stated the infraction is so minimal, and he feels it is ZBA’s responsibility to enforce the rules and where practical to provide some interpretation of the rules that allow for the human element. Mrs. Chiaramonte stated she didn’t feel it was relevant to determine whether the homeowner knew the pool was in violation. Mr. Raines stated he still felt there was a failure in the preliminary process of location approval which created the hardship, he has no objection to granting the Variance, it is of minimal impact to the abutting neighbor, and feels it would not adversely affect the abutting neighbor. The following Motion did not carry.

A. Chiaramonte Moved to Approve ZBA Case # 701- Brown, Avery- 6 Pond View Lane (M- 37, L- 75) Requesting Variance of Section 331.5 Minimum Setback Requirements, Side Yard Setback, from 25’ to 19.1’ to make an existing swimming pool Legal- non Conforming, all in accordance with submitted A-2 survey entitled “Property Survey Prepared for Fairway to Heaven, LLC, 6 Pond View Lane, Sherman, Connecticut”. Dated: 05/08/19. Prepared by: CCA, LLC. Zone A.

Seconded by: D. Raines

Vote: For: 2 (Gubner & Raines)
Against: 2 (Fazzone & Chiaramonte)

Adjournment:
D. Raines Adjourned the Meeting at 3:49 pm.

Respectfully submitted by:

Christine Branson, Administrative Clerk
June 19, 2019

Approved as written at the October 1, 2019 Meeting.