

RESOLUTION 21-282
DENY THE APPLICATION FOR A VARIANCE, PURSUANT TO SECTION 7 OF LOCAL LAW #5 OF 2020, ESTABLISHING A MORATORIUM ON CERTAIN DEVELOPMENT IN THE TOWN OF BALLSTON AS REQUESTED BY LANSING ENGINEERING ON BEHALF OF RIDGEBACK HOSPITALITY FOR PROPERTY LOCATED AT THE EASTSIDE OF NYS ROUTE 50 AND THE WEST SIDE OF NYS ROUTE 67.

A motion was made by Councilwoman Jasinski and seconded by Councilman Antoski.

Discussion: Supervisor Connolly stated that he was not at the public hearing, but he did listen to the entire Zoom recording of the public hearing.

DECISION

IN THE MATTER OF RIDGEBACK HOSPITALITY GROUP, LLC's application to the Ballston Town Board to consider a variance, pursuant to Section 7 of Local Law #5 of 2020, Establishing a Moratorium on Certain Development in the Town of Ballston, as requested by the Applicant, RIDGEBACK HOSPITALITY GROUP, LLC for property located on the eastside of State Route 50 and the westside of State Route 67), Ballston Spa, New York 12020 for a WELLNOW Clinic

Lansing Engineering, PC filed an application with the Town of Ballston Building Department who, in turn filed the request with the Town Clerk for the Town of Ballston on or about May 6, 2021 requesting the Ballston Town Board consider a variance, pursuant to Section 7 of Local Law #5 of 2020, Establishing a Moratorium on Certain Development in the Town of Ballston, for property located on the eastside of State Route 50 and the westside of State Route 67, Ballston Spa, New York on behalf of Ridgeback Hospitality Group, LLC to construct a health care facility known as WellNow.

On September 14, 2021, the Town of Ballston Town Board by Resolution #21-242 scheduled a public hearing for September 28, 2021, at 6:15 pm. The Town Clerk provided at least five days' notice of the hearing date pursuant to the provisions of Local Law #5 of 2020.

On September 28, 2021, the Town of Ballston Town Board held a public hearing starting at 6:15 pm. Prior to the Public Hearing, the Town Board received Supplemental Information from BARTLETT, PONTIFF, STEWART & RHODES, P.C., (Jonathan Lapper, Esq.,) dated July 21, 2021, along with a Map of Site.

Jonathan Lapper, Esq., appeared on behalf of the Applicant as did Jon DeForest, representing Ridgeback Hospitality Group, LLC. Mr. Lapper addressed the Town Board and answered questions from Town Board members. Mr. Lapper referred the Town Board to the Application for a Variance, the Site Plan and the Supplemental Information from his firm detailing the specifics of three real estate transactions which the Town Board accepts as part of the Public Hearing. Mr. DeForest, representing Ridgeback Hospitality, LLC discussed the plan for WellNow, an urgent care health care clinic, to be located along State Routes 67 and 50. The clinic location and its infrastructure would involve a reconfiguration of three current residential

lots - two along State Route 67 and one adjacent to the other two but along State Route 50. Ultimately, because of the reconfiguration of the properties, three commercial lots would be formed, and infrastructure built consisting of roads, water, and sewer. The current application, while only addressing the WellNow urgent care clinic would provide access and infrastructure for two additional commercial use lots. The uses of the two additional lots at this juncture are unknown.

Two of the homeowners who have contracts to sell to Ridgeway Hospitality appeared and spoke to the Town Board. Cynthia Klopfer, who resides at 1502 NYS Route 50, told the Town Board she has listed her property and has tried to sell it since 2014. Margorie Dingman, who owns 975 NYS Route 67, but no longer resides there, listed her home for sale in 2016. Each indicated the need to sell. Both brought up ongoing maintenance of the properties and the changing character of the neighborhood and the length of time each home has been on the market.

The Applicant produced the three contracts of sale for the lots after the Town Board requested copies. The Town Board has had the opportunity to review the three contracts to sell the properties and all three appear to be within the time period for government approval contingencies with them expiring at various times in 2022.

Mr. DeForest, on behalf of the Applicant, represented to the Town Board that if the variance is not granted, WellNow may not enter into a lease with the Applicant which would cause Ridgeback to cancel the contracts with the homeowners. The Town Board asked for documentation from WellNow confirming the possible cancellation. The Town Board received a copy of a memo dated October 4, 2021 (after the Public Hearing), to Jonathan Lapper, Esq., stating that *if Landlord fails to construct and deliver the premises to Tenant on or before 16 months from the execution of the Lease the Tenant may terminate the Lease. The Landlord cannot sign the Lease unless the variance from the moratorium is granted because it will not be able to deliver the site to Tenant when required.* “

The Town Board also received a copy of an unexecuted lease between the Applicant, Ridgeback, and the parent company of WellNow.

No other members of the public spoke at the public hearing and no written comments were received within the time frame provided in the Public Hearing Notice. The Town Supervisor closed the Public Hearing at 6:25 pm.

The Town Board finds undisputed the following facts:

The Applicant is Ridgeway Hospitality Group, LLC.

The Applicant has signed three contracts to purchase three lots it intends to reconfigure into three different sized lots and install water, sewer, and road infrastructure.

Each of the contracts to purchase are still within the time period and/or extension period of governmental approval contingencies with them expiring at various times in 2022.

Two of the lots are located on NYS Route 50 and one on NYS Route 67.

WellNow, a health care urgent care clinic, is interested in leasing the premises from the applicant; however, no lease has been signed.

Based upon the criteria set forth in Section 7 of Local Law #5 of 2020, Establishing a Moratorium on Certain Development in the Town of Ballston, the Town Board finds the following:

1. A strict interpretation of Local Law #5, the Moratorium *does not* impose *practical difficulties* upon the Applicant since no proof has been submitted indicating practical difficulties to this Board. The Applicant is still within the governmental approval contingency time periods or extensions thereof and has not yet executed a lease with WellNow.
2. Nor has the Applicant demonstrated any facts showing *extraordinary hardship* under the statute. The Applicant is Ridgeway Hospitality Group, LLC.

Since the Town Board has determined the Applicant has not met the criteria of granting a Variance from Local Law #5 of 2020, it does not have to consider any additional factors set forth in the moratorium statute but would like to provide that the Board also finds that granting this Application would *significantly conflict* with the general purposes and intent of this Local Law since this application affects three parcels at a crucial intersection located within the Town of Ballston that zoning and a GEIS, including a traffic study, will address. Each is an articulated purpose and goal of Local Law # 5 Moratorium.

While the Town Board sympathizes with the three homeowners who have contracts to sell their properties, the Applicant in this matter is Ridgeback Hospitality Group, LLC. It is the hope that Ridgeback and WellNow will continue to work with the homeowners while the Town finishes up its work on its updated Comp Plan, zoning and its GEIS.

This Board notes that this decision is fact and case specific to Applicant, Ridgeback Hospitality Group, LLC.

Variance denied pursuant to Section 7 of Local Law #5 of 2020, Establishing a Moratorium on Certain Development in the Town of Ballston.

Dated: October 26, 2021

By: The Town of Ballston Town Board

Roll Call Vote:

Councilperson Antoski	Aye
Councilperson Curtiss	Aye
Councilperson Jasinski	Aye
Councilperson Stewart	Nay
Supervisor Connolly	Aye

ADOPTED 4-1
