

RUSH RIVER COMMONS

Approval of a Special Use Permit for the Rush River Commons (RRC) Project Subject to Conditions

The Town Council of the Town of Washington, Virginia, hereby grants A SPECIAL USE PERMIT for a Planned Unit Development in accordance with the provisions of Article 1-4-1 of the Zoning Ordinance of the Town of Washington, Virginia, upon the findings in the affirmative of the General Standards of Article 6-1-1 a. through d. inclusive and Article 6-1-2 d. for the project now known as Rush River Commons upon the application of Black Kettle, LLC, but expressly conditioned upon and subject to the following Conditions:

CONDITIONS OF THE SPECIAL USE PERMIT

The following conditions are applicable to the parcels identified in the application (hereafter the “Property”) at the time of approval of this Special Use Permit, and on all future owners, heirs, assigns and successors in interest of the Property (herein referred to collectively as the “Applicant”) unless and until they are amended or revoked.

1. The Property will be developed in conformance with the Development Plan (as defined in Article 2 of the Town Zoning Ordinance), prepared by Bowman Consulting Group dated April 23, 2021, and updated on July 9, 2021, consisting of six pages, incorporated herein by reference as it has been approved by the Planning Commission and Town Council, as provided for a Planned Unit Development Special Use Permit in The Town of Washington Zoning Ordinance, Article 6-1-2 L (4), but subject to such further approvals as may be set forth herein or required by the Zoning Administrator in furtherance of the provisions of this Special Use Permit.

2. Minor adjustments to the Development Plan may be made by and with the approval of the Zoning Administrator, in connection with the review and approval of a finally approved Plan of Development for any residential or nonresidential structure as required by § 2-1-2 of the Zoning Ordinance, or upon final engineering, subdivision of the Property, or any associated construction documents that may be required. Any change other than a minor adjustment as set out in this condition will require amendment to the Development Plan as required by § 2-1-5 (a) of the Zoning Ordinance.

3. All infrastructure improvements depicted on the Development Plan to be constructed or otherwise provided by the Applicant will be provided at the time of development of that portion of the Property immediately adjacent thereto, or as may be specifically provided herein.

4. Following approval of this Special Use Permit, the Applicant will construct the sewer system depicted on the Development Plan not later than September 30, 2024; provided, however, that any delay caused by an event of force majeure, or any unreasonable delay in the issuance of all permits required for the commencement and acceptance of construction thereof, shall extend the aforesaid date by the time such events, or such delay, impedes that construction or acceptance into the Town’s public sewer system. For the purposes of this condition an event of force majeure shall include disruptions and delays caused by or related to COVID-19 or its variants, other disease or public health crisis, acts of civil or military authority, acts, regulations, or laws of any government, or government order or regulation, or any other cause beyond the control of the

Applicant that would render performance inadvisable, which would materially and directly delay or make impossible performance hereunder.

5. All structures will be connected to the Town's public sewer and water systems. Absent written requirements from the Town to the contrary, commercial buildings may have a single water connection and a master meter, residential buildings may have the option of a single water connection or individual connections and meters. Each commercial building may employ an individual grinder pump for conveyance of sewage, and residential buildings may have the option of a single or multiple grinder pumps, all subject to the further approval of the Town in accordance with its Water and Sewer Ordinances and policies. Flows will be transported by a pressurized force main to a designated location at the existing Town wastewater treatment plant. Additional fire hydrants will be installed as requested by the Town. The Applicant will fully fund connection fees to the Town's water and sewer systems.

6. All new on site utilities on the Property must be underground.

7. Travel trailers and recreational vehicles will not be stored or used on the Property.

8. The following nonresidential uses are permitted on the portion of the Property zoned Village Mixed Use.

- a. Artisan and craft uses
- b. Coffee shop¹
- c. Coworking space²
- d. Farmers' market
- e. Food pantry
- f. Home occupation
- g. Makerspaces³
- h. Medical clinic that contains office space for diagnostic, teletherapy, and outpatient care that may also provide associated medical facilities such as a

¹ For the purposes of these Conditions, a "coffee shop" is defined as a store whose principal business is the sale of coffee of various types, e.g. espresso, latte, cappuccino, and food such as snacks, sandwiches, muffins, fruit or pastries.

² For the purposes of these Conditions, "coworking" is an arrangement in which workers of different agencies or organizations share an office space, and agree to the use of common infrastructure, such as equipment, utilities, receptionist and custodial services, and parcel acceptance services.

³ For the purposes of these Conditions, a "makerspace" is a collaborative work space inside a library or separate structure for making, learning, exploring and sharing that uses high tech to no tech tools, open to any user, with a variety of maker equipment that may include, among other things, 3D printers, laser cutters, computer numerical control machines, soldering irons, sewing machines, and similar devices and equipment.

pharmacy, physical therapy, or other similar services, but does not provide inpatient hospitalization

- i. Museum
- j. Parking lots and public parking
- k. Offices, as defined in the Zoning Ordinance
- l. Quasi-public uses as defined in the Zoning Ordinance
- m. Retail stores and shops not to exceed collectively 1,500 sq. ft., unless authorized by a further SUP in accordance with the provisions of Article 1-4-4-a⁴
- n. Temporary and permanent displays and galleries

9. Open space will be provided and maintained in the areas shown on the Development Plan.

10. Subject to the receipt of appropriate approvals from the United States Army Corps of Engineers, the Applicant may employ the wetlands that presently exist on the Property as preserved parkland, with pedestrian trails and enhanced features, as depicted on the Development Plan.

11. Stormwater management, including both water quantity controls and water quality devices, and erosion and sediment control measures, will be provided in general conformance with the Development Plan and the requirements of the Town engineer, if any, and all state and federal statutes, regulations, requirements, and policies.

12. The Applicant will provide and maintain landscaping as depicted on the (Development Plan) final Site Plan in addition to that which may be required under the Town ordinances.

13. The Property will be subject to the Town's Historic District Ordinance, and the design of all construction or demolition within the purview of the Architectural Review Board as contemplated or required by Historic District Ordinance will be submitted to the Architectural Review Board for approval evidenced by Certificates of Appropriateness.

14. In accordance with the provisions of § 1-5-5 of the Zoning Ordinance, no external amplified sound or music will be allowed without a separate special use permit.

15. The Applicant will make suitable provision for the construction of Leggett Lane, owners' associations, and road maintenance.

15.1. The Applicant will access the site from Leggett Lane by a paved roadway constructed or improved to standards hereafter approved by the Zoning Administrator and which will be not more than twenty (20) feet in width, but generally improved and constructed as a paved surface of a width of eighteen (18) feet. Apart from the paved surface, the road cross section will have gravel shoulders two feet or more in width on each side of the road, except where site conditions only

⁴ The square footage for retail use includes only the area accessible to the public for normal commercial activities and does not include storage space or utility areas.

permit a narrower shoulder, and an open ditch section for drainage. Internal streets within the Property shall be private streets as depicted on the Development Plan, to be constructed and maintained in a good condition, and reconstructed as necessary. There will be no road improvements made to Warren Avenue unless required by VDOT. Approval of this Special Use Permit evidences the Town's consent to the Applicant's use of the existing 40-foot easement on Leggett Lane created in connection with the sale of certain Town Property to Avon Hall, LLC, by the document recorded in the Land Records of Rappahannock County as Instrument #160000598 from Warren Avenue to the third entrance as shown on the Development Plan, but expressly subject to the execution and recordation of a Road Maintenance Agreement and an Easement Agreement, its form and substance to be approved by the Town Attorney, and further subject to the other provisions hereof or provisions contemplated by this.

- 15.2. The first entry into the Property from Leggett Lane shall be constructed as depicted on the Development Plan. After twelve calendar months from the date of the issuance of the first occupancy permit for a structure on the Property and ending 12 months from the date of full build out of the structures shown on the Development Plan, the function and safety of this entry and the opposing road entrance that services the U.S. Post Office (herein the "Intersection") may be evaluated if so requested by the Town Council by a qualified professional traffic engineer selected by the Town and paid for by the Applicant, to perform an evaluation of the Intersection. As to whether the Intersection is deficient or unsafe, to include accident data, congestion data at the Intersection or Warren Avenue, or on other engineering or safety bases, such evaluation to be furnished to the Town Council within 90 days. If after considering such evaluation and such other information as may come before Council, the Town Council determines the intersection to be functioning non-optimally or constitutes a safety hazard, the Applicant shall reconstruct it as a right-out only from the Property as soon practicable within 120 days of written notice from the Town.

15.2.1 Nothing contained in this condition, however, shall preclude the Town from declaring the existence of a hazardous condition at the Intersection prior to or after the aforesaid date and period, and requiring an alternate Intersection design, in the event of one or more traffic accidents at that location, or traffic backups extending into Warren Avenue. In the event of such a declaration, the Intersection shall be reconstructed by the Applicant as a right-in-right-out only from the

Property and a right-in to the Post Office as soon as practicable.

16. For a period of 30 years from the date of approval of this Special Use Permit, the Applicant, jointly with one or more owners' association(s) hereafter created for the purpose, and for other purposes customarily assigned to such association(s), will be responsible for the continuing maintenance, repair, and reconstruction of any commonly held property that may be created, such infrastructure installed that is not accepted into the Town's public utility system, internal streets, and parking areas.

- 16.1. The Applicant will ensure that any documents creating such owners' association(s), or any contracts entered into with non-residential tenants, contain provisions for the adequate funding of the maintenance, repair, and reconstruction of the foregoing with primary liability for sums, if any, which may be due the Town to lie with the Applicant, with such association(s) as a joint obligor. Such documents will be subject to the review and approval of the Town Attorney. The Applicant may retain the services of a professional property management company, or individual, to assist in the functions assigned by this condition.
- 16.2. There shall also be created a Road Maintenance Agreement as to Leggett Lane. The continuing maintenance, repair, and reconstruction of the paved portion, shoulders, and drainage for Leggett Lane from the southern terminus of the third access point into the Property, to the point at which the Post Office commences maintenance of Leggett Lane, shall be the responsibility of the Applicant, subject to the right of the Post Office to require a contribution from the Applicant for such proportionate use as it may make of that portion of Leggett Lane extending from the end of the Applicant's responsibility to Warren Avenue. Such Road Maintenance Agreement shall require reimbursements to the Applicant and any such owners' association according to estimated usage agreed to by other parties using Leggett Lane, except as provided herein, and according to any specifically identifiable damage or unusual or heavy burden upon the roadway by any user.
- 16.3. No sums shall be due from the Town under any such Road Maintenance Agreement, except for damage or unusual or heavy burden, for its incidental use of the Applicant's portion of Leggett Lane as access to the Waste Water Treatment facility; provided, however, that if the Town or its successors in title should develop any portion of the three acre parcel adjacent to the Waste Water Treatment facility, the Town, or as a requirement running with the land any successors in title to the Town, shall reimburse the Applicant in proportion to its use of the aforesaid portion of Leggett Lane.

17. All lighting will meet the IDA Dark Sky Friendly lighting standards in locations as generally depicted on the Development Plan and for periods of operation, subject to the final approval of the Zoning Administrator.

18. The Applicant will submit a comprehensive sign package to the Architectural Review Board and the Zoning Administrator for their approval prior to or contemporaneously with final Site Plan approval.

19. The Applicant will use best, good faith, and commercially reasonable efforts to preserve, protect, and enhance natural resources on the site.

20. The requirements of Article 5, General Provisions, are waived or modified as set forth herein.

20.1. Structures may not exceed 35 feet in height or two stories. "Height of structures" means the measurement of distance from the finish first floor elevation of a structure to the midpoint of its roof, if the roof is sloping in nature, or if the roof is flat, height will be measured from the finish first floor elevation to the top of the highest parapet of the roof structure.

20.2. Notwithstanding the provisions of § 5-8 of the Zoning Ordinance, all parking for the Property will be in the numbers, and in the locations, depicted on the Development Plan, and the Applicant may employ shared parking where compatible uses with differing operational requirements and differing hours of operation can effectively and efficiently use the same parking spaces.

20.3. Provided the Applicant constructs all improvements in conformance with the finally approved Development Plan and Site Plan, the minimum lot sizes, side, rear or front yard, lot width, frontage, or setback requirements, for either residential or commercial uses, are hereby waived in order to permit a fluid and integrated development scheme as depicted on the Development Plan, and no distinction will be made as to corner lots with respect thereto. Notwithstanding the foregoing, all buildings must be set back a minimum of 25 feet from any perennial stream or Federal Emergency Management Agency designated floodplains.

20.4. Containers will be provided for domestic waste and recycling, and will be screened from Warren Avenue, Leggett Lane, and the residential homes and commercial buildings in the project using evergreen vegetation, or fences, gates, or a combination of such devices.

20.5. An internal paved pedestrian path system will be provided to link all the proposed buildings on the Property. Stubs and extensions will be

provided to connect the internal trails and walkways on the Property to existing or planned Town extensions of its pedestrian system.

21. All structures must have a permanent access easement to Leggett Lane. In easement agreements to be hereafter executed in a form consistent with Town requirements and normal easement provisions, the Applicant shall provide for access to the property by the Town and its contractors, and other authorized parties, and all emergency, fire, police, or parties discharging governmental, sewer or water functions. No parking by any parties in any way associated with the use of the subject property shall be permitted to park along Leggett Lane.

22. Accessory structures, if any, may be constructed in the locations as shown on the Development Plan.

23. Permits and proper permissions shall be obtained for all construction, soil disturbance, and other activities on the Property as required by the Building Officials Office and Town zoning approval to obtain a permit or other approval, and upon substantial completion, an occupancy permit, according to law.

24. Approval of the Development Plan for the Property will be considered equivalent to the approval of a Preliminary Site Plan., but subject to the provisions of paragraph 27.

25. Prior to any construction or land disturbance, one or more site plans must be prepared for the development of the Property in accordance with the Town Subdivision and Site Plan Ordinances and the requirements of the Building Official.

26. Housing.

26.1. Residential development of the Property may consist of not more than 20 two-story dwelling structures in the location generally depicted on the Development Plan. The dwelling units will be made available for rent and not for sale. This commitment is made for 30 years. The units may be single-family semi-detached, single-family attached, clustered, or multi-family. The Applicant may construct these dwellings such that they contain differing numbers of individual types of dwelling units internally, so as to increase the diversity and affordability of unit types available. No units will have basements.

26.2. It is the Applicant's purpose to provide affordable housing for residents of Rappahannock County. Nine (9) rental units will be offered to persons who demonstrate to the Applicant's satisfaction, pursuant to a non-discriminatory application process, that gross family income of the potential tenant or the tenant's immediate family members is within a range of 30% - 50% of the Rappahannock County Area Median Income as determined by the United States Department of Housing and Urban Development. "Immediate family

members” include a potential tenant’s spouse, children, or parents. These units will be designated as Affordable Dwelling Units.

- 26.3. Seven (7) rental units will be offered to persons or families resident in Rappahannock County, with preference given to those who work in the County, and whose gross family income is not greater than 80% of the Rappahannock County AMI. These units will be designated Workforce Housing Units.
- 26.4. Four (4) units will be rented at market rate.
- 26.5. Alternatively, up to four (4) of the aforesaid ADU or WHU units (provided they are in a single structure) may be identified by the Applicant as Housing for Older Persons pursuant to applicable law; provided further that all residents of a given unit must be 55 years of age or older and that the income requirement for these units will be the same as that for Workforce Housing Units. These units will be designated Age-Restricted Housing Units.
- 26.6. The rental rates for the aforesaid units will be established by the Applicant such that no tenant(s) in any residential unit except the market rate units is required to pay more than 30% of the tenant(s)’ gross annual family income.
- 26.7. It is the Applicant’s purpose to qualify, if possible, for financial assistance from Virginia Housing (formerly the Virginia Housing Development Authority), and the United States Department of Housing and Urban Development (HUD), which may possess different income or other requirements for such qualification than those that are set forth herein. If the Applicant does, in fact, so qualify, then the Applicant may administer the Affordable Dwelling Units in accordance with those requirements, in the numbers and for the purposes aforesaid.
- 26.8. No residential unit may be subleased, nor may it be occupied other than by the lessee on the lease entered into for that unit and that person’s immediate family members.
- 26.9. Nothing contained herein shall preclude the Applicant from terminating a lease for a unit for breach thereof.
- 26.10. The program established hereby may be administered by any professional property management company or individual that the Applicant may retain, and, if necessary, is acceptable to Virginia Housing.


27. The rights conferred by the adoption of this ordinance shall expire and be of no further effect as to any improvements authorized herein not substantially completed within seven years from the date below excepting those matters which by their terms extend beyond such seven year period.

NOW THEREFORE BE IT ORDAINED A SPECIAL USE PERMIT IS HEREBY GRANTED BUT EXPRESSLY SUBJECT TO THE CONDITIONS 1 THROUGH 27 AS SET FORTH ABOVE TO BLACK KETTLE, LLC AND ITS SUCCESSORS IN TITLE, AS TO THE PROPERTY SET FORTH IN ITS APPLICATION FOR A PLANNED UNIT DEVELOPMENT IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 1-4-1 UPON THE FINDINGS IN THE AFFIRMATIVE OF THE GENERAL STANDARDS OF ARTICLE 6-1-1 A THROUGH D INCLUSIVE ARTICLE 6-1-2-D.

THIS ORDINANCE WAS DULY ADOPTED AT ITS REGULAR MEETING ON THE TOWN COUNCIL ON SEPTEMBER 13, 2021, 2021, UPON A ROLL CALL VOTE BY A MAJORITY OF A QUORUM OF THE TOWN COUNCIL AFTER MATURE CONSIDERATION OF THE RECOMMENDATION OF THE PLANNING COMMISSION AND VIEWS EXPRESSED IN THE PUBLIC HEARING HELD ON SEPTEMBER 13, 2021 AND AFTER PUBLICATION OF NOTICE OF SUCH PUBLIC HEARING AS REQUIRED BY VA CODE SEC. 15.2-2404.

THIS ORDINANCE SHALL BE EFFECTIVE UPON ADOPTION.

TOWN OF WASHINGTON, VIRGINIA

BY:  _____
MAYOR

ATTEST:  _____
CLERK

Voting Aye: Mayor Catlin, Ms. Goodine, Ms. Kuhn, Mr. O'Connell, Mr. Schneider, Ms. Swift, and Mr. Whited

Voting Nay: N/A

Abstaining: N/A

Absent: N/A