

RUSH RIVER COMMONS

Proposed Conditions of a Special Use Permit

Special Use Permit: SUP \

CURRENT ZONING: RR (Rural Residential)
Planned Unit Development

RECORD OWNER: Black Kettle, LLC

TOTAL ACREAGE: 5.14 Acres, more or less Town of Washington, Virginia
(the "Property")

APPLICANT: Black Kettle, LLC

Date: July 8, 2021

CONDITIONS OF THE SPECIAL USE PERMIT

The following conditions are applicable to the Property at the time of approval of this Special Use Permit, and on all future owners, heirs, assigns and successors in interest unless and until they are amended or revoked.

1. The Property will be developed in substantial conformance with the Development Plan (as defined in Article 2 of the Town Zoning Ordinance), prepared by Bowman Consulting Group dated April 23, 2021, consisting of six pages, incorporated herein by reference as they have been approved by Town Zoning Administrator, Planning Commission, and Town Council, and as provided for a Planned Unit Development Special Use Permit in The Town of Washington Zoning Ordinance, Article 6-1-2 L (4).

2. Minor adjustments to the Development Plan may be made with the approval of the Zoning Administrator, in connection with the review and approval of a 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. These minor adjustments may include, but are not limited to, modifications to road locations; open space boundaries; utility lines as necessary to accommodate topography, drainage, vehicular or pedestrian circulation; aesthetic considerations; or regulatory requirements, subject to approvals as provided in Article 6-1-2 L (4). 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, except as may be specifically provided in these conditions.

4. All structures will be connected to the Town's public sewer and water systems. Absent written agreement with the Town to the contrary, commercial buildings may have a single water connection and a master meter, and residential buildings may have the option of a single water connection and a master meter, or individual connections and meters. Each commercial building will employ an individual grinder pump for conveyance of sewage, and residential buildings will have the option of a single or multiple grinder pumps. 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.

5. All utilities on the Property must be underground.
6. Travel trailers and recreational vehicles will not be stored or used on the Property.
7. The following nonresidential uses are permitted on the Property.
 - a. Artisan and craft uses
 - b. Coffee shop¹
 - c. Coworking space²
 - d. Farmers' market
 - e. Food pantry
 - f. Home occupation
 - g. Makerspaces³
 - h. Medical clinics
 - i. Museum
 - j. Offices
 - k. Parking lots and public parking
 - l. Quasi-public uses as defined in the Zoning Ordinance
 - m. Retail stores and shops totaling not more than 1,500 square feet

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 light 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.

- n. Temporary and permanent displays and galleries
8. Open space will be provided as shown on the Development Plan.
9. 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.
10. 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.
11. The Applicant will provide additional landscaping as depicted on the Development Plan.
12. The Property will be subject to the Town's Historic District Ordinance, and the design of all structures will be submitted to the Architectural Review Board for Certificates of Appropriateness.
13. 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.
14. The Applicant will access the site from Leggett Lane, which will remain a Town-owned street constructed to standards depicted on the Development Plan and which will be not more than twenty (20) feet in width. Improvements will be made to Leggett Lane to pave its surface to a width of eighteen (18) feet. The road cross section will have gravel shoulders and an open ditch section for drainage. Internal streets within the Property shall be private streets not more than twenty (20) feet in width. There will no road improvements made to Warren Avenue. 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.
15. All lighting will meet the IDA Dark Sky Friendly lighting standards in locations as generally depicted on the Development Plan.
16. The Applicant will submit a comprehensive sign package to the Architectural Review Board for its approval prior to or contemporaneously with final Site Plan approval.
17. The Applicant will use best, good faith, and commercially reasonable efforts to preserve, protect, and enhance natural resources on the site.
18. The Applicant, or alternatively 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 of any commonly held property that may be created, such infrastructure installed that is not accepted into the Town's public utility or street system, and internal streets and parking areas. The Applicant will ensure that any documents creating such

association(s), or any contracts entered into with non-residential tenants, contain provisions for the adequate funding of the maintenance of the foregoing. 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 to assist in the functions assigned by this condition.

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

- 19.1. Structures may not exceed 35 feet in height or two stories. Notwithstanding this provision, a governmental building or library may be erected to a height of 45 feet from grade without recourse to a height exception, provided that the required front, side and rear yards shall be increased one foot for each foot in height over 35 feet. "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.
- 19.2. 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.
- 19.3. There will be no minimum lot sizes, side, rear or front yard, lot width, frontage, or setback requirements, for either residential or commercial uses, 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.
- 19.4. Containers will be provided for domestic waste and recycling, and will be screened from view from public roads using evergreen vegetation, fences, gates, or a combination of such devices.
- 19.5. 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.
- 19.6. The provisions of § 5-9 of the Zoning Ordinance are hereby waived.

20. All structures must have VDOT or Town road frontage, or a permanent access easement to a VDOT or Town road.

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

22. All structures on the property must obtain a building permit, and upon substantial completion, an occupancy permit, according to law.

23. Approval of the Development Plan for the Property will be considered equivalent to the approval of a Preliminary Site Plan.

24. One or more site plans must be prepared for the development of the Property in accordance with the Town Subdivision and Site Plan Ordinance.

25. Housing.

25.1. 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. The units may be single-family detached, 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.

25.2. Three (3) rental units will be offered to persons who demonstrate to the Applicant's satisfaction, pursuant to an application process that is approved by the Town Attorney, that gross family income of the potential tenant or the tenant's immediate family members is 30% of the Rappahannock County Area Median Income as determined by the United States Department of Housing and Urban Development; three (3) rental units will be offered to such person or persons whose gross immediate family member's income is 40% of the County's Area Median Income; and three (3) rental units will be offered to such person or persons whose gross immediate family member's income is 50% of the County's Area Median Income. "Immediate family members" include a potential tenant's spouse, children, or parents. These units will be designated as Affordable Dwelling Units.

25.3. At the election of the Applicant, seven (7) rental units will be offered to persons or families resident in Rappahannock County as of the date of approval of this Special Use Permit who are employed by County or the Town, the County's public schools, or the County's Constitutional Officers, and whose gross family income is not greater than 80% of the Rappahannock County AMI. These units will be designated Workforce Housing Units.

25.4. Four (4) units will be rented at market rate.

- 25.5. Alternatively, a number of those 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.
- 25.6. The rental rates for the aforesaid units will be established by the Applicant such that no tenant(s) in any residential unit is required to pay more than 30% of the tenant(s)' gross annual family income.
- 25.7. 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.
- 25.8. The program established hereby may be administered by any professional property management company that the Applicant may retain.

DRAFT



**WALSH COLUCCI
LUBELEY & WALSH PC**

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July 6, 2021

Mr. John Bennett, Esq.
Zoning Administrator
567 Mt. Salem Avenue, Suite 3
P. O. Box 7
Washington, Virginia 22747

Re: Second Comment Response Letter

Dear John:

Since our initial responses to comments we have received regarding Rush River Commons, the team has continued to refine several aspects of the project, in large measure in response to the comments that have been made to us by the Town and citizens, as well as on further consideration internally. The material below either adds to or amends responses previously provided that show these refinements. We are also forwarding a revised set of draft Special Use Permit Conditions, recognizing that the Council will be the eventual author of those Conditions, but recognizing as well that our input to them will be essential to their crafting.

ATTORNEYS AT LAW

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4310 PRINCE WILLIAM PARKWAY ■ SUITE 300 ■ WOODBRIDGE, VA 22192-5199

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Town Comment	RRC Revised Response
<p>Leggett Lane and traffic.</p>	<p>This comment is acknowledged. Whether Leggett Lane should be striped is a matter for the Town to decide. The Town presently maintains Leggett Lane.</p>

<p>Wastewater: Given the size of the project, the applicant should be commended for not seeking a volume discount for sewer and water connection fees. These will be substantial at \$15,000 per residence or EDU and \$7,500 for any unit considered an apartment.</p> <p>Under the Town Sewer Ordinance an EDU is 6,000 gallons rather than 6,500 gallons as stated in the report.</p> <p>Further, the estimated usage for non-residential is increased by a Peak Load Factor of 1.4, excepting restaurants whose usage is increased by a peak load Factor of 1.7. As to the estimates stated, the Town has traditionally relied on estimates supplied by ESS, the Town's consultant on wastewater matters. It gets a bit tricky here as there must be a more or less final plan for a more precise estimate. It would be premature at this point to expend funds</p>	<p>This comment is acknowledged. For clarity, RRC would define residential units rented to qualifying third parties as apartments.</p> <p>This comment is acknowledged</p> <p>This is acknowledged.</p>
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<p>with ESS until the stage of a more or less final plan is reached.</p> <p>Given the estimates in the report of Mr. Plescow and presumed estimates from ESS which may vary, but not likely in a substantial manner, we may consider what would be an overly conservative estimate of 40 EDUs necessary for this project. That would still leave the Town with 90 EDUs for future projects and residential use. Given the pace of growth within the Town, the Town should continue to have adequate sewer reserves for the foreseeable future. Given this analysis, sewer capacity is not an impediment to this project.</p>	
<p>Commercial building facing Warren Avenue: On this matter, I have received the largest number of comments and expressions of concern. A 110 ft. long building which would be limited to two stories (though three stories are presently permitted by the zoning ordinance), situated parallel to the street, at a close proximity, with no plans or elevations demonstrating the side facing Warren Avenue would have an appearance satisfactory to what is perhaps the major entrance corridor to the Town. As to this corridor, one would normally say adequate vistas should be maintained and that there be a considered mass, context, and appearance to all structures easily visible from Warren Avenue.</p> <p>The PUD ordinance requires the total project to be "integrated in the surrounding areas as well as the overall layout of the Town" (Paragraph 9) and the individual and collective structures to harmonize with the surrounding areas (Paragraph 5).</p>	<p>RRC has given substantial thought to how this building should present itself, and Gensler has prepared illustrative drawings that show how it can be constructed so as to break up the appearance along Warren. These will be provided to the Planning Commission and Council at an upcoming work session.</p> <p>RRC will also provide illustrative drawings of the residential units. It agrees to limit structures to 2 stories-with building height as further defined in the SUP application and the proposed conditions.</p>

<p>It could be said these are not issues to be passed over now to be ultimately addressed by the ARB. The applicant could show through revised plans and new elevations how these concerns will be resolved and those made a condition of the SUP. These are typically submitted in conceptual form subject to necessary engineering revisions. This approach would also address the minimum and maximum number and type of housing units to be constructed. While it can be said that this project enjoys broad support among Town and County residents, it can also be said that the residents' biggest concerns revolve around these matters.</p> <p>To provide reasonable comfort to all parties, a more concrete solution to these questions now allows analyzation and the solution shown and accepted as part of any special use permit, rather than leaving these issues essentially open with unknown solutions.</p>	<p>RRC intends to provide sufficient information such that the public and the Town are apprised in as much detail as is reasonably possible without full engineering and architecture to provide this information.</p>
	<p>Discussions with a potential operator of the “coffee shop” proposed for the office building indicate that 1000 ft.² is insufficient, and that 1500 ft.² is more appropriate. As result RRC has amended the draft Special Use Permit Conditions to reflect this number.</p>
<p>Opportunity/Affordable Housing: There has been much discussion and much said on this issue. The PUD ordinance allows the applicant much discretion and few restraints, if any, in resolving these questions. It should not be said these matters will be left to the ARB. There are too many elements over which the ARB would lack legal authority to require any particular solution. That is why it makes more sense to get this on the table and have</p>	<p>RRC had requested up to 24 residential units in the general configuration shown on the submitted plans. Site constraints and a limitation to two stories means that the property can only accommodate 20 units.</p> <p>RRC’s architects are still in the design process for the precise mix of unit size and bedroom count.</p>

these issues resolved in a conceptual manner at this juncture.

If a unit or group of units are to be designated for age-restricted housing for persons 55 and older, RRC must meet the requirements of the Housing for Older Persons Act (“HOPA”), a part of the federal Fair Housing Act (Virginia has a similar statute that corresponds). One aspect of this is that in a development such as RRC, such units must be in a single building.

It is possible to restrict affordable and workforce housing to residents of the Rappahannock / Washington community so long as the application process is non-discriminatory.

As we have previously said, no locality has truly solved the problem of providing affordable, workforce, or “opportunity” housing. A common program for affordable housing employees a locality’s Area Median Income.

While RRC’s original proposal suggested different percentages, further research suggests that eligibility should be set at the 30%, 40% and 50% levels of AMI, and for workforce housing no greater than 80%, with rental rates that do not exceed 30% of annual gross family income. A chart showing what these AMI numbers for Rappahannock County presently are, is at the bottom of this letter as an exhibit.

All of the units constructed will be rental, and controlled by the owner of those units. There is no possibility that they will become weekend properties since the leases will require tenant occupancy and no subletting.

The proposed Special Use Permit Condition related to Housing has been moved and rewritten to spell out in greater detail how housing on the property will be managed and how affordable and workforce units will be

	<p>distributed. An option will be retained to create age restricted homes meeting requirements of federal and state law. Among the housing types formerly proposed, 2 over 2s have been deleted because they exceed two stories in height.</p>
	<p>Additional financial analysis of the project suggests that in order to maintain a long-term financial return sufficient to provide for the ongoing maintenance of those items that the property owner or any Association created for the purpose of that maintenance, and to provide assurances to potential lenders, it is necessary to retain four units as market rate rentals.</p>
<p>Number of housing units: At this stage, a condition could be a minimum number of units and a maximum number of units. The ongoing question of three story structures should be addressed now and made a part of the SUP. Not allowing three-story structures could certainly decrease the number of units and overall density, but many would argue it is more consistent with integration into the fabric of the Town.</p>	<p>As noted, RRC had requested a maximum of 24 units for the site and the site plan submitted shows the layout of the buildings and at least the possibility to accommodate 24 units. This number has been reduced to 20, since it does not appear feasible to construct 24 units with a height limitation of two stories</p>
<p>HOA Docs: What is proposed by the applicant is a typical solution to this condition and perhaps other appropriate conditions should be a statement that no occupancy permits may be issued until such documents are approved, recorded and are legally binding upon the units.</p>	<p>The Condition relating to the management of the property has been modified in recognition of the fact that there may only be one or two property owners, Black Kettle, LLC, or its successors and assigns, and the Food Pantry that will likely own its own building under a long-term lease. Whatever form the ownership takes, however, it will be required to ensure that a mechanism is in place to fund ongoing maintenance of the infrastructure that is not publicly maintained, and all common areas. It must also do so while ensuring that rental rates for the residential units meet the requirements of the proposed condition that keeps those rates</p>

	<p>affordable. The addition of four market rate units will assist in this.</p> <p>A professional property manager would likely be engaged to manage the residential and commercial properties.</p> <p>Any documentation associated with this process must be subject to the review and approval of the Town Attorney. These documents will be submitted with the final site plan.</p>
<p>Integration of Project into Town Fabric: Many have said it would be fair to note the submitted plan does not sufficiently integrate. It is reasonable and necessary to explore this issue further to see what solutions may be offered or made, especially since there are a wide range of parties with a wide range of expertise now examining the concepts of this project.</p>	<p>RRC respectfully disagrees with those whose opinion is that the project is not adequately “integrated” into the fabric of the Town.</p> <p>At the most recent joint public hearing RRC sought more specificity on this concern, but little was provided.</p> <p>It would direct analysis to the Rush River Commons Special Use Permit Narrative that was a part of the submission documents for the project. More specifically, pages 12 to 19 of that document address compliance with the Town Comprehensive Plan and compliance with the Town’s PUD ordinance.</p> <p>Acceptance of compliance with the ten Town PUD ordinance minimum submission standards has already been affirmed by Town Staff.</p> <p>RRC has not received specific feedback on the submitted compliance review with the Town Comprehensive Plan, or recommendations on either what is lacking or how any shortcomings might be reasonably addressed. The compliance narrative includes review of the Town Guiding Principles, Town Vision, Town Population, Business and Governmental Agencies, Visitor and/or Resident User</p>

	<p>Friendliness, Environment of Town & Surrounding Region, Economy and Employment, Finance, Natural Features, Land Use, Zoning, Housing, Transportation Services, and Community Facilities and Services.</p> <p>RRC firmly believes that this project will add to the Town in a manner that will benefit it both now and in the future.</p>

As always, we appreciate the Town's courteous treatment of these matters.

Very sincerely yours,

WALSH, COLUCCI,
LUBELEY & WALSH, P.C.

John H. Foote

John H. Foote

JHF/jf

cc: Charles Akre
Alexis Akre
Betsy Dietel
Tim Hoerner
Jordan Goldstein
Stephen Plescow
Michael Vergason
Brian Prater

EXHIBIT

HUD Median Income for Fiscal Year 2021



Virginia State Median Family Income: \$93,497.00*

Effective Date: 4/1/2021

30%: Extremely Low-Income | 50%: Very Low-Income | 80%: Low-Income

*Source: deftofnumbers.com/income/virginia. Based on 2019 Census ACS 1-year survey data. 2020 data will be released September 2021.

Search Criteria

City:

Search Results

Sort by: [Jurisdiction](#) | [Median Income](#)

Rappahannock County

MSA: Rappahannock County, VA HUD Metro FMR Area

Median Income: \$88,700.00

Percentage	One	Two	Three	Four	Five	Six	Seven	Eight
30%	\$18,450.00	\$21,100.00	\$23,750.00	\$26,500.00	\$31,040.00	\$35,580.00	\$40,120.00	\$44,660.00
40%	\$24,640.00	\$28,160.00	\$31,680.00	\$35,160.00	\$38,000.00	\$40,800.00	\$43,600.00	\$46,440.00
50%	\$30,800.00	\$35,200.00	\$39,600.00	\$43,950.00	\$47,500.00	\$51,000.00	\$54,500.00	\$58,050.00
60%	\$36,960.00	\$42,240.00	\$47,520.00	\$52,740.00	\$57,000.00	\$61,200.00	\$65,400.00	\$69,660.00
80%	\$49,250.00	\$56,250.00	\$63,300.00	\$70,300.00	\$75,950.00	\$81,550.00	\$87,200.00	\$92,800.00