

Development Review Committee

Staff Report

August 2, 2017



Case No:	17DEVPLAN1019
Project Name:	9903 Brownsboro Road
Location:	9903 Brownsboro Road
Owner(s):	Commonwealth Bank & Trust Co.
Applicant:	Commonwealth Bank & Trust Co.
Representative(s):	Stites & Harbison, PLLC
Project Area/Size:	2.74 acres
Existing Zoning District:	C-1
Existing Form District:	RC, Regional Center
Jurisdiction:	Louisville Metro
Council District:	16 – Scott Reed
Case Manager:	Joel P. Dock, Planner II

REQUEST(S)

- **Waiver** of LDC, section 10.2.4.B to allow easements to overlap a Landscape Buffer Area by more than 50%
- **Amendment to Binding Elements** of the General District Development Plan (docket 9-64-01) to allow for a drive-through restaurant on Lot 1
- **Revised Detailed District Development Plan**

CASE SUMMARY

Four uses, across three lots, having pedestrian and vehicular cross-connectivity and sharing a single access point to Brownsboro Road are proposed. The uses include a restaurant with drive-thru, coffee shop with drive-thru and outdoor patio, retail store, and bank with ATM and drive-thru queuing having a total combined square footage of 11,172 square feet and 117 parking spaces. Elevations show the usage of brick, stone, and paneling with doors and windows affording views into the businesses from the public street. A thirty foot parkway buffer and monument style signs have also been incorporated.

Previous Cases

- 9-64-01: CIZ from R-4 & C-2 to C-1 (approved 3/7/02; revised 2/18/04 & 9/13/06)
- 8394: RDDDP for subject site only (approved 4/25/07)

STAFF FINDING

The requested waiver, amendment to general plan binding element, and revised detailed district development plan appear to be adequately justified and meet the standard of review based on staff analysis in the staff report. The proposed development plan provides for the safe movement of pedestrians and vehicles to adjacent sites and the public right-of-way; building materials and site design are compatible with the surrounding area and form district; appropriate transitions are being made; and the area has sufficient population and employment to support the use. Drive-thru facilities

for restaurants, banks, or similar activities are also not uncommon within the area or Regional Center form districts throughout the County.

TECHNICAL REVIEW

A variance of Land Development Code (LDC), section 5.3.3.C.2.b to reduce the required 50' setback to 30' along the rear property line adjacent to a single-family residential zoning district will be heard by the Board of Zoning Adjustment on August 7, 2017.

INTERESTED PARTY COMMENTS

Alice Gunnison with the Wolf Pen Preservation Association contacted PDS staff to voice opposition to the proposed plan. Opposition to the proposal included the following statements:

"We are opposed to amending the binding elements to allow a drive-through restaurant. There are no restaurants of this type with direct access to the KY 22 Parkway from Herr Lane to the Oldham County Line! There are, however, drive-through restaurants in some of the regional centers on the Parkway, where only major entrances afford access to KY 22. This is a much more amenable arrangement.

Curb cuts should be minimized, but the proposed development shows curb cuts for each lot. As shown on the development plan, each lot would have a drive-through restaurant at the site, if there were a common entrance from KY 22 to access the three lots. Additionally, the use of a shared, non-LED monument sign to accommodate the businesses would further the neighborhood's goals of reducing visual clutter and driver distraction."

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely impact adjacent property owners as the required planting material will be provided and due to the property's location within a form district transition zone the required number of plantings will be planted at 1.5 times the minimum required.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, Policy 9 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3,

Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. Each of these aforementioned policies will be adhered to upon the granting of the waiver as the required dimension and planting material is not being altered to provide relief from the provision.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver is the minimum necessary to provide relief as easements must be provided to ensure the proper drainage on-site and plantings are being provided as required by the Land Development Code.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as easements must be provided to ensure the proper drainage on-site and plantings are being provided as required by the Land Development Code.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR AMENDMENT TO BINDING ELEMENT

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There do not appear to be any significant natural or historic features that would impede the development of the subject site. The 30' parkway buffer is being provided as required to preserve and enhance the aesthetic quality of Brownsboro Road. Additionally, the drive-thru queuing begins at the rear of the building and the slight angular orientation of the building helps to shield queuing for a greater distance traveling Westbound along the parkway

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within the development and the community is provided the subject site will maintain pedestrian and vehicular cross connectivity across the three lots, with an adjacent site to the West, and upon the redevelopment of the site to the East. A single shared entrance for all three lots provides vehicular access onto Brownsboro Road. Pedestrian connection from the site is being provided to existing and proposed sidewalks along the frontage.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: The development site provides the required 30' parkway buffer along Brownsboro Road, Landscape buffering, and outdoor patio for the coffee shop.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site designs (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area as the area and land uses are predominantly automobile dependent given their proximity to the interstate and low population density. Drive-thru facilities for restaurants, banks, or similar activities are not uncommon within the area or regional center form districts throughout the County.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan as Guideline 2, Policy 13 encourages shared parking and access; Guideline 3, Policy 1 encourages compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district; and Guideline 8, Policy 9 encourages the avoidance of access to development through areas of significantly lower intensity or density development if such access would create significant nuisances. The proposed amendment to binding element to allow for a development containing a restaurant with a drive-thru facility is incorporated into a proposal with shared access and cross connectivity across three sites that is compatible in both design and land uses with the area, as well as the form district. Access to the drive-thru facility is being provided in an activity center generating large amounts of traffic. The new facilities will provide increased amenities for the areas users or passers-by.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There do not appear to be any significant natural or historic features that would impede the development of the subject site. The 30' parkway buffer is being provided as required to preserve and enhance the aesthetic quality of Brownsboro Road.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within the development and the community is provided the subject site will maintain pedestrian and vehicular cross connectivity across the three lots, with an adjacent site to the West, and upon the redevelopment of the site to the East. A single shared entrance for all three lots provides vehicular access onto Brownsboro Road. Pedestrian connection from the site is being provided to existing and proposed sidewalks along the frontage.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: The development site provides the required 30' parkway buffer along Brownsboro Road, Landscape buffering, and outdoor patio for the coffee shop.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site designs (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area as the area and land uses are predominantly automobile dependent given their proximity to the interstate and low population density. Drive-thru facilities for restaurants, banks, or similar activities are not uncommon within the area or regional center form district located throughout the County. Building materials of brick, stone, and paneling are consistent with development on the same and opposite side of Brownsboro Road. Appropriate landscaping is provided to ensure transition between incompatible uses and to enhance views along the parkway.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code (LDC) as safe pedestrian and vehicular connections to adjacent sites and the public right-of-way are provided; building materials and site design are compatible with the surrounding area and form district; appropriate transitions are being made; and the area has a population, workforce, and employment to support the use.

REQUIRED ACTIONS

- **Approve or Deny the Waiver** of LDC, section 10.2.4.B to allow easements to overlap a Landscape Buffer Area by more than 50%
- **Approve or Deny the Amendment to Binding Elements** of the General District Development Plan (docket 9-64-01) to allow for a drive-through restaurant on Lot 1
- **Approve or Deny the Revised Detailed District Development Plan**

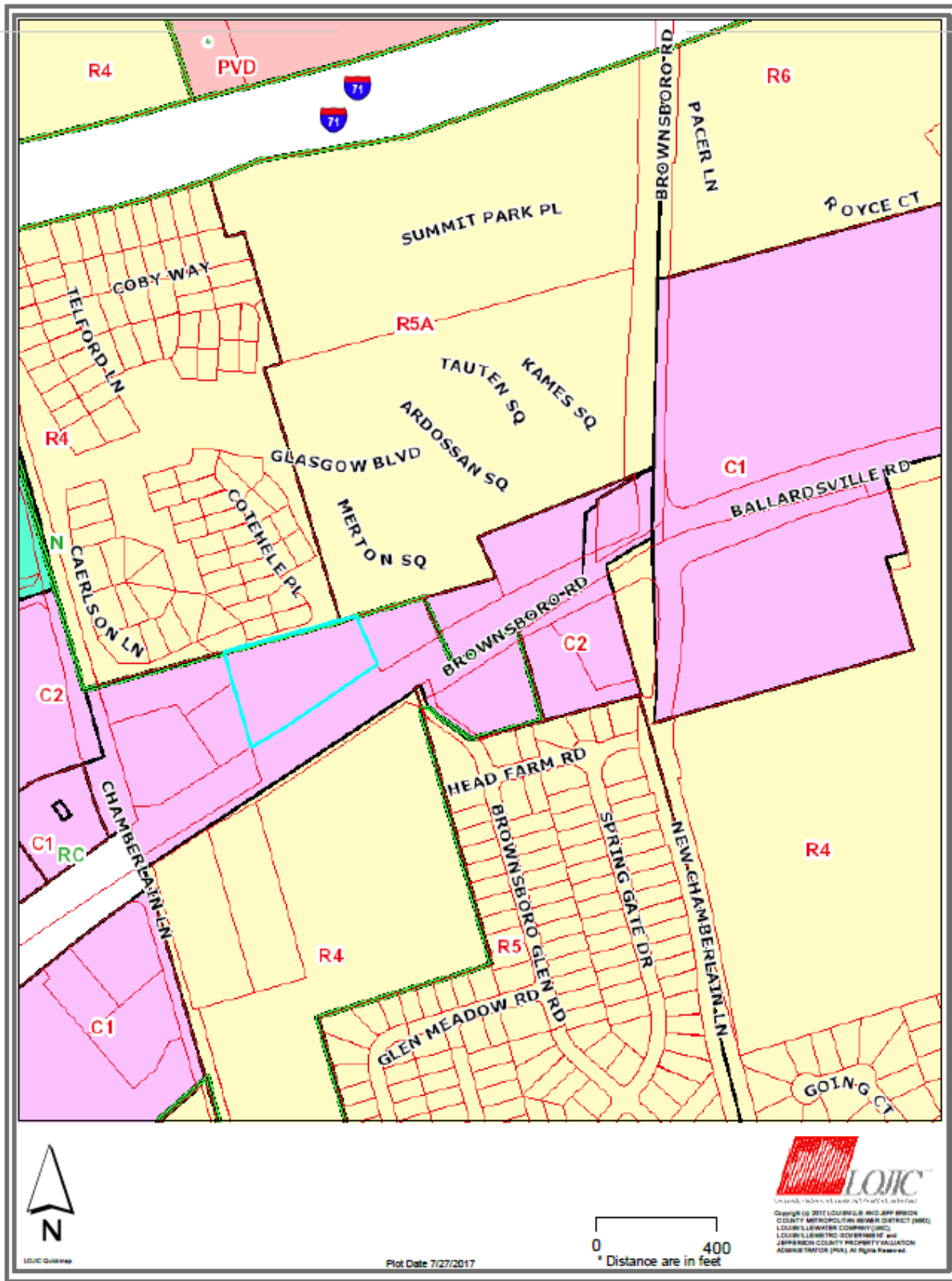
NOTIFICATION

Date	Purpose of Notice	Recipients
7/21/17	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 1

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements docket 9-64-01(GDDP)
4. Existing Binding Elements case 8394
5. Proposed Binding Elements 9-64-01 (GDDP)
6. Proposed Binding Elements

1. **Zoning Map**



3. Existing Binding Elements docket 9-64-01(GDDP)

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions or alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Prior to development (includes clearing and grading) of the general district development plan portion of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan from the Planning Commission. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
 - a. screening, buffering, landscaping, tree preservation
 - b. density, floor area, size and height of buildings
 - c. points of access and site layout with respect to on-site circulation
 - d. land uses
 - e. signage
 - f. loading berths
 - g. parking
 - h. sidewalks
 - i. site design elements relating to alternative transportation modes
 - j. outdoor lighting
 - k. minor subdivision plat approval
 - l. air pollution
 - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection
 - n. dumpsters
3. The detailed development plan portion of the site shall not exceed 31,587 square feet of gross retail floor area. The general development plan portion of the site shall not exceed 8,400 square feet of gross retail floor area and 10,000 square feet of gross office floor area.
4. The center freestanding identification sign and any other permitted freestanding signs shall be monument style signs (no pole signs permitted), located as shown on the approved development plan. No portion of the signs, including the leading edge of the sign frame, shall be closer than 30 feet to front property line. No sign shall exceed 60 square feet each in area per side and 6 feet in height each. No sign shall have more than two sides. There shall be no electronic reader boards. There shall be no free standing sign allowed on the portion of the site approved as a general plan. The freestanding sign shown on the detailed plan along KY 22 shall be shared with the portion of the site approved as a general plan.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. There shall be no outdoor storage, display or sales permitted on the site.
7. Outdoor lighting (for parking lot illumination and security) shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of

the light standard shall be set so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed 0.5 foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.

8. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
9. A Tree Preservation Plan (TPP) shall be approved by Planning Commission staff prior to transmittal to the office responsible for permit issuance. No clearing and/or grading activities may take place until a Tree Preservation Plan has been approved. The Tree Preservation Plan shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.
10. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from the Jefferson county Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan dedicating additional right-of-way to Chamberlain Lane and Brownsboro Road (KY 22). A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - d. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 and in conformance with the Parkway Policy prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
11. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
12. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
13. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.

14. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
15. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for the placement of materials according to the approved landscape plan.
16. Dumpsters shall not be emptied between the hours of 10 p.m. and 7 a.m.
17. Architecture/exterior design of the project's building shall be predominantly brick, including at the rears of the various buildings. The developer shall work with the Wolf Pen Preservation Association (WPPA) in an effort to try to design a storefront entrance to the anticipated pharmacy store that is, if at all possible on the part of the developer, acceptable to WPPA. If an agreement is not worked out on design, the issue shall return to LD&T. Building materials and architectural style and design shall be consistent throughout the entire detailed and general district development plan portions of the overall site.
18. A landscape plan for Kentucky 22 and Chamberlain Lane shall be implemented in a form substantially similar to that in place for the Summit development located on Kentucky Highway 22, which plan shall be designed in close consultation with the WPPA. A landscape plan conforming to that produced at the March 7, 2002 public hearing shall also be implemented at this developer's cost in the open space area, as agreed to by that property owner/homeowners association, located within the single family subdivision immediately behind the development. A 6-foot high, double-sided solid wood fence shall also be constructed along this property line.
19. The following uses shall be prohibited: automobile, truck and boat rental and sales agencies, automobile service and/or gas stations, beer depots (although package liquor stores will be allowed), car washes, drive through restaurants, garage and yard sales, ice storage houses, mobile home parks, radio towers, sewage plants, paid parking, and oil, gas or hydrocarbon extraction/mining.
20. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
21. The minor plat shall be submitted and approved for dedication of Right-of-Way on KY 22 and Chamberlain Lane within 90 days of a request from the Director of Public Works.

4. Existing Binding Elements case 8394

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
- 1a. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
2. The development on Lot 1 shall not exceed 7,295 square feet of gross floor area. The development on Lot 2 shall not exceed 9,750 square feet of gross floor area.
3. Signs shall be in accordance with Chapter 8 or as presented at the public hearing (60 square feet and 6 feet tall).
4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. No outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site.
6. There shall be no outdoor storage permitted on the site.
7. Outdoor lighting (for parking lot illumination and security) shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed 0.5 foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.
8. Before any permit (including but not limited to building, parking lot, change of use, site disturbance,) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and Transportation, and the Metropolitan Sewer District.
 - b. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

- c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
9. If a certificate of occupancy (building permit) is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
10. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
11. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
12. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
13. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
14. Dumpsters shall not be emptied between the hours of 10 p.m. and 7 a.m.
15. The materials and design of the proposed structures for Lot 1 shall be substantially the same as depicted in the rendering as presented at the April 25, 2007 DRC Committee meeting. Façade elevations shall be approved for Lot 2 of the development by Planning Commission staff prior to construction of the plan for Lot 2 of the development site.

5. **Proposed Binding Elements 9-64-01 (GDDP)**

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions or alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Prior to development (includes clearing and grading) of the general district development plan portion of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan from the Planning Commission. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
 - a. screening, buffering, landscaping, tree preservation
 - b. density, floor area, size and height of buildings
 - c. points of access and site layout with respect to on-site circulation
 - d. land uses
 - e. signage
 - f. loading berths
 - g. parking
 - h. sidewalks
 - i. site design elements relating to alternative transportation modes
 - j. outdoor lighting
 - k. minor subdivision plat approval
 - l. air pollution
 - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection
 - n. dumpsters
3. The detailed development plan portion of the site shall not exceed 31,587 square feet of gross retail floor area. **~~The general development plan portion of the site shall not exceed 8,400 square feet of gross retail floor area and 10,000 square feet of gross office floor area.~~**
4. The center freestanding identification sign and any other permitted freestanding signs shall be monument style signs (no pole signs permitted), located as shown on the approved development plan. No portion of the signs, including the leading edge of the sign frame, shall be closer than 30 feet to front property line. No sign shall exceed 60 square feet each in area per side and 6 feet in height each. No sign shall have more than two sides. There shall be no electronic reader boards. There shall be no free standing sign allowed on the portion of the site approved as a general plan. The freestanding sign shown on the detailed plan along KY 22 shall be shared with the portion of the site approved as a general plan.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. There shall be no outdoor storage, display or sales permitted on the site.
7. Outdoor lighting (for parking lot illumination and security) shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible off-site. Light levels due to lighting

on the subject site shall not exceed 0.5 foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.

8. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
9. A Tree Preservation Plan (TPP) shall be approved by Planning Commission staff prior to transmittal to the office responsible for permit issuance. No clearing and/or grading activities may take place until a Tree Preservation Plan has been approved. The Tree Preservation Plan shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.
10. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from the Jefferson county Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan dedicating additional right-of-way to Chamberlain Lane and Brownsboro Road (KY 22). A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - d. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 and in conformance with the Parkway Policy prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
- ~~11. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.~~
11. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
12. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.

13. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
14. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for the placement of materials according to the approved landscape plan.
15. Dumpsters shall not be emptied between the hours of 10 p.m. and 7 a.m.
16. Architecture/exterior design of the project's building shall be predominantly brick, including at the rears of the various buildings. The developer shall work with the Wolf Pen Preservation Association (WPPA) in an effort to try to design a storefront entrance to the anticipated pharmacy store that is, if at all possible on the part of the developer, acceptable to WPPA. If an agreement is not worked out on design, the issue shall return to LD&T. Building materials and architectural style and design shall be consistent throughout the entire detailed and general district development plan portions of the overall site.
17. A landscape plan for Kentucky 22 and Chamberlain Lane shall be implemented in a form substantially similar to that in place for the Summit development located on Kentucky Highway 22, which plan shall be designed in close consultation with the WPPA. A landscape plan conforming to that produced at the March 7, 2002 public hearing shall also be implemented at this developer's cost in the open space area, as agreed to by that property owner/homeowners association, located within the single family subdivision immediately behind the development. A 6-foot high, double-sided solid wood fence shall also be constructed along this property line.
18. The following uses shall be prohibited: automobile, truck and boat rental and sales agencies, automobile service and/or gas stations, beer depots (although package liquor stores will be allowed), car washes, ~~drive through restaurants~~ garage and yard sales, ice storage houses, mobile home parks, radio towers, sewage plants, paid parking, and oil, gas or hydrocarbon extraction/mining.
19. **Drive-through restaurants, banks, coffee shops, or any other use with drive-through service shall be prohibited from having individual direct vehicular access to Brownsboro Road. The 2.74 acre site indicated as the General District Development Plan portion of the site and further revised in case 17DEVPLAN1019 shall be limited to a single shared access point as shown on the Revised Detailed District Development Plan.**
20. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
21. The minor plat shall be submitted and approved for dedication of Right-of-Way on KY 22 and Chamberlain Lane within 90 days of a request from the Director of Public Works.

6. Proposed Binding Elements case 17DEVPLAN1019

1. The development shall be in accordance with the approved **detailed** district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
- ~~1a. **Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.**~~
- ~~2. **The development on Lot 1 shall not exceed 7,295 square feet of gross floor area. The development on Lot 2 shall not exceed 9,750 square feet of gross floor area.**~~
2. Signs shall be in accordance with Chapter 8 **of the Land Development or as presented at the public hearing (60 square feet and 6 feet tall) and applicable binding elements of the general district development plan.**
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. No outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site.
5. There shall be no outdoor storage permitted on the site.
6. Outdoor lighting (for parking lot illumination and security) shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed 0.5 foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.
7. Before any permit (including but not limited to building, parking lot, change of use, site disturbance,) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and Transportation, and the Metropolitan Sewer District.
 - b. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; **transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.**

- c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
8. If a certificate of occupancy (building permit) is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
9. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
10. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
11. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
12. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
13. Dumpsters shall not be emptied between the hours of 10 p.m. and 7 a.m.
- ~~15. The materials and design of the proposed structures for Lot 1 shall be substantially the same as depicted in the rendering as presented at the April 25, 2007 DRC Committee meeting. Façade elevations shall be approved for Lot 2 of the development by Planning Commission staff prior to construction of the plan for Lot 2 of the development site.~~