

Development Review Committee

Staff Report

November 30, 2016



Case No:	16MOD1010
Project Name:	Shiraz Mediterranean Grill
Location:	4610 Chamberlain Lane
Owners:	Chamberlain Pointe, LLC
Applicant:	Mohsen Maybody
Representative:	Mohsen Maybody
Zoning/Form District:	C1/Regional Center
Jurisdiction:	Louisville Metro
Council District:	17 – Glen Stuckel
Case Manager:	Dante St. Germain – Planner I

REQUEST

- Amendment to Binding Elements to allow small temporary freestanding signs.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant requests that binding element #3 on this property be changed to allow the display of small temporary freestanding signs. The current binding element reads:

“3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site, except for those permitted by the Land Development Code, EXCEPT THAT pennants may be affixed to parking lot lighting poles provided they do not advertise a product or service sold on site or state a brand name. Prior to the display of pennants the planning commission general counsel must determine that the pennants are permitted by the LDC.”

The site is located along the Brownsboro Road scenic corridor at the intersection of Brownsboro Road and I-265. Brownsboro Road is classed as a minor arterial road with more than 4 lanes at this location. Because Brownsboro Road is a designated scenic corridor, development should preserve the scenic character of the corridor.

This property was subject to several rezoning requests in the past. Docket # 9-21-05 introduced a binding element with the above wording, which applied to the east and west portions of the property. Planning Commission hearing minutes indicate that the property owner wished to display decorative pennants on the lighting poles for holidays and events, but there was a question as to whether the Land Development Code permitted such pennants. Consequently the wording of the standard binding element was modified to the above language.

Prior to docket # 16DEVPLAN1057, three different sets of binding elements applied to the different portions of the site as they had been rezoned. Docket # 16DEVPLAN1057 standardized the binding elements across the site, with the language from docket # 9-21-05 used for binding element #3.

Small freestanding signs are not permitted by the Land Development Code except for the Downtown form district and in the Traditional Neighborhood Zoning District. Therefore, in order to allow small freestanding signs on the property as permitted by Chapter 155 of the Louisville Metro ordinances, the language of the binding element must be changed. The proposed changes are as follows:

"3. No outdoor advertising signs, ~~small freestanding signs~~, pennants, balloons, or banners shall be permitted on the site, except for those permitted by the Land Development Code, EXCEPT THAT pennants may be affixed to parking lot lighting poles provided they do not advertise a product or service sold on site or state a brand name. Prior to the display of pennants the planning commission general counsel must determine that the pennants are permitted by the LDC."

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Commercial	C-1	Regional Center
Proposed	Commercial	C-1	Regional Center
Surrounding Properties			
North	Commercial	C-1	Regional Center
South	Multi-Family Residential	R-5A	Neighborhood
East	Church Parking and Cemetery	R-4	Regional Center
West	I-265	ROW	ROW

PREVIOUS CASES ON SITE

- 9-110-77: Planning Commission approved a zoning map amendment from R-4 to C-1 for a nursery on a portion of the site.
- 9-15-84: Planning Commission approved a zoning map amendment from R-4 to R-9 for a professional office building on a portion of the site.
- B-3-85: Board of Zoning Adjustment approved a variance to allow a proposed freestanding sign to encroach into the required front yard.
- 9-18-95: Planning Commission approved a zoning map amendment from R-4 to C-1 for retail, a restaurant, and auto services on a portion of the site.
- 9-21-05: Planning Commission approved a zoning map amendment from OR-3 to C-1 on the portion of the site that had been rezoned in Docket # 9-15-84, and from R-4 to C-1 on the portion of the site that had not yet been rezoned.
- 15CUP1027: Board of Zoning Adjustment approved a Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 zoning district.
- 16VARIANCE1052: Board of Zoning Adjustment approved a variance to allow a building to exceed the maximum height requirement within a transition zone.
- 16DEVPLAN1057: Development Review Committee approved a revised detailed district development plan for a three-story medical office building.

INTERESTED PARTY COMMENTS

Barbara Kelly contacted staff to request more information and to express disapproval of the amount of signage already along Brownsboro Road. She is not in favor of the applicant's request on the grounds that the amount of existing signage already detracts from the public enjoyment of the Brownsboro Road scenic corridor.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR AN AMENDMENT TO BINDING ELEMENTS

- 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: LOJIC does not show any environmental constraints or historic resources on the subject site. The proposed signage will negatively impact the scenic view along 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 and around the development and the community will continue to be provided.

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

STAFF: The amount of open space provided will not be changed. The scenic quality of the open space will be negatively impacted.

- 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 approved the provision of drainage facilities on prior plans, and those facilities will continue to be provided 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 design (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.

- 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 provision of temporary signage does not conform with the Comprehensive Plan. Objective C1.4 is to "Encourage the preservation of important cultural resources, landscapes and scenic vistas in the design, maintenance and development of major thoroughfares and parkways." Goal J4 is to "Develop and implement appropriate regulatory and non-regulatory mechanisms and design standards to protect important scenic and historic resources and visual quality of life." Plan Element A, Guideline 3, Policy A.28 is to "Ensure that signs are compatible with the form district pattern and contribute to the visual quality of their surroundings. Promote signs of a size and height adequate for effective communication and conducive to motor vehicle safety. Encourage signs that are integrated with or attached to structures whenever feasible; limit freestanding signs to monument style signs unless such design would unreasonably compromise sign effectiveness. Give careful attention to signs in historic districts, parkways, scenic corridors, design review districts, and other areas of special concern. For

freestanding signs in multi-lot developments, minimize the number of signs by including signage for each establishment on the same support structure and encourage consistent design (size, style, and materials).” Plan Element D, Guideline 13, Policy A.7 is to “Protect the character of parkways and scenic by-ways and corridors through standards for buffers, landscape treatment, lighting and signs.” The H-frame-style temporary signage proposed does not conform with the Comprehensive Plan goals and objectives or plan elements in the establishment and preservation of the Brownsboro Road scenic corridor.

The Land Development Code does not address temporary signage in this location. The provision of temporary signage is in conformance with Chapter 155 of the Louisville Metro Ordinances.

TECHNICAL REVIEW

None.

STAFF CONCLUSIONS

- The proposed amendments do not appear to be adequately justified based on staff analysis in the staff report.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must determine if the proposal meets the standards established in the LDC for approving the Amendment to Binding Elements.

REQUIRED ACTION

- **APPROVE** or **DENY** the Amendment to Binding Elements.

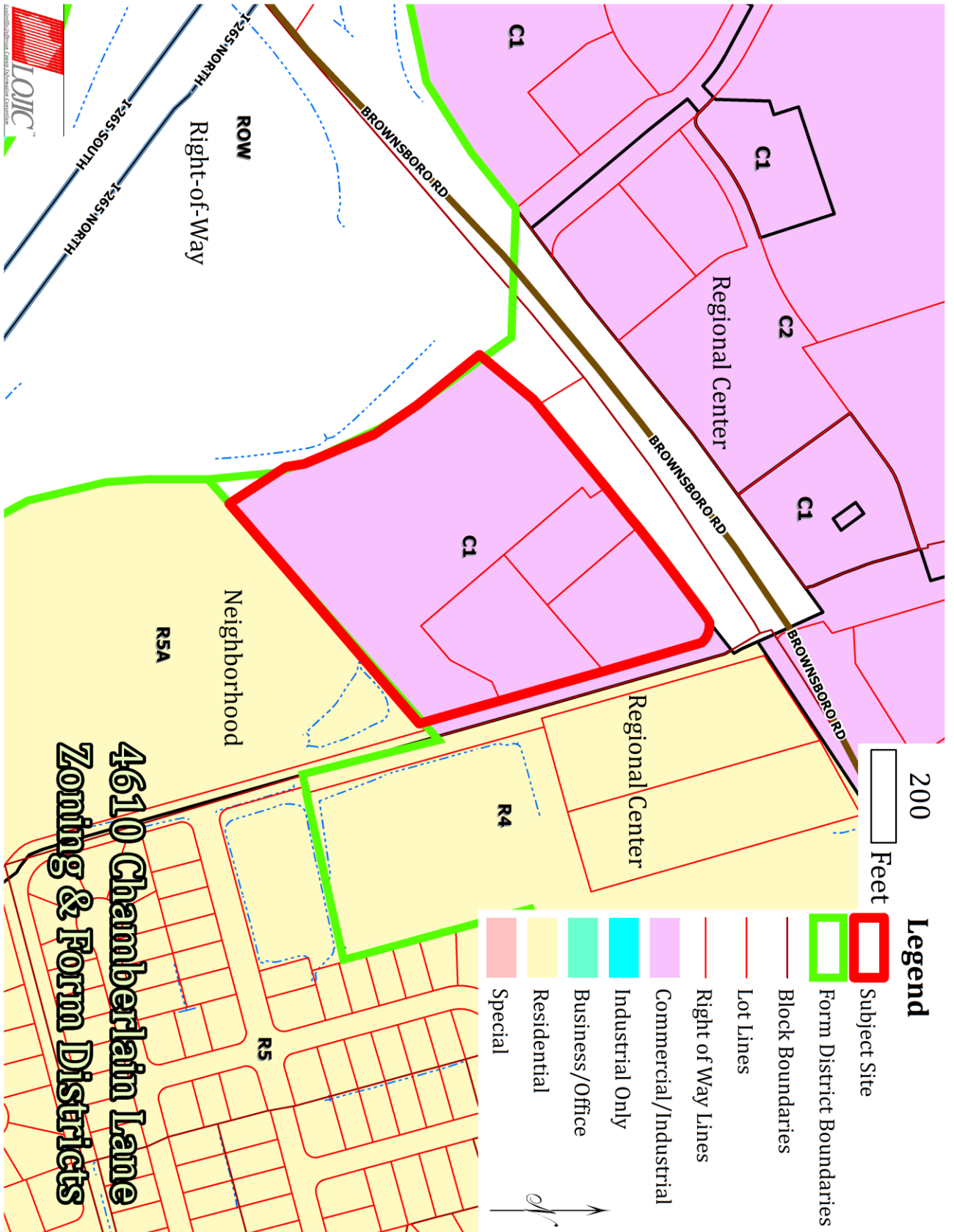
NOTIFICATION

Date	Purpose of Notice	Recipients
11/15/2016	DRC Public Meeting	1 st tier adjoining property owners Parties who previously addressed hearings on this site.

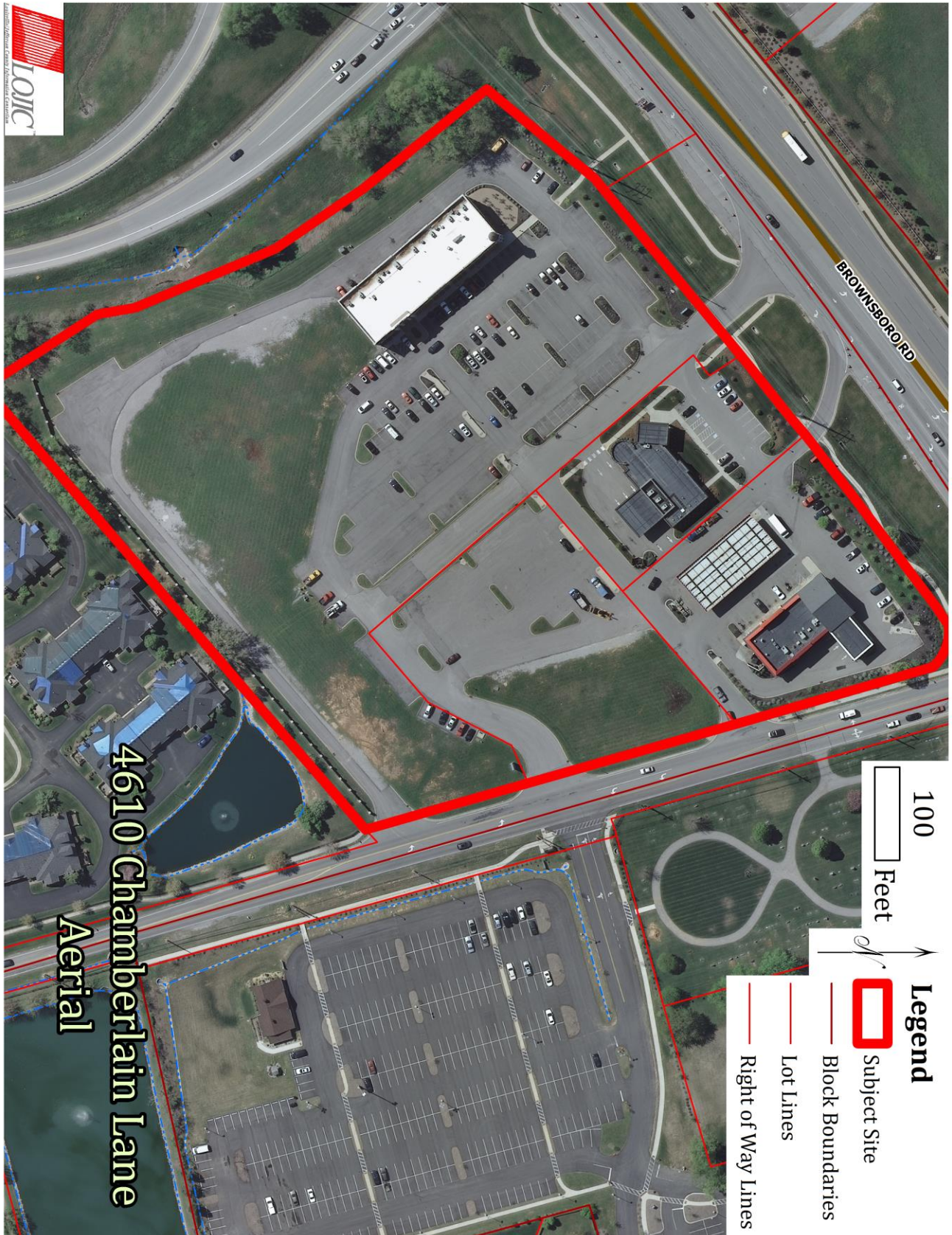
ATTACHMENTS

1. Zoning Map
2. Aerial
3. Plan Certain Boundaries
4. Proposed Location of Small Temporary Freestanding Sign
5. Existing Binding Elements
6. Proposed Changes to Binding Elements
7. Interested Party Comments

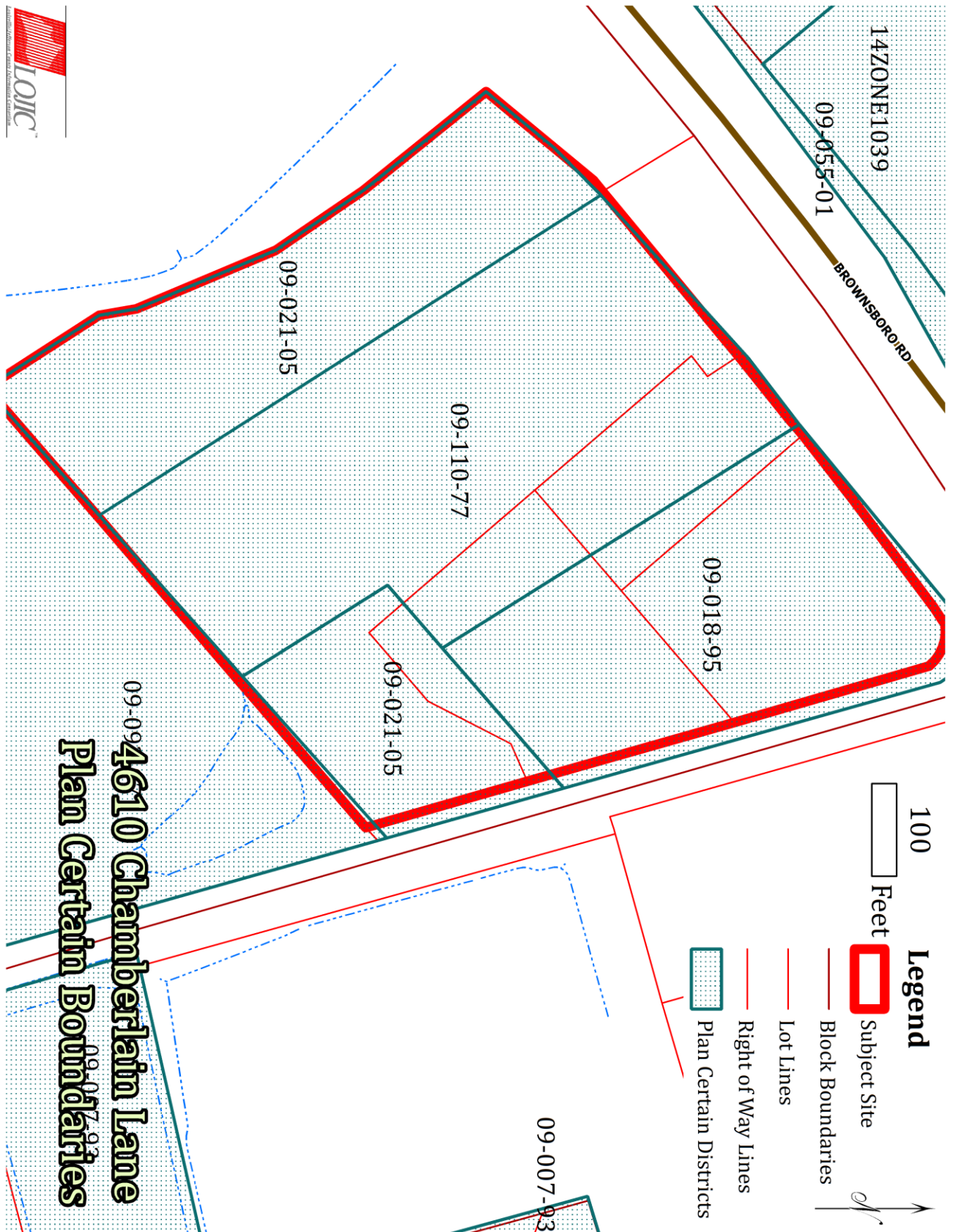
1. Zoning Map



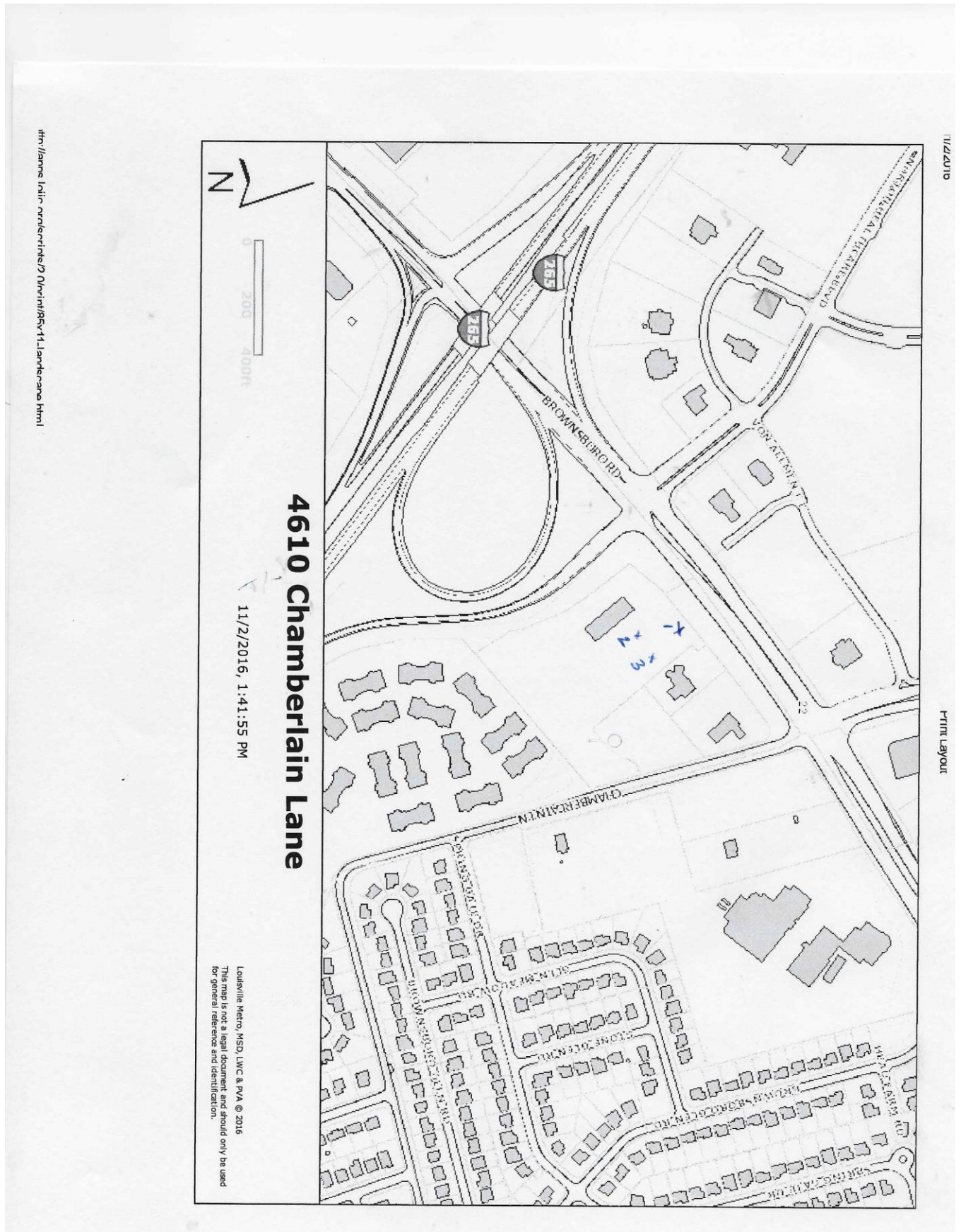
2. Aerial



3. Plan Certain Boundaries



4. Proposed Location of Small Temporary Freestanding Sign



5. Existing Binding Elements

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.

~~2. The site shall be developed with the following square footages and uses:~~

~~A. Building A. 114,798 square feet of retail, office and restaurant~~

~~B. Building B. 5,875 square feet of bank~~

~~C. Building C. 1,250 square feet of bank~~

~~D. Building D. 3,750 square feet of convenience store~~

~~E. Building E. 12,000 square feet of retail~~

~~TOTAL: 137,673 SQUARE FEET.~~

A. Building A. 84,352 square feet of office

B. Building B. 27,140 square feet of retail, office, and restaurant

C. Building C. 21,200 square feet of retail, office, and restaurant

D. Building D. 5,507 square feet of bank

E. Building E. 1,250 square feet of bank

F. Building F. 3,750 square feet of convenience store & gas

G. Building G. 12,000 square feet of office

TOTAL: 155,199 SQUARE FEET

2. The development shall not exceed 155,199 square feet of gross floor area

3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site, except for those permitted by the Land Development Code, EXCEPT THAT pennants may be affixed to parking lot lighting poles provided they do not advertise a product or service sold on site or state a brand name. Prior to the display of pennants the planning commission general counsel must determine that the pennants are permitted by the LDC.

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. Before any permit (including, but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) 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 the Metropolitan Sewer District.

b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.

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.

6. If a 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.

7. 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.

8. 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.

9. The materials and design of proposed structures shall be substantially the same as depicted in the renderings presented at the November 15, 2005 and December 1, 2005 Planning Commission meetings, **and the Development Review Committee meeting on August 3, 2016.**

10. The façade elevations shall be in accordance with applicable forms district standards and shall be approved by PDS staff prior to construction permit approval.

11. The applicant shall provide documentation showing that the development complies with all the regulations from Chapter 4, Part 1, Section 3, Lighting, prior to the issuance of a construction permit. These regulations include the following items:

- a. Mounting Height Limit – 16 feet.
- b. Luminaire Shielding – 100% cut-off at 90 degrees.
- c. Canopy Lighting Level – 50 FC maximum. d. Light Trespass – 0.3 FC maximum.

12. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

13. **Outdoor Activity.** No loading, trash pickup (i.e., dumpster loading and unloading, pallet or trash removal from the site), trash compacting audible beyond a residential property line, or outdoor construction or maintenance, parking lot cleaning or sweeping (except snow and ice), or drive-through window operation shall occur on the property between the hours of 10 PM and 7 AM.

14. **Deliveries.** No deliveries shall be made to or on the site between the hours of 10 PM and 7 AM.

15. **Delivery Truck Parking On-Site.** (a) No delivery trucks shall be allowed to park on the property within 180 feet of the Old Brownsboro Gardens property line between the hours of 10 PM and 7 AM.

(b) The property owner shall post signs at appropriate locations on the rear of the shopping center building prohibiting delivery truck parking as described in (a).

16. **Vehicle Noise.** No vehicle shall be allowed to park on the property at any time between the hours of 10 PM and 7 AM with its engine running or sound system operating if the engine or sound system is audible beyond a residential property line.

17. **Freestanding Shopping Center Identification Sign.** The freestanding shopping center identification sign shown as being located in the right-of-way adjacent to KY 22 shall not be erected until the right-of-way comes under the same ownership as the shopping center.

18. **Fence.** The main component of the fence to be placed along the boundary of the site adjacent to Old Brownsboro Gardens shall be wood, unless the Old Brownsboro Gardens Homeowners Association expresses to Applicant its preference for a vinyl fence product in lieu of wood. Any such preference shall be stated in writing with copy to the Department of Planning and Design Services.

19. Signs on the west (Snyder Freeway) side and the south (rear) side of the main shopping center building prohibited; one exception. (a) No attached sign on the western side of the main shopping center building shall face Snyder Freeway.

(b) Except for the signs on the south (rear) side of the main shopping center building referred to in Binding Element No. 15, the rear of the main shopping center building (facing Old Brownsboro Gardens) shall have no attached sign.

20. **Regarding the 14 parking spaces shown on the original "Humphrey Tract" which have been deleted on the approved general/detailed district development plan; landscaping and shopping center ID sign.**

(a) 14 parking spaces all shown as partially located within the state right-of-way on the original general/detailed district development plan filed with the zone change application on April 5, 2005 may be approved by DPDS staff; staff approval of a revised plan showing parking spaces (and landscaping and a shopping center ID sign) may be granted upon proof of acquisition of the title of this right-of-way from the Commonwealth of Kentucky ("Commonwealth").

(b) Until acquisition of right-of-way and approval of the revised general/detailed district development plan referred to in (a) above the development square footage shall be reduced to the extent of the 14 parking spaces. "Shell" building permits may be issued for construction of the development as is attributable to the 14 parking spaces prior to acquisition of the right-of-way provided no occupancy of the space attributable to the 14 parking spaces occurs until the 14 parking spaces are available for use.

21. **Temporary limitation on occupancy of 4000 SF general office space.** (a) The property owner/developer shall not request a certificate of occupancy for 4,000 square feet of general office space as shown on the approved general/detailed district development plan for Planning Commission Docket No. 9-21-05 on file with Louisville Metro Planning and Design Services until government funding for the construction of roadway improvements on KY 22 between Chamberlain Lane and HWY 1694 has been included in the Six Year Plan in accordance with Kentucky Transportation Cabinet plans.

(b) Prior to the approval of government funding referred to in (a) above, "shell" building permits may be issued for the construction of the 4,000 square feet of general office space.

22. **Shopping Center Identification Signs** (a) "Monument Sign – 1" and "Monument Sign – 2" may be internally lit to the extent of the portion of the sign cabinet relating to the shopping center name. The remainder of these signs shall be externally lit. (b) The shopping center identification sign/gas sign "Monument Sign – 3" at Brownsboro Road and Chamberlain Lane may be internally lit.

23. **"Changeable copy signs/reader board signs."** Changeable copy signs/reader board signs shall not be permitted within the 30 foot buffer along Brownsboro Road.

24. **"Changing Image Signs."** Changing Image signs shall not be permitted within the 30 foot buffer along Brownsboro Road.

25. **Height of the berm adjacent to Ky. 22.** The height of the berm shall be measured from the grade of Ky. 22 (rather than measured from the grade of the parking lot).

6. Proposed Changes to Binding Elements

3. No outdoor advertising signs, ~~small freestanding signs~~, pennants, balloons, or banners shall be permitted on the site, except for those permitted by the Land Development Code, EXCEPT THAT pennants may be affixed to parking lot lighting poles provided they do not advertise a product or service sold on site or state a brand name. Prior to the display of pennants the planning commission general counsel must determine that the pennants are permitted by the LDC.

7. Interested Party Comments

Dante,

The DRC hearing for this case is not until November, 30, 2016, so I was surprised to see that the staff report has already been submitted. I am not in favor of this request, but I would like more information. Is Shiraz requesting to place their free standing signs in any particular locations? Do you know the type of signs being requested, such as sandwich board-type signs, and how many signs have been requested?

If Shiraz is granted the request to make use of freestanding signs, will all other businesses on the Brownsboro Road Scenic Corridor/Parkway be entitled to approval of their own freestanding sign requests, since Shiraz will have set a precedent? Or, is there a special reason for Shiraz alone to be granted this exception?

For quite a while, Shiraz and other businesses in Chamberlain Pointe littered parts of Brownsboro Road and Chamberlain Lane with freestanding signs. They received the benefits of free advertising in the public rights-of-way, while detracting greatly from the attractiveness and the public's enjoyment of the corridor. Surely, Shiraz must realize that paid advertising is a cost of doing business to make their location and their products known.

I look forward to hearing from you on these issues.

Barbara Kelly
6009 Mint Spring Branch Road
Prospect, KY 40059