

Louisville Metro Planning Commission
April 2, 2015

Docket No. 14ZONE1030

Change in zoning from R-7 to C-1, plus waivers
and variances to allow a Family Dollar store on
property already partly zoned C-1, located at 3901,
3905, 3907 & 3909 W. Market Street



Attorneys: Bardenwerper Talbott & Roberts, PLLC

Land Planners, Landscape Architects & Engineers: LeCraw Engineering, Inc.

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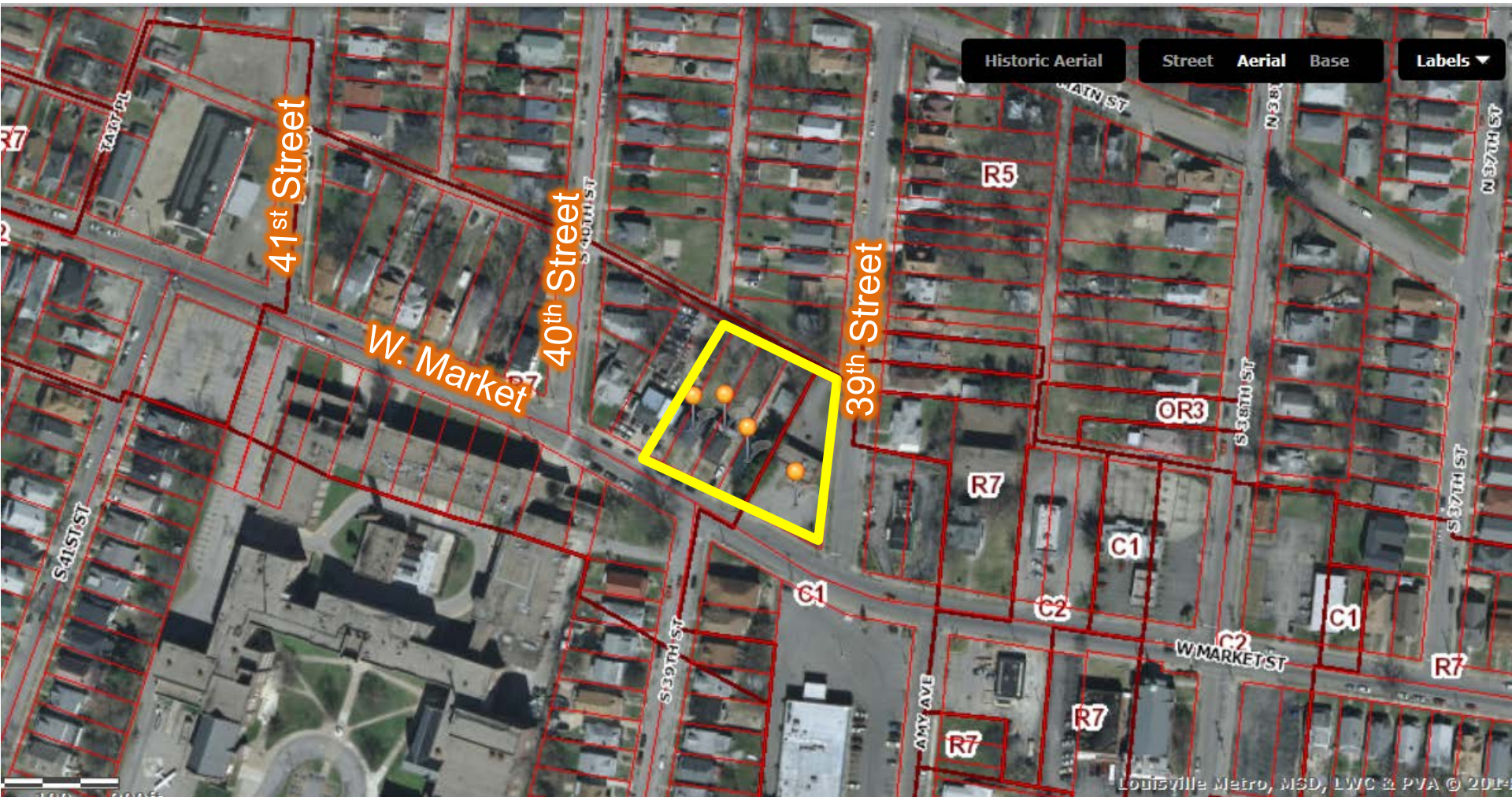
Tab 1
LOJIC Zoning Map





Tab 2

Aerial photograph of the site and
surrounding area





Tab 3

Ground level photographs of the site and surrounding area

1 – Chicago
Steak and
Lemonade
restaurant

2 – Crystal
Chinese Fast
Food Restaurant

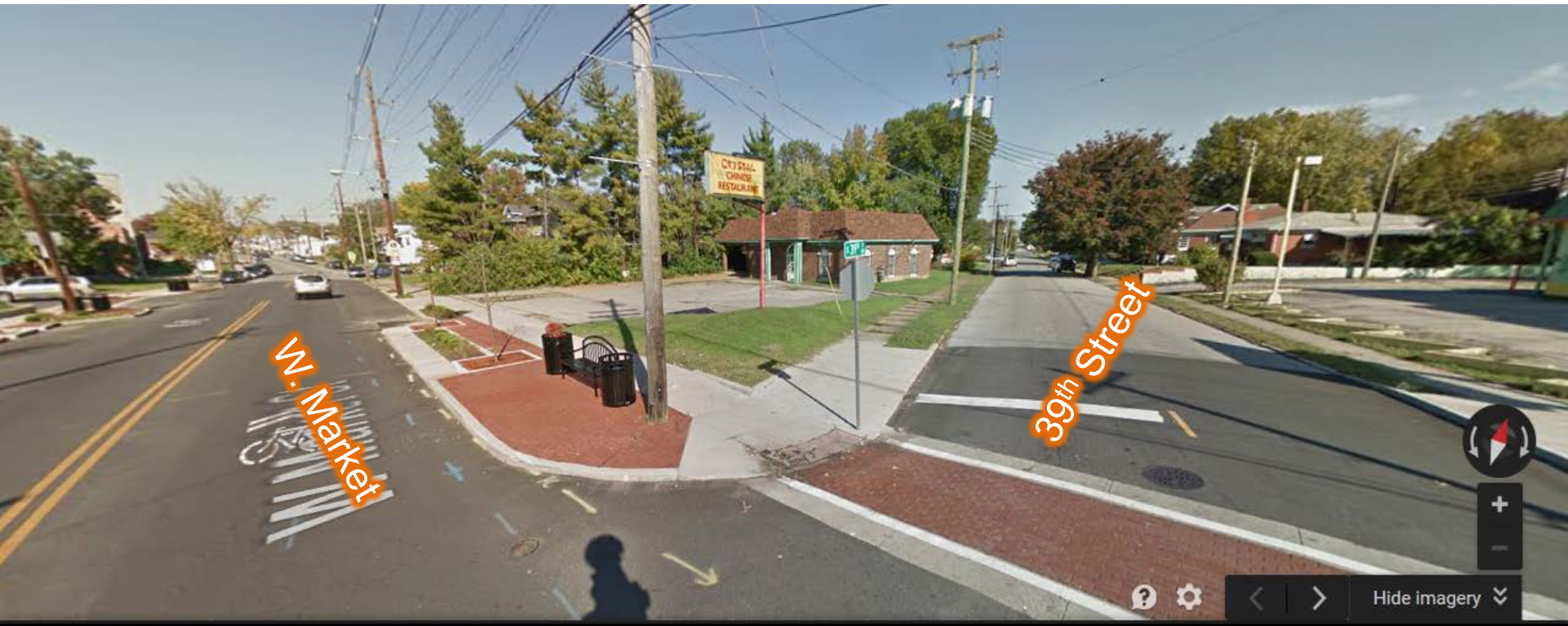
3 – houses
within site

4 – Starks
Automotive





1 - Chicago Steak and Lemonade restaurant



2 - Crystal Chinese Fast Food Restaurant



2 - Crystal Chinese Fast Food Restaurant



3 – Houses within site



4 – Starks Automotive



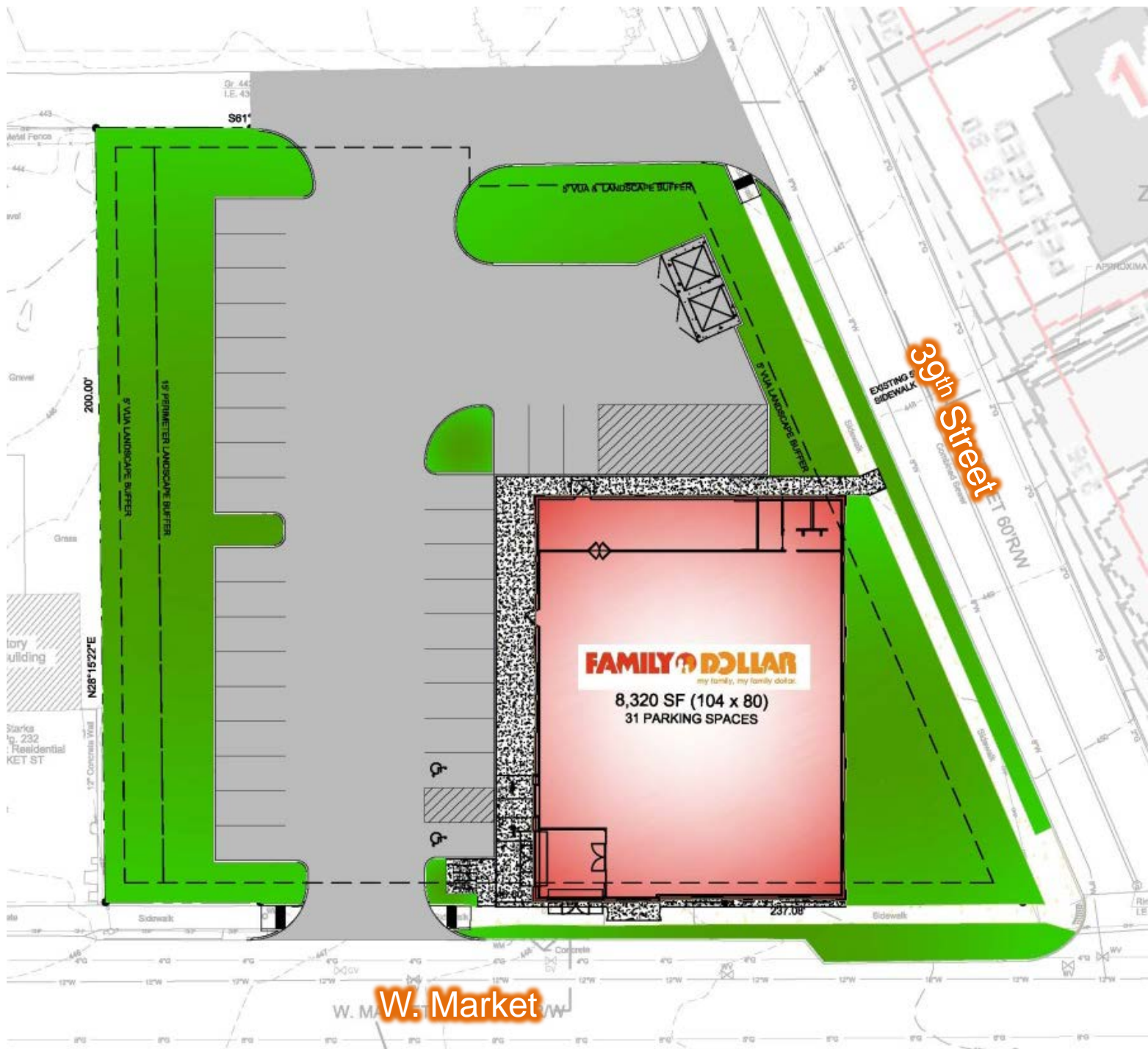
Tab 4

Color Development Plan

PROPOSED 4 TREES PROPOSED

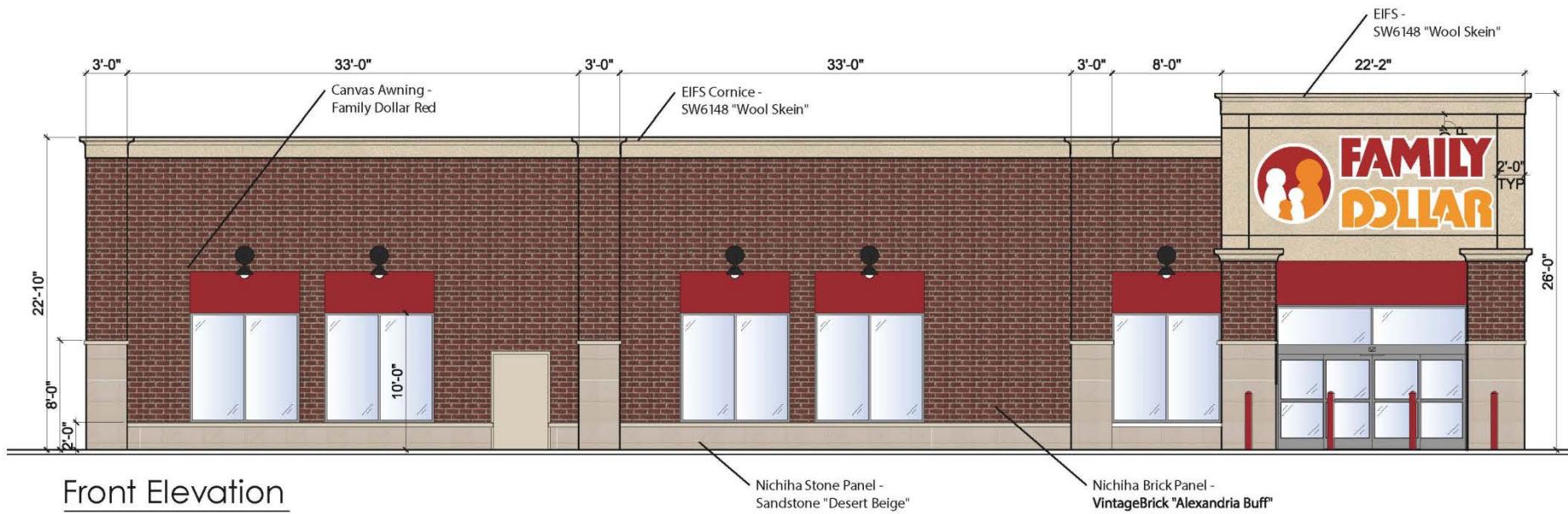


W. Market

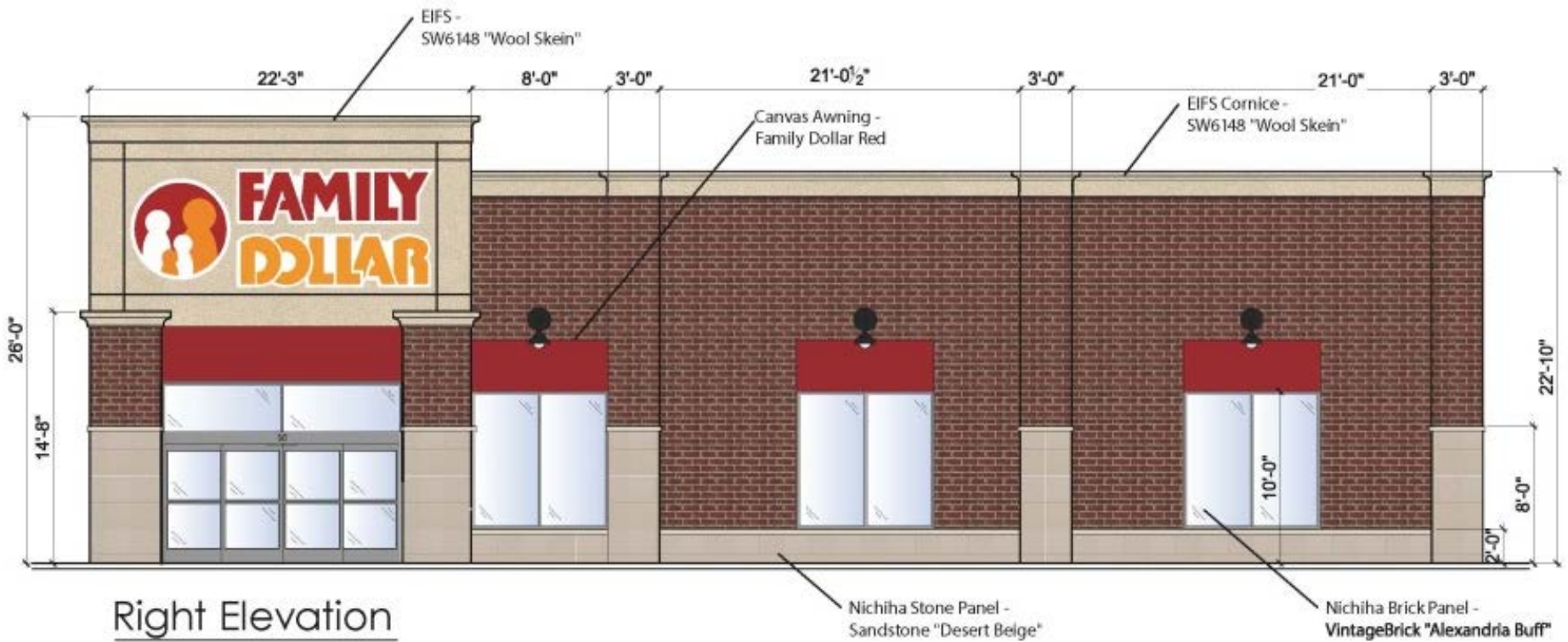




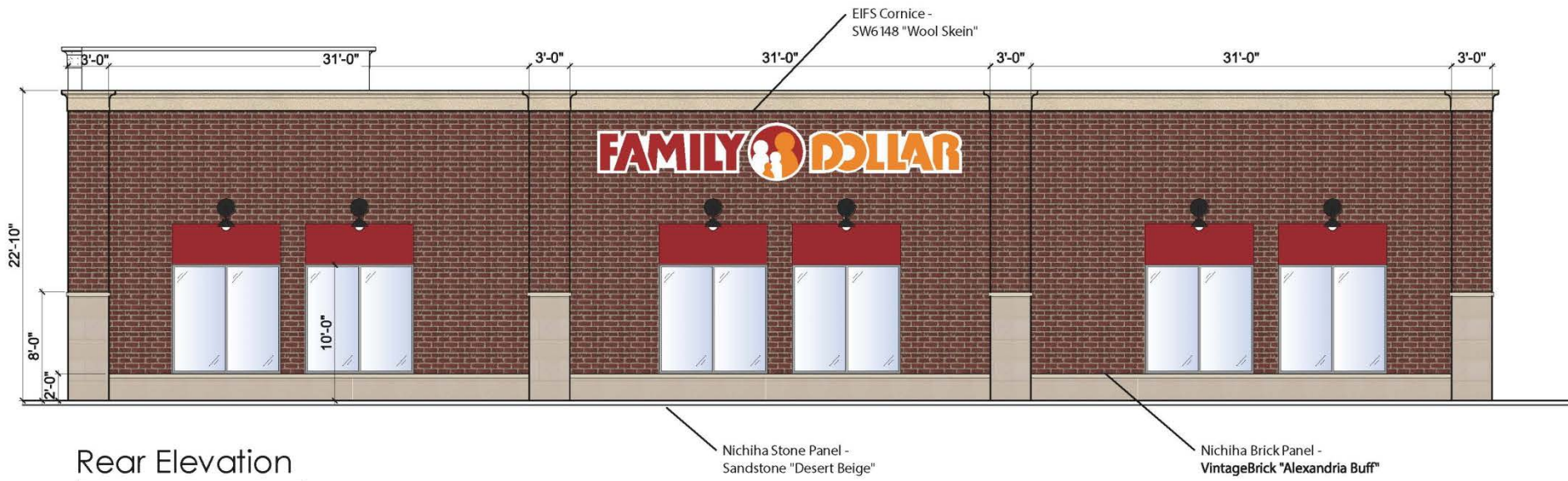
Tab 5 Building Elevation



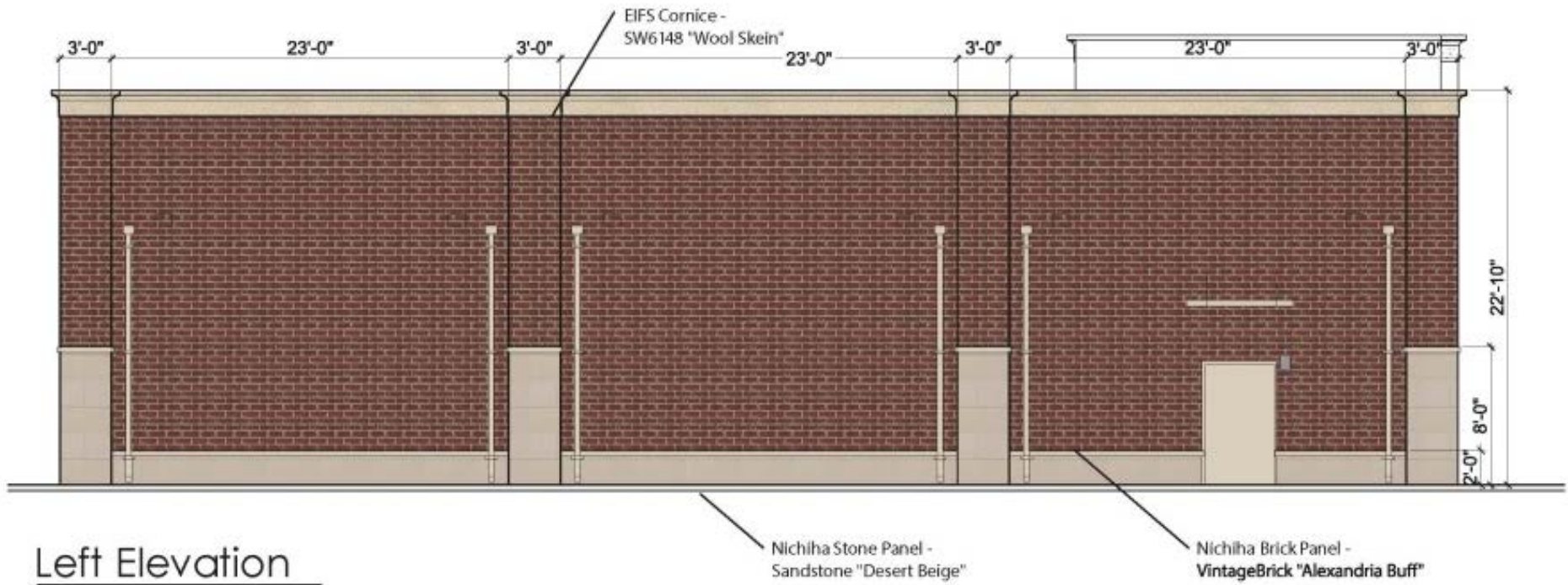
Front elevation



Right elevation



Rear elevation

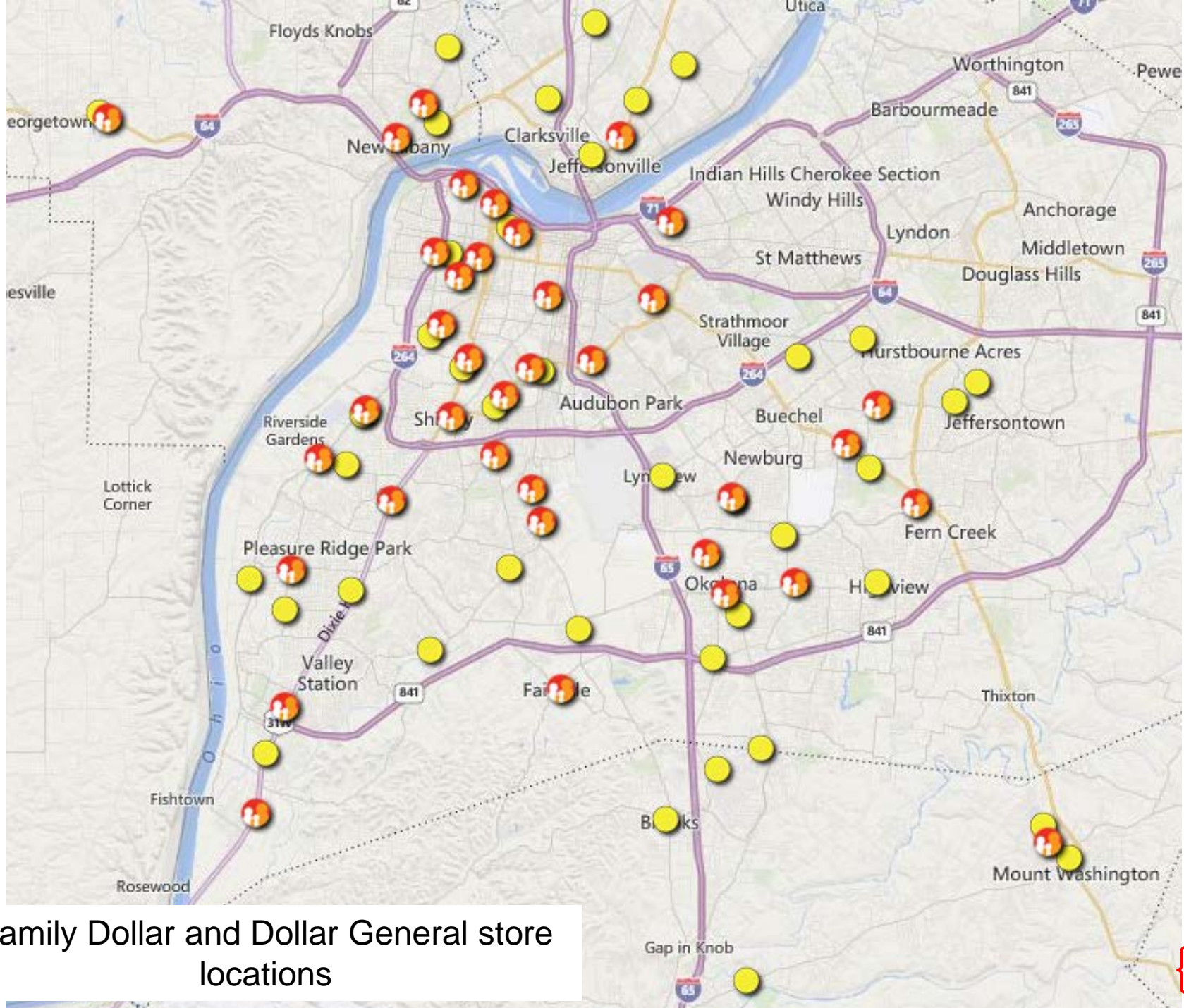


Left elevation

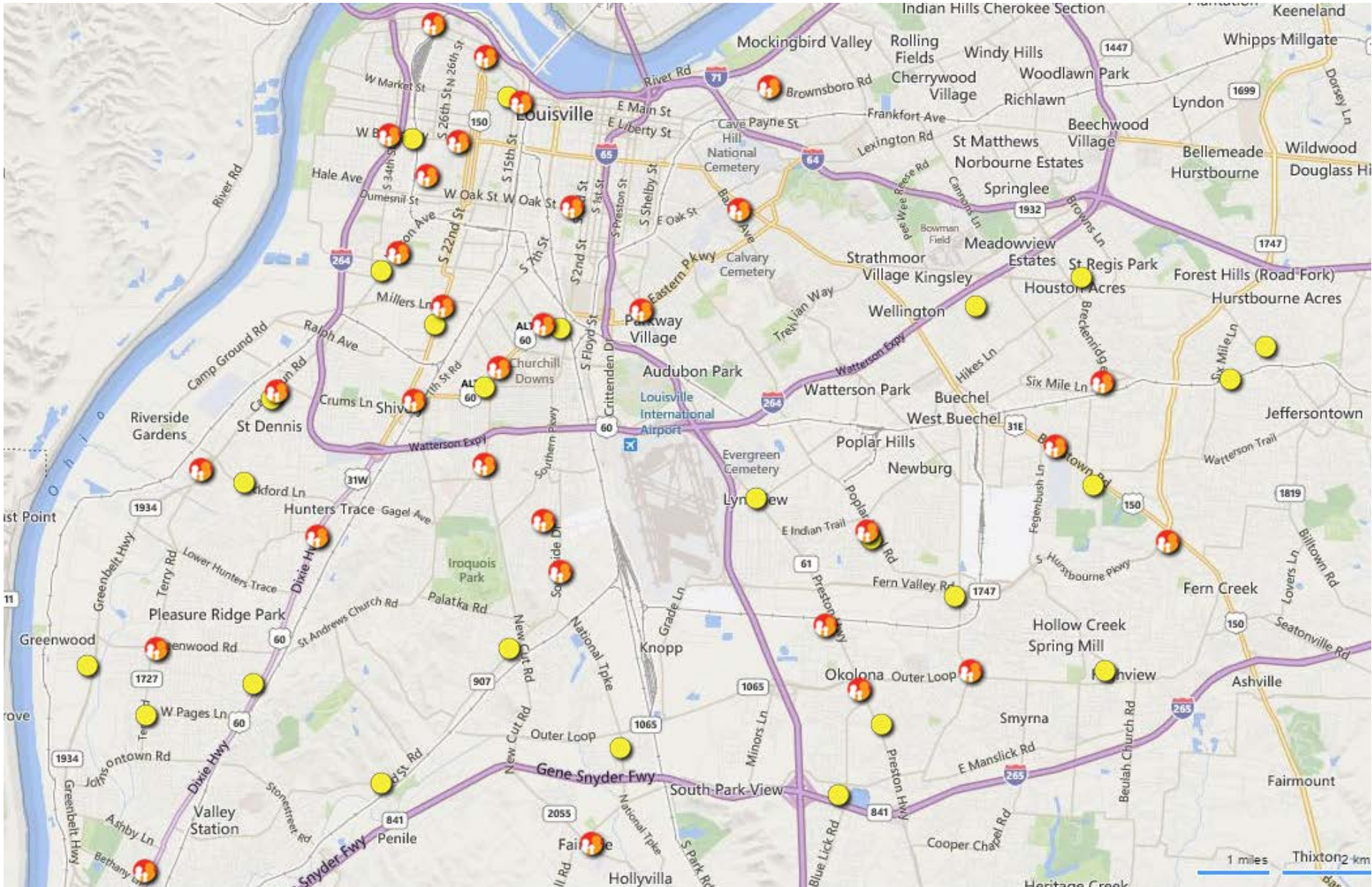


Tab 6

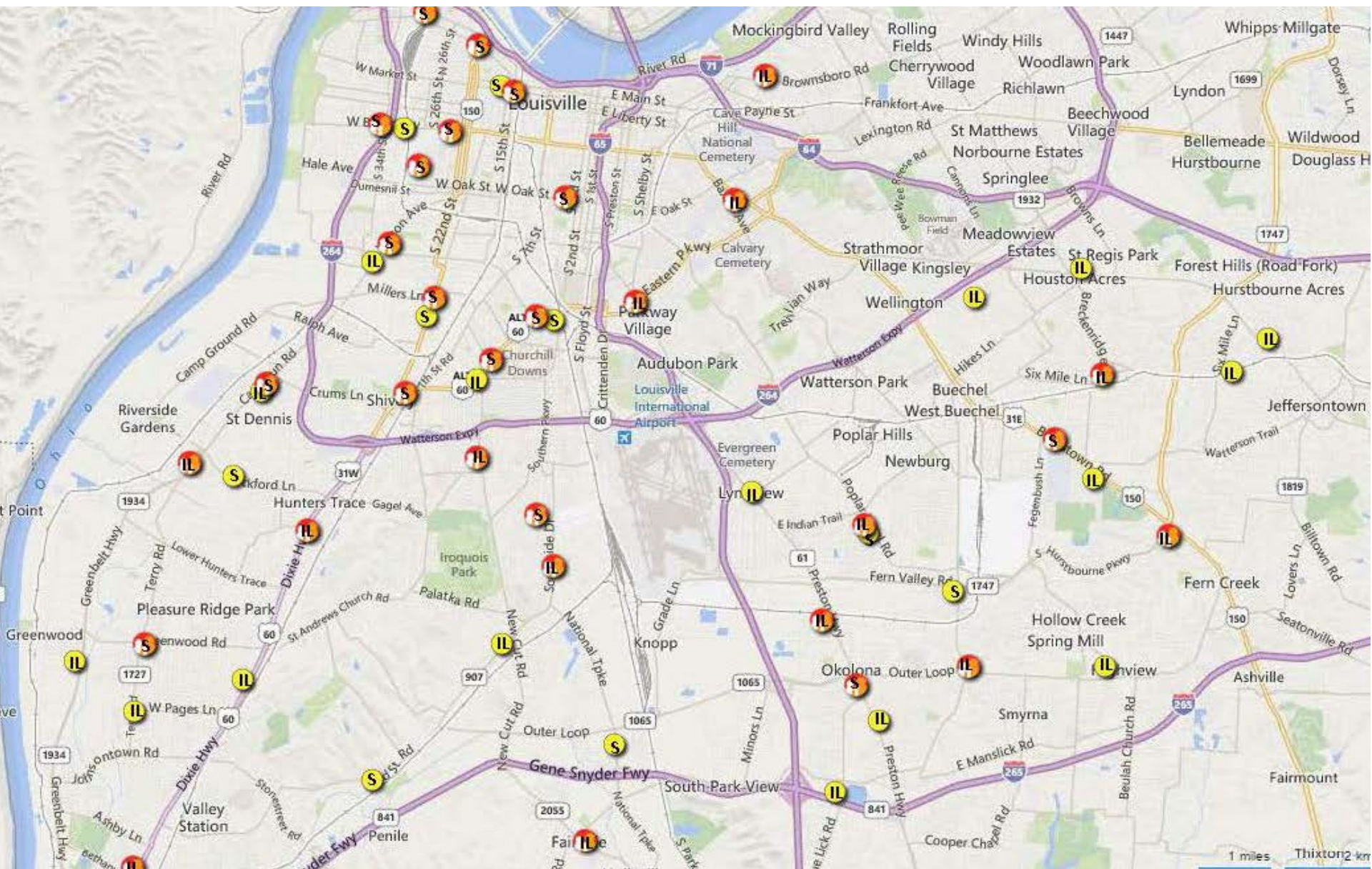
Area Family Dollar Stores



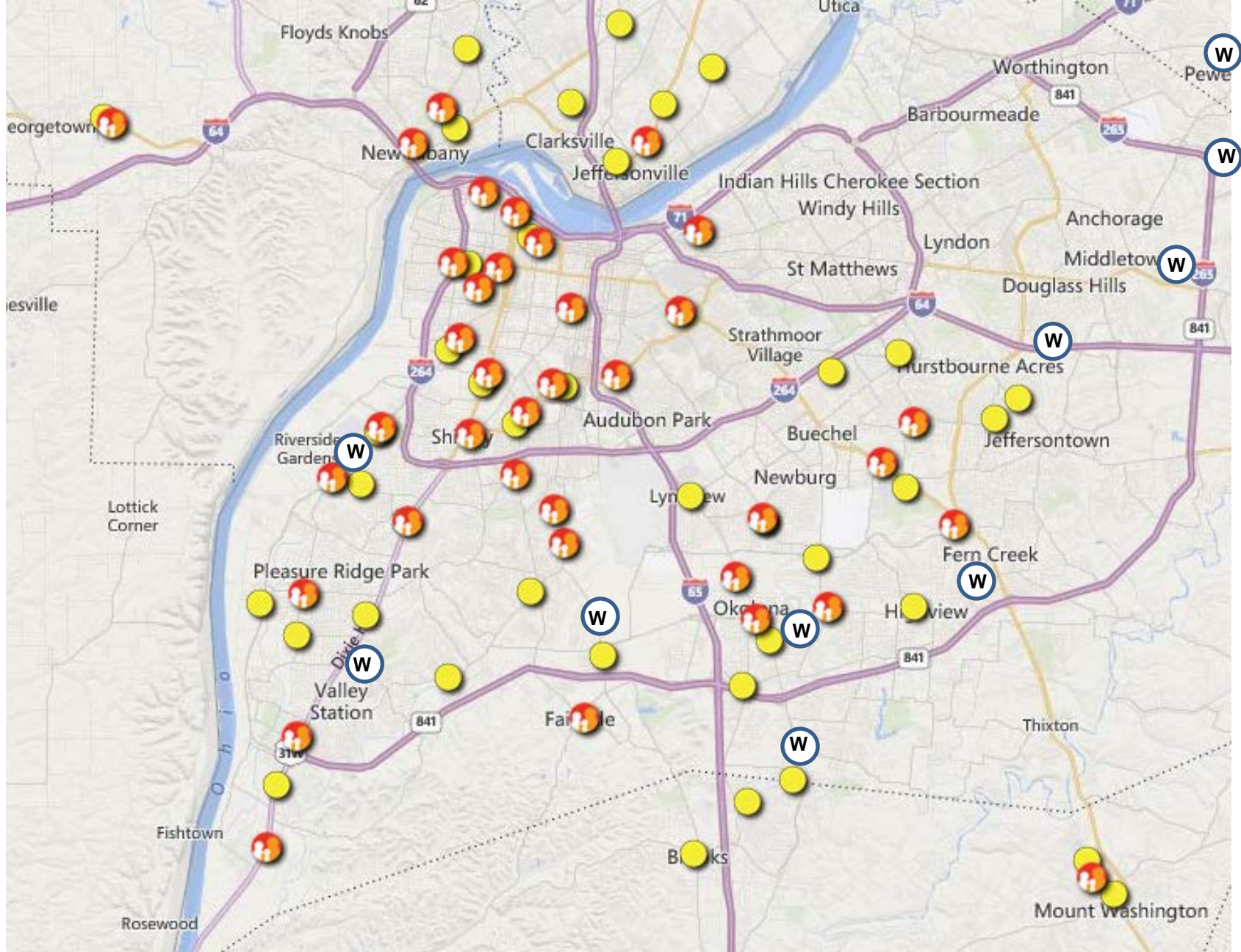
Family Dollar and Dollar General store locations



Family Dollar and Dollar General store locations



Stand alone and in-line Family Dollar and Dollar General store locations {25}



Walmart supercenter locations compared to Family Dollar and Dollar General store locations



Tab 7

Statement of Compliance filed with the original zone change application with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan, Variance and Waiver Justification

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STATEMENT OF COMPLIANCE WITH THE APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

Applicant/Owner: The Hutton Company

Location: 3901, 3905, 3907 and 3909 W. Market Street

Proposed Rezoning/Use: Retail for Family Dollar store

Engineers, Land Planners and
Landscape Architects: LeCrew Engineering, Inc.

Zoning: R-7 and C-1 to C-1

BACKGROUND

This is an application to rezone about three-fifths of a property comprised of four tracts, about two-fifths of which is already zoned C-1 Commercial. Of these four tracts, one is an old restaurant, currently operating under an Asian restaurant theme. One of the properties has a boarded-up building on it. Two of the properties are residentially occupied. To the east of the site is 39th Street, and across 39th Street is another commercial property. To the west of the four properties is another commercial property. To the north of the site is an alley and north of that, other residential properties. Mostly across Market Street from the subject properties are other commercial and institutional properties, the latter being a church and its parking lot. This is clearly what would be called an “activity center”, which would be defined by the uses described. Within activity centers one does not generally find single-family uses, especially those that are separated by existing commercial uses.

This area of West Market Street has also recently benefited from government investment in infrastructure in order to upgrade the aesthetics of the area and create an environment for new investment, especially along Market Street -- that being of a commercial kind, given that this is an activity center by definition.

Family Dollar is represented in this instance by a master developer, The Hutton Company out of Chattanooga, Tennessee, which has been responsible for other Family Dollar stores recently developed and constructed in Metro Louisville. The Hutton Company develops and builds dozens of Family Dollar stores around the country each year. It also is engaged in other commercial activity. But developing and building Family Dollar stores is a principal activity of Hutton. Through its experience at other sites, it has come to realize what Louisvillians want in terms of store designs. Consequently, it has agreed to an upscale design like the store most recently constructed at its 22nd and Bank Streets location in the Portland area of Metro Louisville.

The Hutton Company held two neighborhood meetings in advance of this official filing, and at those meetings not only explained its proposed project, but took and answered a lot of questions about why so many dollar stores in this particular area of town.

Filed with this application is the PowerPoint presentation shown at the second of those two neighbor meetings, which includes graphics illustrating where dollar stores are located in Metro Louisville. Contrary to the erroneous assumptions made, dollar stores are not just located in west Louisville. They are located all over Metro Louisville, but especially in high density/intensity areas. This is true of both Family Dollar and Dollar General stores. The reason for this is partly explained in contrast to the map that shows where the Walmart Supercenters are located, which is in low density/low intensity areas. High density areas allow people to conduct neighborhood-level shopping in close proximity to where they live, in part because some people in high density areas do not have automobiles and are limited to public transportation and walking. Stores like Walmart, which are predominantly located, as the accompanying map shows, in outlying, low density areas rely entirely on customers visiting by automobile. The Walmart Supercenter stores need a minimum of 20 acres, usually preferring more, and don't cater to neighborhoods, but rather to large regional population areas. Convincing Walmart to locate a store in the central part of the original City of Louisville has been a challenge for years. One may eventually be built at the old Philip Morris site, but that site only recently has become the focus of a big box retailer, notably Walmart. Large sites like that are not even available within the City of Louisville. But moreover, it is the small retailers, such as Family Dollar, which truly serve neighborhood needs, not Walmart Supercenters, which serve regional needs.

One of the other primary issues raised at the neighborhood meetings was that of store cleanliness. Whereas The Hutton Company and even Family Dollar admitted that they can do a better job with picking up litter and keeping their stores clean, this is not a phenomenon reserved to just Family Dollar. Lots of major chains are criticized the same way. While the message has been passed on to corporate leadership that Family Dollar needs to do a better job maintaining its properties, The Hutton Company (which builds and turns operations of the property over to Family Dollar) has agreed that government can play a role in helping neighborhoods assure that all businesses do a good job with property maintenance. Landscape plans, for example, are already the subject of ongoing Zoning Enforcement review. That is to say, if a property that has been the subject of a development plan approval does not comply with that development plan, for example with its landscaping conditions of approval, it can be found in violation of the zoning regulations and subject to fines. It has been suggested in this case, even by the developer's representatives, that a condition of approval could be added to this project, if approved, that the exterior portion of the site must be kept reasonably litter free. If it is not, it would be found in violation of its binding elements and subject to Zoning Enforcement penalties.

GUIDELINE 1: COMMUNITY FORM

The Traditional Neighborhood Form District is characterized by predominantly residential uses, with a grid pattern of streets and alleys, with a range of housing opportunities, but also with appropriately located and integrated neighborhood centers with a mixture of neighborhood serving uses.

This application complies with this Guideline because of the fact that this particular area of West Market Street, as described above, is the focus of neighborhood activities, including a church, a

community center, a small strip retail shopping center and a variety of disparate commercial uses. Indeed, as set forth above, the subject property is already partly zoned commercial and occupied at present by an operating Asian restaurant. But very little of what presently exists in the immediate vicinity, including this property, is new. It is mostly old retail surrounded by older residential. The properties that are used are also, to a large extent, in need of investment, notably repair or in some instances demolition and replacement. So it is hard to make a case for reuse of the existing Asian restaurant building. And, as noted above, one of the residential structures included in the property that is the subject of this application is already, itself, vacant. Therefore, whereas the question may be asked as to whether this is a desirable use, it is awfully hard to argue that the subject property is not appropriate for a retail use, given the nature of development around it and condition of the properties in question as they exist today.

GUIDELINE 2: ACTIVITY CENTERS

The Intents and applicable Policies 1, 2, 3, 4, 5, 7, 9, 11, 14 and 16 all pertain to these issues of where activity centers are or should be located, what is the purpose of them, how they should be designed, what kinds of uses are appropriate for different kinds of activity centers located in different places, and so on.

This application complies with these Intents and applicable Policies of this Guideline as follows. Adaptive reuse of this already partly commercially zoned property should be viewed as a good thing, in concert with the Intents and Policies of this Guideline because the alternative means no reinvestment in this community or at any rate a delayed investment until such time as the “perfect” use comes along, assuming it ever does. The \$1.5-2 million investment in this overall site with new parking, a new building located up on the street as a building should be (instead of back as the commercial building presently is) and designed, as it is, in accordance with Form District design standards, results in the planting of a seed for future economic investment and community revitalization to occur. There appears to be no question that the corner of Market and 39th Streets is an activity center and that there are other businesses located proximate to this location. Generally speaking, retail is a desirable use within an activity center. And generally, also, neighborhood serving retail, of a size appropriate to a neighborhood, is what the Traditional Neighborhood Form District specifically calls for, not large boxes on large tracts of land which, in a Traditional Neighborhood, would require that lots of buildings be demolished to make room for a large box or large retail center.

Therefore, what the debate involving this Guideline comes down to is whether Family Dollar is a desirable use within this activity center, not generically, but brand name speaking. Family Dollar is not a fly-by-night business. It is a highly successful, publicly traded company. If it locates here, in all likelihood it will be operating a solid, well designed, quality looking building for decades to come. As a national name with significant financing and a long track record of success, it will not be like so many locally owned businesses that come and go, often either because they are not well thought out or because they are under-capitalized from the get-go. Dollar stores serve a purpose, and Family Dollar serves a special purpose if one takes any amount of time to walk the aisles of the store and look at what is on its shelves. It has a fairly large food section, including milk, eggs, juices, breakfast cereals, a variety of canned goods and multiple meal options. It also sells all of the essentials for personal hygiene, house cleaning, and wearing apparel. Similarly, it includes items often essential to managing a household. Its prices are very competitive. Yes, it includes some frivolous items like candy and toys, but what retail

does not do so? For people who do not have personal vehicles, having easy access to food and household staples is essential within a densely populated neighborhood.

GUIDELINE 3: COMPATIBILITY

The Intents and applicable Policies 1, 2, 4, 5, 6, 7, 8, 9, 20, 21, 22, 23, 24, 28 and 29 of this Guideline all pertain to the issues of what makes a particular use fit within a given form district. In this particular instance, given that we are talking about a Traditional Neighborhood Form District, the issues of compatibility are somewhat different than they would be if speaking of a different kind of form district--for example, the Suburban Neighborhood Form.

This application complies with the Intents and applicable Policies of this Guideline as follows. The building has been located on the site up on the street, as required by the Form District standards for a Traditional Neighborhood. Because of the irregular configuration of this site, it is not possible to place the door right at the corner of Market and 39th Streets. The building would not end of being rectangular in shape but rather irregular in shape, which would not work for this or probably any retailer. Walls would not be squared up on the inside. But the building is brought as close to the corner as possible, given the lot's irregular shape. Furthermore, The Hutton Company, working in conjunction with Family Dollar, has made an accommodation to assure that a door both faces Market Street and yet still faces the parking lot. If it only faced Market Street, there would be a significant inconvenience factor involved by forcing customers who drive to the location to enter the store, not from the parking lot, but from a location inconvenient especially to the elderly and handicapped. The design accommodations shown on the development plan submitted herewith and described herein represent accommodations to that form district design standard. Also, whereas clear, see-through windows cannot be provided because shelving is located along the interiors of these building walls in these locations, the look of windows is accommodated with spandrel glass. That has the same look as a window with the blinds turned down or the shades pulled. If clear glass, see-through windows were provided, there is nothing keeping the occupant of a building from turning down blinds or closing shades. Also, in this particular instance, the applicant has chosen a brick look, which is reflective of its highest design. Design elements are employed which give the building a very attractive look.

Because the building is not a restaurant, nightclub, car wash or any of the other kinds of uses that are often affiliated with noise, odors and the like, no known nuisances will be created.

Because points of access have been selected by Metro Transportation Planning and Public Works, traffic management is achieved as discussed later in this Compliance Statement and explained. The parking lot is small and not overbuilt for the size of the building or the anticipated amount of business it generates. It will be landscaped in accordance with the Land Development Code, as also later explained.

GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY

The Intents and applicable Policies 3, 5, 6 and 11 of Guideline 6 all pertain to the issues of ensuring economic opportunity especially through the investment in and revitalization of places of particular importance, such as areas of the old city, especially around existing activity centers.

This application complies with the Intents and applicable Policies of this Guideline as follows. There is no more important area to concentrate investment in bricks and mortar and in jobs and

the opportunities that come with them than in older, neglected areas such as west Louisville. Investment opportunities don't occur everyday. And investment opportunities aren't always exactly of the kind that everyone might prefer, all else being equal. But investment tends to encourage other investment. As the Chinese proverb goes, a journey of a thousand miles begins with one step. Or as we learn from the Bible, from one seed an abundant harvest grows. What Family Dollar has done in some of the older, high density areas of Metro Louisville, especially if done right (for example, in accordance with Compatibility Guideline 3 of the Comprehensive Plan), will cause other investment to occur in time.

**GUIDELINES 7, 8 and 9: CIRCULATION, TRANSPORTATION FACILITIES,
BICYCLES, PEDESTRIAN AND TRANSIT**

The Intents and applicable Policies 1, 2, 3, 4, 8, 11, 12, 15 and 16 of Guideline 7, plus applicable Policies 9, 10 and 11 of Guideline 8, plus applicable Policies 1, 2, 3 and 4 of Guideline 9 all pertain to the issues of traffic impacts and making certain that those impacts are appropriately addressed. Impacts include issues of appropriate access, road capacity, internal site design, and seeking to assure access to sites by alternate modes of transportation, not just automobiles – meaning by pedestrians, bicycles and transit.

This application complies with the Intents and applicable Policies of these Guidelines as follows. Most important is the fact that everything about this application as relates to traffic and transportation must be reviewed and approved by the Metro Transportation Planning and Public Works agencies. They seek to assure that Market and 39th Streets, as well as the alleyway to the north, are able to handle traffic to and from this development site. And they have done that in this case. Those agencies also seek to assure that where access is located is not at a place or places of the developer's choice, but rather at a place of the public design professionals' choice. That has occurred here. These agencies also seek to assure that, whereas internally a site has less impact on the public than externally, nevertheless, the public, as it gains access to a site, needs to be assured that it can move about that site in a safe and convenient manner, not just for vehicles but also for pedestrians and bicycles. Thus, parking aisles need to be wide enough, parking stalls need to be accessible and sufficient in number, existing street conditions need to be managed in such a way that new development does not create new problems or exacerbate ones that already exist. All of that has occurred in this case as well. Sites also need to be available for use by pedestrians and bicyclists and, when transit is available, to assure convenient transit access. All that has occurred here, too. In fact, this application cannot receive preliminary technical review by the Planning Commission's Land Development and Transportation (LD&T) Committee until such time as this plan has received the preliminary stamp of approval from these agencies, demonstrating compliance with all of their technical design standards, relative to both off-site and on-site conditions. Knowing all this, the development plan has been designed by professional engineers taking into account the requirements of Metro Transportation Planning and Public Works agencies as respects the issues of existing roads, including alleyway, capacity, access, site visibility, safe internal circulation, the provision of sidewalks and bike racks and so on.

**GUIDELINES 10 and 11: FLOODING AND STORMWATER
And WATER QUALITY**

The Intents and applicable Policies 3, 6, 7, 10 and 11 of Guideline 10, plus applicable Policies 3 and 4 of Guideline 11 all pertain to the issues reviewed by MSD as the local floodplain, stormwater and water quality agency.

This application complies with the Intents and applicable Policies of these Guidelines as follows. As respects floodplain management, the location of this site is not in a floodplain, so those issues are not affected. As respects stormwater management, post-development rates of runoff may not exceed predevelopment conditions. MSD seeks to assure that onsite detention is provided, except in limited instances where downstream facilities already exist or where MSD is willing to accept payment of the Regional Facility Fee in lieu of onsite detention. As to water quality, MSD has ordinances that assure soil erosion and sedimentation control during construction, and best management practices as respects water quality protection as an ongoing part of the effects of stormwater runoff.

This application complies with the Intents and applicable Policies of these Guidelines as follows. The detailed district development plan filed with this application has been designed by a professional engineering firm, taking into account the design standards as respects stormwater management and water quality promulgated by MSD. MSD, in fact, must “sign off” on this development plan before it is permitted to be docketed by the LD&T Committee for technical review.

GUIDELINE 12: AIR QUALITY

The Intents and applicable Policies 1, 3, 4, 6, 7, 8 and 9 of Guideline 12 all seek to assure that new developments do not contribute to added air quality problems but rather, when possible, actually contribute to improved air quality.

This application complies with the Intents and applicable Policies of this Guideline as follows. By locating neighborhood services within a neighborhood, particularly in an activity center where people are already moving about, visiting facilities and services and doing their shopping, vehicle miles traveled are reduced, thus contributing to the improvement of air quality.

GUIDELINE 13: LANDSCAPE CHARACTER

The Intents and applicable Policies 1, 2, 4, 5 and 6 of Guideline 13 all pertain to the issues of good landscape screening and buffering, as well as quality landscape design.

This application complies with the Intents and applicable Policies of this Guideline because it will comply with all of the Land Development Code requirements for landscaping, utilizing native plants, in areas within parking lots and around perimeters. If required as part of the discretionary review of this application, additional landscaping is needed, it will be provided, as well as added screening as deemed necessary, where the Planning Commission and Metro Council decide.

* * * * *

This application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan for all the reasons set forth herein and as will be discussed at the LD&T and Planning Commission hearings.

Respectfully submitted,

William B. Bardenwerper
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CLIENT/ Family Dollar/W. Market & 39th Streets / Application – Compliance Statement of Compliance
JTR Rev. 11/10/2014 12:57 PM

Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Variance of: Section 5.5.1.A.2 to not locate the building at the corner right-of-way because the property is irregularly shaped, so the building would have to be irregularly shaped as well to be located up to the 39th and Market Streets corner setbacks.

1. Will not adversely affect the public health, safety or welfare because having the building set back as shown on the proposed detailed development plan is a result of the irregular shape of the lot, resulting in the building being set as close to the corner of 39th and Market Streets as it can be.
2. Will not alter the essential character of the general vicinity because the building is properly situated relative to Market Street, just not to the corner of Market and 39th Streets for the reasons set forth above.
3. Will not cause a hazard or a nuisance to the public because the setback requirements are design considerations not public health and safety considerations.
4. Will not allow an unreasonable circumvention of the requirements of the zoning regulations because the required setback on the corner of 39th and Market Streets is purely a factor of the irregular shape of this lot.

Additional consideration:

- 1 The Variance arise from special circumstances, which do not generally apply to land in the general vicinity, given that the reason for this request has everything to do with the irregular shape of this lot.
2. Strict application of the provisions of the regulation would deprive the applicant a reasonable use of the land or would create an unnecessary hardship because Family Dollar would have to occupy an irregular shaped building with walls that are not squared on the inside, which would make it very difficult to position shelving.
3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought, but rather are the result of the irregular shaped lot.

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of: Section 5.5.1.A.1.a and b. The Traditional Neighborhood Form District requires that buildings be located up along the streets with entry doors to be located at the corner of intersecting streets. The problem is that locating the door at the corner of Market and 39th Streets would prove very inconvenient to patrons, especially the elderly and handicapped, entering from the parking lot. An accommodation has been made to have double entry doors – one from the parking lot and an adjoining one from Market St.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because the location of the doors is actually an accommodation to the public.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because most other aspects of this site design as required by the Land Development Code are being met.
4. 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 because the door would be located in a spot totally inconvenient to store patrons and the public and would make operating the store in an efficient and safe manor next to impossible.

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of: Section 5.6.1.C to allow less than 50% clear windows and doors along the street facades because the Traditional Neighborhood Form District requires that building be located up along the street, which triggers the idea of store front windows, yet merchandise must be displayed along exterior walls which limits the ability to have large full view windows, although a sense of same can be and is being provided as shown in the building elevation renderings accompanying this application.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because no one is adversely impacted by the failure to provide windows of the exact size and kind that the Code demands, and furthermore any adverse impacts are mitigated by virtue of the windows that are actually proposed as shown on the building elevations rendering accompanying this application. Whereas spandrel glass is employed instead of clear glass, the effect is one of windows as though the blinds are turned or shades are pulled. This breaks up the otherwise long expanse of brick façade, while providing an appearance of windows.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because all other aspects of site design as can reasonably be provided, as required by the Land Development Code and Comprehensive Plan, are being met, except those essential to the viability of this proposed project, for which waivers and variances have been requested.
4. 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 because the merchandise has to be displayed within the store which restricts the ability to see into the building through the required windows.



Tab 8

Proposed findings of fact pertaining to compliance with the Comprehensive Plan, Variance and Waiver criteria

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

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PROPOSED FINDINGS OF FACT REGARDING COMPLIANCE WITH APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

Applicant/Owner: The Hutton Company

Location: 3901, 3905, 3907 and 3909 W. Market Street

Proposed Rezoning/Use: Retail for Family Dollar store

Engineers, Land Planners and Landscape Architects: LeCrew Engineering, Inc.

Zoning: R-7 and C-1 to C-1

The Louisville Metro Planning Commission, having heard testimony before its Land Development & Transportation Committee, in the Public Hearing held on April 2, 2015 and having reviewed evidence presented by the applicant and the staff's analysis of the application, make the following findings:

INTRODUCTORY STATEMENT

WHEREAS, this is an application to rezone about three-fifths of a property comprised of four tracts, about two-fifths of which is already zoned C-1 Commercial; of these four tracts, one is an old restaurant, recently operating under an Asian restaurant theme; one of the properties has a boarded-up building on it; up to two of the properties appear residentially occupied; to the east of the site is 39th Street, and across 39th Street is another commercial property; to the west of the four properties is another commercial property; to the north of the site is an alley and north of that, other residential properties; mostly across Market Street from the subject properties are other commercial and institutional properties, the latter being a church and its parking lot; and this is clearly what would be called an "activity center", which would be defined by the uses described; and within activity centers one does not generally find single-family uses, especially those that are separated by existing commercial uses; and

WHEREAS, this area of West Market Street has also recently benefited from government investment in infrastructure in order to upgrade the aesthetics of the area and create an environment for new investment, especially along Market Street -- that being of a commercial kind, given that this is an activity center by definition; and

WHEREAS, Family Dollar is represented in this instance by a master developer, The Hutton Company out of Chattanooga, Tennessee, which has been responsible for other Family Dollar stores recently developed and constructed in Metro Louisville; the Hutton Company develops and builds dozens of Family Dollar stores around the country each year; it also is engaged in other commercial activity; but developing and building Family Dollar stores is a principal

activity of Hutton; through its experience at other sites, it has come to realize what Louisvillians want in terms of store designs; and consequently, it has agreed to an upscale design like the store most recently constructed at its 22nd and Bank Streets location in the Portland area of Metro Louisville; and

WHEREAS, the Hutton Company held two neighborhood meetings in advance of this official filing, and at those meetings not only explained its proposed project, but took and answered a lot of questions about why so many dollar stores in this particular area of town; and

WHEREAS, filed with this application is the PowerPoint presentation shown at the second of those two neighbor meetings, which includes graphics illustrating where dollar stores are located in Metro Louisville; contrary to the erroneous assumptions made, dollar stores are not just located in west Louisville; they are located all over Metro Louisville, but especially in high density/intensity areas; this is true of both Family Dollar and Dollar General stores; the reason for this is partly explained in contrast to the map that shows where the Walmart Supercenters are located, which is in low density/low intensity areas; high density areas allow people to conduct neighborhood-level shopping in close proximity to where they live, in part because some people in high density areas do not have automobiles and are limited to public transportation and walking; stores like Walmart, which are predominantly located, as the accompanying map shows, in outlying, low density areas rely entirely on customers visiting by automobile; the Walmart Supercenter stores need a minimum of 20 acres, usually preferring more, and don't cater to neighborhoods, but rather to large regional population areas; convincing Walmart to locate a store in the central part of the original City of Louisville has been a challenge for years; one may eventually be built at the old Philip Morris site, but that site only recently has become the focus of a big box retailer, notably Walmart; large sites like that are not generally available within the old City of Louisville; and but moreover, it is the small retailers, such as Family Dollar, which truly serve neighborhood needs, not Walmart Supercenters, which serve regional needs; and

WHEREAS, one of the other primary issues raised at the neighborhood meetings was that of store cleanliness; whereas The Hutton Company and even Family Dollar admitted that they can do a better job with picking up litter and keeping their stores clean, this is not a phenomenon reserved to just Family Dollar stores; lots of major chains are criticized the same way; while the message has been passed on to corporate leadership that Family Dollar needs to do a better job maintaining its properties, The Hutton Company (which builds and turns operations of the property over to Family Dollar) has agreed that government can play a role in helping neighborhoods assure that all businesses do a good job with property maintenance; and

GUIDELINE 1: COMMUNITY FORM

WHEREAS, the Traditional Neighborhood Form District is characterized by predominantly residential uses, with a grid pattern of streets and alleys, with a range of housing opportunities, but also with appropriately located and integrated neighborhood centers with a mixture of neighborhood serving uses; and

WHEREAS, this application complies with this Guideline because of the fact that this particular area of West Market Street, as described above, is the focus of neighborhood activities, including a church, a community center, a small strip retail shopping center and a variety of disparate commercial uses; indeed, as set forth above, the subject property is already partly zoned

commercial and appears occupied by an operating Asian restaurant; but very little of what presently exists in the immediate vicinity, including this property, is new; it is mostly old retail surrounded by older residential; the properties that are used are also, to a large extent, in need of investment, notably repair or in some instances demolition and replacement; so it is hard to make a case for reuse of the existing Asian restaurant building; and, as noted above, one of the residential structures included in the property that is the subject of this application is already, itself, vacant; and therefore, whereas the question may be asked as to whether this is a desirable use, it is hard to argue that the subject property is not appropriate for a retail use, given the nature of development around it and condition of the properties in question as they exist today; and

GUIDELINE 2: ACTIVITY CENTERS

WHEREAS, the Intents and applicable Policies 1, 2, 3, 4, 5, 7, 9, 11, 14 and 16 all pertain to these issues of where activity centers are or should be located, what is the purpose of them, how they should be designed, what kinds of uses are appropriate for different kinds of activity centers located in different places, and so on; and

WHEREAS, this application complies with these Intents and applicable Policies of this Guideline as follows; adaptive reuse of this already partly commercially zoned property should be viewed as a good thing, in concert with the Intents and Policies of this Guideline because the alternative means no reinvestment in this particular community or at any rate a delayed investment until such time as the “perfect” use comes along, assuming it ever does; the \$1.5-2 million investment in this overall site with new parking, a new building located up on the street as a building should be (instead of back as the commercial building presently is) and designed, as it is, in accordance with Form District design standards, results in the planting of a seed for future economic investment and community revitalization to occur; there appears to be no question that the corner of Market and 39th Streets is an activity center and that there are other businesses located proximate to this location; generally speaking, retail is a desirable use within an activity center; and generally, also, neighborhood serving retail, of a size appropriate to a neighborhood, is what the Traditional Neighborhood Form District specifically calls for, not large boxes on large tracts of land, in a Traditional Neighborhood, when that would require that lots of buildings be demolished to make room for a large box or large retail center; and

WHEREAS, therefore, what the debate involving this Guideline comes down to is whether Family Dollar is a desirable use within this activity center, not generically, but brand name speaking; Family Dollar is not a fly-by-night business; it is a highly successful, publicly traded company; if it locates here, in all likelihood it will be operating a solid, well designed, quality looking building for decades to come; as a national name with significant financing and a long track record of success, it will not be like so many locally owned businesses that come and go, often either because they are not well thought out or because they are under-capitalized from the get-go; dollar stores serve a purpose, and Family Dollar serves a special purpose if one takes any amount of time to walk the aisles of the store and look at what is on its shelves; it has a fairly large food section, including milk, eggs, juices, breakfast cereals, a variety of canned goods and multiple meal options; it also sells many of the essentials for personal hygiene, house cleaning, and wearing apparel; similarly, it includes items often essential to managing a household; its prices are very competitive; yes, it includes some frivolous items like candy and toys, but what retail does not do so; and for people who do not have personal vehicles, having easy access to food and household staples is essential within a densely populated neighborhood; and

GUIDELINE 3: COMPATIBILITY

WHEREAS, the Intents and applicable Policies 1, 2, 4, 5, 6, 7, 8, 9, 20, 21, 22, 23, 24, 28 and 29 of this Guideline all pertain to the issues of what makes a particular use fit within a given form district; and in this particular instance, given that we are talking about a Traditional Neighborhood Form District, the issues of compatibility are somewhat different than they would be if speaking of a different kind of form district--for example, the Suburban Neighborhood Form; and

WHEREAS, this application complies with the Intents and applicable Policies of this Guideline as follows; the building has been located on the site up on the street, as required by the Form District standards for a Traditional Neighborhood; because of the irregular configuration of this site, it is not possible to place the door right at the corner of Market and 39th Streets; the building would not end of being rectangular in shape but rather irregular in shape, which would not work for this or probably any retailer; walls would not be squared up on the inside; but the building is brought as close to the corner as possible, given the lot's irregular shape; furthermore, the Hutton Company, working in conjunction with Family Dollar, has made an accommodation to assure that a door both faces Market Street and yet still faces the parking lot; if it only faced Market Street, there would be a significant inconvenience factor involved by forcing customers who drive to the location to enter the store, not from the parking lot, but from a location inconvenient especially to the elderly and handicapped; the design accommodations shown on the development plan submitted herewith and described herein represent accommodations to that form district design standard; also, whereas clear, see-through windows cannot be provided because shelving is located along the interiors of these building walls in these locations, the look of windows is accommodated with spandrel glass; that has the same look as a window with the blinds turned down or the shades pulled; if clear glass, see-through windows were provided, there is nothing keeping the occupant of a building from turning down blinds or closing shades; also, in this particular instance, the applicant has chosen a brick look, which is reflective of its highest design; and design elements are employed which give the building a very attractive look; and

WHEREAS, because the building is not a restaurant, nightclub, car wash or any of the other kinds of uses that are often affiliated with noise, odors and the like, no known nuisances will be created; and

WHEREAS, because points of access have been selected by Metro Transportation Planning and Public Works, traffic management is achieved as discussed later in this Compliance Statement and explained; the parking lot is small and not overbuilt for the size of the building or the anticipated amount of business it generates; and it will be landscaped in accordance with the Land Development Code, as also later explained; and

GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY

WHEREAS, the Intents and applicable Policies 3, 5, 6 and 11 of Guideline 6 all pertain to the issues of ensuring economic opportunity especially through the investment in and revitalization of places of particular importance, such as areas of the old city, especially around existing activity centers; and

WHEREAS, this application complies with the Intents and applicable Policies of this Guideline as follows; there is no more important area to concentrate investment in bricks and mortar and in jobs and the opportunities that come with them than in older, neglected areas such as west Louisville; investment opportunities don't occur every day; and investment opportunities aren't always exactly of the kind that everyone might prefer, all else being equal; but investment tends to encourage other investment; as the Chinese proverb goes, a journey of a thousand miles begins with one step; or as we learn from the Bible, from one seed an abundant harvest grows; and what Family Dollar has done in some of the older, high density areas of Metro Louisville, especially if done right (for example, in accordance with Compatibility Guideline 3 of the Comprehensive Plan), will cause other investment to occur in time; and

**GUIDELINES 7, 8 and 9: CIRCULATION, TRANSPORTATION FACILITIES,
BICYCLES, PEDESTRIAN AND TRANSIT**

WHEREAS, the Intents and applicable Policies 1, 2, 3, 4, 8, 11, 12, 15 and 16 of Guideline 7, plus applicable Policies 9, 10 and 11 of Guideline 8, plus applicable Policies 1, 2, 3 and 4 of Guideline 9 all pertain to the issues of traffic impacts and making certain that those impacts are appropriately addressed; and impacts include issues of appropriate access, road capacity, internal site design, and seeking to assure access to sites by alternate modes of transportation, not just automobiles – meaning by pedestrians, bicycles and transit; and

WHEREAS, this application complies with the Intents and applicable Policies of these Guidelines as follows; most important is the fact that everything about this application as relates to traffic and transportation must be reviewed and approved by the Metro Transportation Planning and Public Works agencies; they seek to assure that Market and 39th Streets, as well as the alleyway to the north, are able to handle traffic to and from this development site.; and they have done that in this case; those agencies also seek to assure that where access is located is not at a place or places of the developer's choice, but rather at a place of the public design professionals' choice; that has occurred here; these agencies also seek to assure that, whereas internally a site has less impact on the public than externally, nevertheless, the public, as it gains access to a site, needs to be assured that it can move about that site in a safe and convenient manner, not just for vehicles but also for pedestrians and bicycles; thus, parking aisles need to be wide enough, parking stalls need to be accessible and sufficient in number, existing street conditions need to be managed in such a way that new development does not create new problems or exacerbate ones that already exist; all of that has occurred in this case as well; sites also need to be available for use by pedestrians and bicyclists and, when transit is available, to assure convenient transit access; all that has occurred here, too; in fact, this application was unable to receive preliminary technical review by the Planning Commission's Land Development and Transportation (LD&T) Committee until such time as this plan has received the preliminary stamp of approval from these agencies which it did, demonstrating compliance with all of their technical design standards, relative to both off-site and on-site conditions; and knowing all this, the development plan has been designed by professional engineers taking into account the requirements of Metro Transportation Planning and Public Works agencies as respects the issues of existing roads, including alleyway, capacity, access, site visibility, safe internal circulation, the provision of sidewalks and bike racks and so on; and

GUIDELINES 10 and 11: FLOODING AND STORMWATER AND WATER QUALITY

WHEREAS, the Intents and applicable Policies 3, 6, 7, 10 and 11 of Guideline 10, plus applicable Policies 3 and 4 of Guideline 11 all pertain to the issues reviewed by MSD as the local floodplain, stormwater and water quality agency; and

WHEREAS, this application complies with the Intents and applicable Policies of these Guidelines as follows; as respects floodplain management, the location of this site is not in a floodplain, so those issues are not affected; as respects stormwater management, post-development rates of runoff may not exceed predevelopment conditions; MSD seeks to assure that onsite detention is provided, except in limited instances where downstream facilities already exist or where MSD is willing to accept payment of the Regional Facility Fee in lieu of onsite detention; and as to water quality, MSD has ordinances that assure soil erosion and sedimentation control during construction, and best management practices as respects water quality protection as an ongoing part of the effects of stormwater runoff; and

WHEREAS, this application complies with the Intents and applicable Policies of these Guidelines as follows; the detailed district development plan filed with this application has been designed by a professional engineering firm, taking into account the design standards as respects stormwater management and water quality promulgated by MSD; and MSD, in fact, “signed off” on this development plan now docketed by the Planning Commission for Public Hearing; and

GUIDELINE 12: AIR QUALITY

WHEREAS, the Intents and applicable Policies 1, 3, 4, 6, 7, 8 and 9 of Guideline 12 all seek to assure that new developments do not contribute to added air quality problems but rather, when possible, actually contribute to improved air quality; and

WHEREAS, this application complies with the Intents and applicable Policies of this Guideline as follows; by locating neighborhood services within a Traditional Neighborhood, particularly in an activity center where people are already moving about, visiting facilities and services and doing their shopping, vehicle miles traveled are reduced, thus contributing to the improvement of air quality; and

GUIDELINE 13: LANDSCAPE CHARACTER

WHEREAS, the Intents and applicable Policies 1, 2, 4, 5 and 6 of Guideline 13 all pertain to the issues of good landscape screening and buffering, as well as quality landscape design; and

WHEREAS, this application complies with the Intents and applicable Policies of this Guideline because it will comply with all of the Land Development Code requirements for landscaping, utilizing native plants, in areas within parking lots and around perimeters; and if required as part of the discretionary review of this application, additional landscaping is needed, it will be provided, as well as added screening as deemed necessary, where the Planning Commission and Metro Council decide; and

* * * * *

WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby recommends to the Louisville Metro Council that it rezone the subject property from R-7 and C-1 to C-1.

PROPOSED FINDINGS OF FACT FOR THE VARIANCE

Variance from Section 5.5.1.A.2 to not locate the building at the corner right-of-way because the property is irregularly shaped, so the building would have to be irregularly shaped as well to be located up to the 39th and Market Streets corner setbacks.

WHEREAS, this Variance will not adversely affect the public health, safety or welfare because having the building set back as shown on the proposed detailed development plan is a result of the irregular shape of the lot, resulting in the building being set as close to the corner of 39th and Market Streets as it can be; and

WHEREAS, this Variance will not alter the essential character of the general vicinity because the building is properly situated relative to Market Street, just not to the corner of Market and 39th Streets for the reasons set forth above; and

WHEREAS, this Variance will not cause a hazard or a nuisance to the public because the setback requirements are design considerations not public health and safety considerations; and

WHEREAS, this Variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the required setback on the corner of 39th and Market Streets is purely a factor of the irregular shape of this lot; and

WHEREAS, this Variance arises from special circumstances, which do not generally apply to land in the general vicinity, given that the reason for this request has everything to do with the irregular shape of this lot; and

WHEREAS, Strict application of the provisions of the regulation would deprive the applicant a reasonable use of the land or would create an unnecessary hardship because Family Dollar would have to occupy an irregular shaped building with walls that are not squared on the inside, which would make it very difficult to position shelving; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought, but rather are the result of the irregular shaped lot;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Variance.

PROPOSED FINDINGS OF FACT FOR THE WAIVER

Waiver of: Section 5.5.1.A.1.a and b. The Traditional Neighborhood Form District requires that buildings be located up along the streets with entry doors to be located at the corner of intersecting streets. The problem is that locating the door at the corner of Market and 39th Streets would prove very inconvenient to patrons, especially the elderly and handicapped, entering from the parking lot. An accommodation has been made to have double entry doors – one from the parking lot and an adjoining one from Market St.

WHEREAS, this Waiver will not adversely affect adjacent property owners because the location of the doors is actually an accommodation to the public; and

WHEREAS, this Waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application; and

WHEREAS, the extent of Waiver of the regulation is the minimum necessary to afford relief to the applicant because most other aspects of this site design as required by the Land Development Code are being met; and

WHEREAS, 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 because the door would be located in a spot inconvenient to store patrons and the public and would make operating the store in an efficient and safe manor next to impossible.

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves the Waiver.

PROPOSED FINDINGS OF FACT FOR THE WAIVER

Waiver of Section 5.6.1.C to allow less than 50% clear windows and doors along the street facades because the Traditional Neighborhood Form District requires that building be located up along the street, which triggers the idea of store front windows, yet merchandise must be displayed along exterior walls which limits the ability to have large full view windows, although a sense of same can be and is being provided as shown in the building elevation renderings accompanying this application.

WHEREAS, the Waiver will not adversely affect adjacent property owners because no one is adversely impacted by the failure to provide windows of the exact size and kind that the Code demands, and furthermore any adverse impacts are mitigated by virtue of the windows that are actually proposed as shown on the building elevations rendering accompanying this application; also whereas spandrel glass is employed instead of clear glass, the effect is one of windows as though the blinds are turned or shades are pulled, and this breaks up the otherwise long expanse of brick façade, while providing an appearance of windows; and

WHEREAS, the Waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the rezoning application; and

WHEREAS, the extent of Waiver of the regulation is the minimum necessary to afford relief to the applicant because all other aspects of site design as can reasonably be provided, as required by the Land Development Code and Comprehensive Plan, are being met, except those essential to the viability of this proposed project, for which waivers and variances have been requested; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because the merchandise has to be displayed within the store which restricts the ability to see into the building through the required windows.

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves the Waiver.