

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

CASE NO. 19-10 (Valor Development, LLC – Consolidated Planned Unit Development for Square 1499, Lots 802, 803, 806 and 807 [bounded by Yuma Street, Massachusetts Avenue, 48th Street, and the Spring Valley Exxon])

Monday, October 7, 2019

Submission of Neighbors for a Livable Community

Neighbors for a Livable Community (“NLC”) generally supports PUD developments where the use, scale and density proposed are reasonable and appropriate, and there are amenities that benefit the immediate community. Any additional development support is framed within the assurance provided in Subtitle X, Chapter 3, Section 300.5 of the Zoning Regulations, which states:

A comprehensive public review by the Zoning Commission of a PUD is required in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.

Thus, NLC eagerly awaits Zoning Commission (“the Commission”) review of Application 19-10, given the previous submission for Design Review (ZC16-23), which after a four-year failed approval process was withdrawn, and the record in ZC 16-23 was closed.

The proposed Valor PUD submission (ZC 19-10), while not completely unlike ZC 16-23, attempts to maximize use of the project’s combined lots and borrows FAR from within the project boundaries for necessary additional commercial FAR or density. The use of all “aggregated” density within the project boundaries must be carefully memorialized for the future of the project lots as well as the historic Massachusetts Avenue Park and Shops (“MAPS”) from which the stranded density was transferred.

BACKGROUND AND SITE DESCRIPTION

The development standards implemented for the established low-density residential neighborhood surrounding the project site and the adjacent commercial area were based on the 1958 Zoning Regulations where more attention was paid to the relationship between opposing residential and commercial development. The proposed PUD development site was a low-density commercial area (C-2-A) based

on the relationship of building FAR to its lot. The front of the former grocery store was set back from the front property line along 48th Street by at least 125 linear feet (Attachment 1) and, given the topography of the site and a 26' drop in grade from front to back of the lot, the cupola atop the store's single-story is slightly visible above the level of the grade at the curb opposite the front of the existing grocery store building.

A later-built neighboring building, which eventually became the American University Law School and is still owned by American University ("AU") and used for classrooms, transferred almost all of the "stranded FAR" from the grocery store to build a structure which has remained an out-of-scale anomaly with its neighbors. This aggregation of FAR is discussed at length in the Applicant's submission; however, it is now evident the FAR on the Super Fresh site was never stranded as it is needed for the proposed PUD. The transfer of density which occurred earlier at the AU site did not happen without opposition and is the reason FAR must be transferred from the historic MAPS site to the Valor PUD site if it is to provide a grocery store.

PROPOSED DEVELOPMENT

This site was meant to be low scale-neighborhood serving commercial and is instead being turned into what appears to be an apartment zone. The proposed PUD development, which encompasses four separate lots and sprawls literally from lot line to lot line with a penthouse atop two stepped-back stories of building façade, makes the decision to recommend support very difficult. While some may find the small recessed courtyards at the front of the building along 48th Street provide open green space, it is unusable and, there is far less green or open space provided at the front of the building than currently exists. Its projections touch the "front build to line." When placed in the midst of an existing low scale commercial and residential development, it is clear any proposed amenities do little to improve or soften the bulk and scale of this PUD, which will not come without considerable community impacts. It should be noted that all photos of the site appear with fully leafed mature trees, but in fact, only one historic evergreen tree will remain on site when the project is delivered (Exhibit L 6). Any trees that are planted will be small in circumference and without leaves for at least five months for years to come.

In reviewing the Office of Planning's ("OP") Preliminary Report, dated May 31, 2019, the Future Land Use Map or FLUM description of Low-Density Commercial

areas is used to define the site. It is noteworthy that in the Comprehensive Plan defining language the words “housing” or “residential” do not appear in the definitions or on the maps; yet, a large 214-unit apartment building and five townhouses are planned for this low-density neighborhood-serving commercial site. The definition goes on to state “a common feature of these areas ‘is that they are comprised primarily of one-to three-story commercial buildings.’” OP justifies the five-story apartment building by citing the existence of the six-story anomalous AU building which faces Massachusetts Avenue. The proposed five-story apartment will face two residential streets. OP does not mention that the proposed five-story apartment building is in addition to the six story AU building, which is completely out of character with its opposing residential and commercial neighbors, or that in an C-2-A (MU-4) zone these buildings are meant to be “one-to-three story commercial buildings.”

In several Zoning Commission discussions on the former Valor Design Review Application (ZC 16-23), concern was raised by Commissioner Miller about that very point – *this project would be better sited along Massachusetts Avenue.*

The OP description of Neighborhood Commercial Centers further reveals that these nodes are meant for a mix of neighborhood-serving businesses. Again, no mention of residential uses in the description.

A small 17,293 sq. ft. grocery store has been proposed for the site but can only be installed if “stranded” FAR is transferred from the adjacent MAPS lot. A closer look at the retail or commercial space provided on the lot reveals that a total of 18,393 square feet out of the total lot size of 160,788 square feet, or 11 percent of the total project area will be devoted to *neighborhood serving business.*

There will be a loss of about 44,000 sq. ft. of existing neighborhood-serving retail on Lot 807. These businesses have existed for a significant period of time and will be missed. Also, located in the basement of the former Super Fresh site is the kitchen space for Wagshal’s two businesses located on the MAPS lot. Concern has been expressed that the loss of the kitchen space may be so significant that the restaurant will have to close or find another location. This would be a huge loss to the immediate community, but Wagshal’s popularity spreads across the Ward and into the nearby Maryland community.

The retail space the Applicant is proposing is singular in purpose, no longer a priority for the community, and would eradicate existing four times more retail space than proposed as well as jobs associated with those businesses.

Perhaps the most appropriate Land Use Comprehensive Plan Policy included in the OP report is LU-2.1.5: *Conservation of Single-Family Neighborhoods*

Protect and conserve the District’s stable, low density neighborhoods and ensure that their zoning reflects their established low-density character. Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale. 309.10

Little about the PUD proposed for Lots 802, 803, 806 and 807 in Square 1499 meets the guidance offered in this Land Use Policy. Using the AU building as precedent for the height of the proposed building is a bad choice and gives meaning to the unintended consequences which often result when new precedent is set.

While many additional policies, and sections from other Comprehensive Plan Elements and the Rock Creek West Area Element are included to support the proposed PUD development, none provides the same level of direct guidance and accuracy as that cited above from the Land Use Element.

When contrasted with the Comprehensive Plan guidance, it is an insult to the Commission, neighborhood residents and the public that the city’s Office of Planning would characterize the proposed PUD development in its conclusion and provide the following justification for the agency’s support:

The Applicant is proposing an appropriately scaled, mixed-use infill development that is setback from the property lines at Yuma and 48th Streets, including two landscaped courtyards and Windom Park along the 48th Street frontage. The upper levels of the project would step back from the property lines. The building design results in a development that is compatible with the surrounding residential neighborhood. The Yuma and 48th Street facades feature high quality design and materials, with extensive landscaping. The project would respect the surrounding neighborhood and would serve as a transition from the commercial development on Massachusetts Avenue to the adjacent single-family homes on Yuma and 48th Streets.

The Comprehensive Plan’s Land Use Element does not support OP’s justification for many reasons but primarily because in some ways the cart is before the horse, i.e., residential development is not included in definitions provided for either the

Comprehensive Plan's FLUM or the Generalized Policy Map. The C-2-A and MU-4 Zones are meant for commercial development which is generally low in scale and density. That is not what is proposed in this PUD Application.

GREEN AREA RATIO

The Applicant notes Green Area Ratio ("GAR") requirements in the Exhibits section of its submission at G05 and provides a score sheet at L11 for Lot 807 only. The coverage of only one lot within the four-lot project area seems contrary to DOEE's Guidebook for Green Area Ratio.¹ Only 79,622 sq. ft. are considered when the total land area of the project is 160,788 sq.² Even so, the Applicant just meets the GAR score requirement by including some of the roof area which is further indication that this PUD is just scraping by on GAR requirements.

PUD EVALUATION STANDARDS

Section 304 of Subtitle X, Chapter 3 sets out the Planned Unit Development Standards.

- 1. Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*

Perhaps "inconsistency" is the key word in defining the proposed ZC 19-10 PUD. As noted earlier and demonstrated in Attachment 1, the existing commercial structure on the lot is set back at least 125 ft. from the front property line. There is no reason to expect the developer to respect that major setback but the placement of the proposed residential buildings along the front property line (48th Street) is not consistent with current development patterns. [If this were an R-1-B lot, it would have to respect the front setback of Subtitle B, Section 314.] Residential use on a MU-4 lot is not consistent with guidance provided in the Comprehensive Plan, as the allowance for housing in MU-4 Zones will not be realized until the 2020 Amendment Cycle is complete. The fact OP got ahead of the Comprehensive Plan in the Zoning Rewrite may speak to some of the issues experienced by developers and the Zoning Commission as far as the Court of Appeals is concerned. This is a clear example of the two documents being in conflict with one another.

¹<https://doee.dc.gov/node/619622>

² DC Office of the Surveyor. Plat for Building Permit of Square 1499 Lots 802-803 & 806-807. Prehearing Submission, Zoning Analysis, Exhibit G05.

2. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project;*

One of the impacts, which has not yet been discussed in this submission, is the increase in traffic and how it will be handled within the development site. The two alleyways are essentially being turned into interior roads without the requirements imposed on public streets by the District Department of Transportation (“DDOT”). Instead of setting out the guidance needed for this Application, DDOT has acquiesced to the Alley Operation Study submitted on February 5, 2019 for Case No. 16-23 by Gorove/Slade. A small snippet of time (30 hours) was spent on this study of activities in the north-south alley, which runs from Yuma Street to Massachusetts Avenue; however, main alley access to the site will be from 48th Street – the east/west alley. This small snippet is unfair to those who witness activities associated with the alley 24-7 and know that one truck parked in the alley can completely block passage until it moves. It is also a known fact that currently a 30’ delivery truck cannot transgress the east-west alley from top due to the existing telephone pole at the bend in the alley. The intersection of the east-west and north-south alleys might be regarded as “ground zero” in terms of potential vehicular conflicts. This potential impact needs to be given serious attention, prior to approval, given the units in the building will be rentals and 30’ moving trucks will need to access the loading dock which can only be gained by entry from Yuma Street or Massachusetts Avenue, given the loading dock is below the impassable bend in the north-south alley. It is noteworthy that currently American University does not use its loading dock in the east-west alley because of alley width and the difficulty of delivery trucks accessing the loading dock. Most of AU’s deliveries are made from the building front on Massachusetts Avenue where one lane of traffic is impacted for the time necessary to complete the delivery. Unloading by vendors or moving companies from the street is an unacceptable project impact. The Gorove/Slade report fails to mention the inability of a 30’ truck to currently access the loading dock in the east-west alley if it is entered from 48th Street because it is an inconvenient truth which cannot be mitigated without moving that side of the building back. According to Gorove/Slade’s figures, six vehicles currently enter or exit the north-south alley and after the project is built 141 vehicles will enter or exit the alley during the Peak PM Hour. Truck deliveries

will likely not be using the east-west alley during the Peak PM Hour although a moving truck could arrive at any time.

The impact of additional traffic on the surrounding streets will be noticeable and will increase likely over time as the developer has committed to only furnishing a Metro-bound shuttle bus for one year. Residents will return to their cars likely after that temporary amenity ceases to exist and because public transportation in the area is not reliable.

The demographic target and cost of these units will determine residents' "habits" in terms of vehicular choices, but if the demographic target is meant to reflect the income levels set out for median household income, and corresponding rents are set, then the surrounding neighborhood pattern of transportation choices should be reflected by those living at the Ladybird Apartments. It is also noted that in 2016, 42.2 percent of housing units in Washington, DC were occupied by their owner. This percentage grew from the previous year's rate of 39.2 percent, but this percentage of owner-occupation is lower than the national average of 63.9 percent. The largest share of households in Washington, DC have one car, followed by 0 cars. Commute time in Washington, DC is longer than the average (third worst in the US), while those who live outside the city experience a 90-minute commute. Looking at the most common method of transportation shows that 34.4 percent drive alone; 32.7 percent use public transit; and 12.7 percent walk.³ According to WABA, less than 5 percent of the city's population use bicycles as their sole method of transportation.

How do these statistics apply to the proposed development and how can Gorove/Slade make it appear the potential impacts on the surrounding community can be mitigated? The sheer numbers of residents using local alleys and streets, along with already existing alley conditions, make that almost impossible. The Level of Service at local intersections, which continues to deteriorate, illustrate there is impact every time a development is approved. This in no way is meant to imply development should not be allowed but allowing maximization rather than scaled down development will surely cause Levels of Service to move from A to F over time and lead to longer wait times at intersections. A very clear example of impact on the surrounding roadway system is what has occurred at Ward Circle since the development of American University's East Campus. Gorove/Slade

³ <https://datausa.io/profile/geo/washington-dc/>

assured all involved in the Campus Plan approval process that there would be no impact on the surrounding neighborhood from the East Campus addition, but in fact campus impacts have caused significant wait times at all four entrances to Ward Circle and that wait time has caused longer wait times for other intersections close to Ward Circle. The necessity to install additional traffic signals at all four entrances to the Circle, which were unnecessary prior to the construction of the East Campus, use of the Berkshire Apartments for student housing overflow and move of the Law School to Tenleytown, are further indications of University impact. The fact traffic back-ups on local roadways decrease dramatically when the University is not in session show the cause/effect relationship of University growth and approvals based on faulty transportation reports prepared and paid for by the University. Trucks delivering supplies to the former law school building park in one of the southbound lanes of Massachusetts Avenue rather than the loading dock at the back of the building. While American University is not the subject of this submission, the outcome of its expansions clearly demonstrate that significant impacts do occur when large-scale development projects are approved, and the experts fail to fully disclose the potential conflicts which will occur once the project is fully operational.

“Brinks Trucks” serving the two banks in the area of the east-west alley park on Massachusetts Avenue because there is concern about getting trapped in the alley due to other trucks making deliveries and it is so difficult to maneuver in the alley. This traffic impact currently exists. Residents of the low-density residential area around the proposed Ladybird site should not be subjected to the same predictable impacts when trucks meant to service the grocery store cannot maneuver in the two-way alley or transgress the east-west alley off 48th Street.

It is a known fact that rentals experience far more move-in/move-out than condominiums. It is unlikely the five proposed townhouses will turn over routinely as they are likely to be sold, but the rental units are meant to change occupancy on a routine basis. It is impossible to predict the frequency of those changes, but it is possible to predict there will be noticeable impacts on surrounding streets when moving trucks are parked there because use of the alley is impossible or impassable.

The variety of units might be reconsidered. This is an opportunity for seniors living in the community to downsize; however, their interest will only be peaked if

the sq. feet of the units are realistic. They will also likely not be interested in rental units, but Valor has made clear that condos are highly unlikely.

The Zoning Commission cannot ignore the existing unacceptable impacts of the proposed alley use on surrounding neighborhood streets and Massachusetts Avenue and are not addressed in the Gorove/Slade analysis. The inability of some trucks to move within the project site will have a profound impact on surrounding neighborhood streets, and those new impacts will be in addition to those that currently exist.

While Gorove/Slade says the alleys are not meant for pedestrian use, that does not reflect the alleys' current use which is anticipated to attract more pedestrian traffic, especially if the proposed Hawk signal is installed.

3. Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

Section 306.2 of the PUD Regulations outlines the criteria to be used for judging benefits associated with PUDs. *“Public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would be likely to result from development of the site under the matter-of-right provisions of this title.”*

The Applicant has submitted a list of Public Benefits and Amenities at Section IV – B of the narrative. These are based on the Applicant's subjective judgement and not on public opinion. At a recent meeting where the Parties to Case No. 16-23 and a representative of the two ANCs met with the developer, there was little headway in the way of negotiation by the Applicant on a list of suggested changes.

The premise of the Application narrative cites: “The Project will help achieve a number of the goals of the PUD process by creating a mixed-use, mixed-income development with a thoughtful high-quality design that relates to and is compatible with the surrounding neighborhood...”

Given the Comprehensive Plan does not recognize mixed-use as being commercial and residential development in its definitions on the Generalized Policy MAP for Neighborhood Commercial Centers; or Low Density Commercial Areas on the FLUM, it seems the housing goals set out in ZC 19-10 do not meet the purpose of a low density neighborhood commercial zone. Only 11 percent of the total square feet of the development are devoted to commercial uses and creates a conflict

between the Comprehensive Plan and the Zoning Regulations. The paltry amount of “neighborhood serving retail” provided, and the neighborhood serving retail that will be eliminated, appears to place the proposed zoning for this project in conflict with the purpose of the Neighborhood Commercial Zone as defined in the Comprehensive Plan.

The premise outlined in B-3, **Historic Preservation of Private or Public Structures, Places, or Parks (11-X DCMR § 305.5 (e))** is outrageous. The Applicant is saying that any future development of or at the historic MAPS site would be permanently reduced in terms of density that could be constructed on the MAPS site for any development that might be proposed. It has never been made clear from where on the MAPS lot the stranded density is being removed – the existing structures or the parking lot or both; but, currently change or complete demolition is possible through the 106 Process. Removing the ability to use existing FAR from the lot will continue the domino effect that is currently in play with Valor’s need to purchase FAR from the MAPS site because the current AU building bought FAR from the Super Fresh site. Not only is this need demonstrative of earlier precedent set at the AU site and that it appears history is about to repeat itself, but it is unclear that the owner of the property understands this aspect of “the power to bind FW DC-Spring Valley Shopping Center LLC in the case before the Commission.” This “borrowing of FAR” or “aggregating of FAR” across project lots is something that might be envisioned for denser downtown zones but seems to push the envelope in low density commercial zones.

The Environmental and Sustainable Benefits cited are minimal for a project that purports to include superior urban design, architecture, superior landscaping and creation of open spaces. If consideration is given to the setback of the existing grocery store building and the relationship of the MAPS development to Massachusetts Avenue it is obvious that development on the overall lot respected the low density character of the neighborhood and was faithful in most part to the C-2-A designation. There is currently considerable open space on the entire MU-4 zone and were it not for the height and bulk of the AU building this would be even greater. What is being proposed by the Applicant is that there be lot line to lot line coverage with some small recessed pocket setbacks between protruding building sections and a front “park area” which seems unlikely a destination use by future residents or residents of the neighborhood. The LEED Certification is “gold” instead of “platinum.” The GAR is just met and only addresses one small area of the larger project lot.

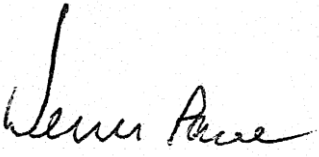
Amenity #8, Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (11-X DCMR § 305.5(q)), provides yet another half-true statement. The full-service grocery store cited in the application, “Moms,” does not meet the full-service criteria. This invalid description of the proposed store was cited in testimony provided in ZC 16-23 and nothing about the proposed grocery store has changed.⁴ The results of the most recent Checkbook survey can be found at Attachment 2. The variety of products received the lowest score.

When Valor first proposed a project for the site, there was interest in a full-service grocery store shown by the surrounding neighborhood, but over the past three years, realization of the scope of the project and the small store proposed, finds the neighborhood significantly less interested in the proposed grocery store use as a neighborhood amenity. New shopping habits have been formed since the closure of the Super Fresh site and additional new shopping opportunities have or will shortly be available to the neighborhood.

The proffered tree replacement is only fitting, given the existing trees and large YEW screen that currently exists on site. Replacement of street trees should not count as an amenity.

Transportation to Metro will be only for one year. This is temporary and will cease to exist after a very short period. It assumes all units in the building will be fully occupied on opening day, but incremental rental occupancy is more likely to occur which means some residents of the Ladybird will find this proposal of little use or appeal.

The Conclusion of the Valor narrative found at Section VI just before Exhibit A, boldly states that the PUD meets the standards of X DCMR Chapter 3 of the Zoning Regulations and Zoning Map. It fails to mention that it places the Zoning Regulations in conflict with the current Policies and Map definitions of the Comprehensive Plan. This should be of high concern to the Zoning Commission.



Dennis Paul, President

⁴ Exhibit 416 in ZC 16-23, January 24, 2019, Scott Parker.

ATTACHMENT 1

The following attachment shows the relationship of the front of the existing structure (former grocery store) to the front of the property along 48th Street. The original of the attachment is taken from the Applicant's Prehearing Submission Exhibit Site Plan.

Scale 1" = 50'

SCALE: 1" = 50'

PROP RETAIL SIGNAGE

STORM
BY
CHOICE TO
AT EXHIBIT
RY
H
SANITARY
WATER MAIN
100H TO 8"

PUBLIC ALLEY

Grocery

Retail / Amenity

GROCERY LOADING

UP TO ALLEY

DN TO G21

ELEC RM

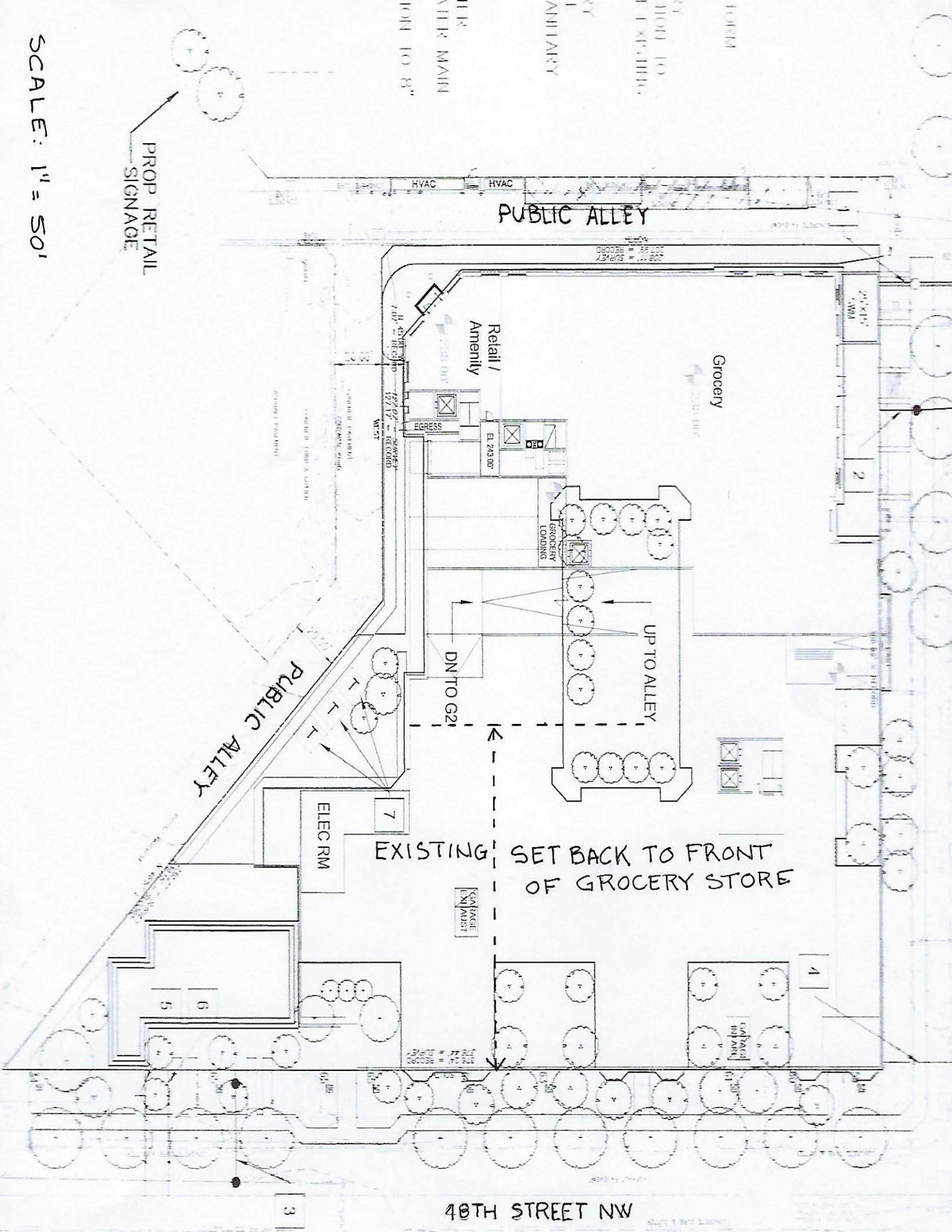
EXISTING SET BACK TO FRONT OF GROCERY STORE

SPACE EXHAUST

SPACE EXHAUST

40TH STREET NW

KUMA STREET NW



ATTACHMENT 2

Weekly Checklist from Consumer Checklist Magazine
October 2, 2019
Featuring Mom's Organic Scores

Grocery Stores

Overview

Ratings

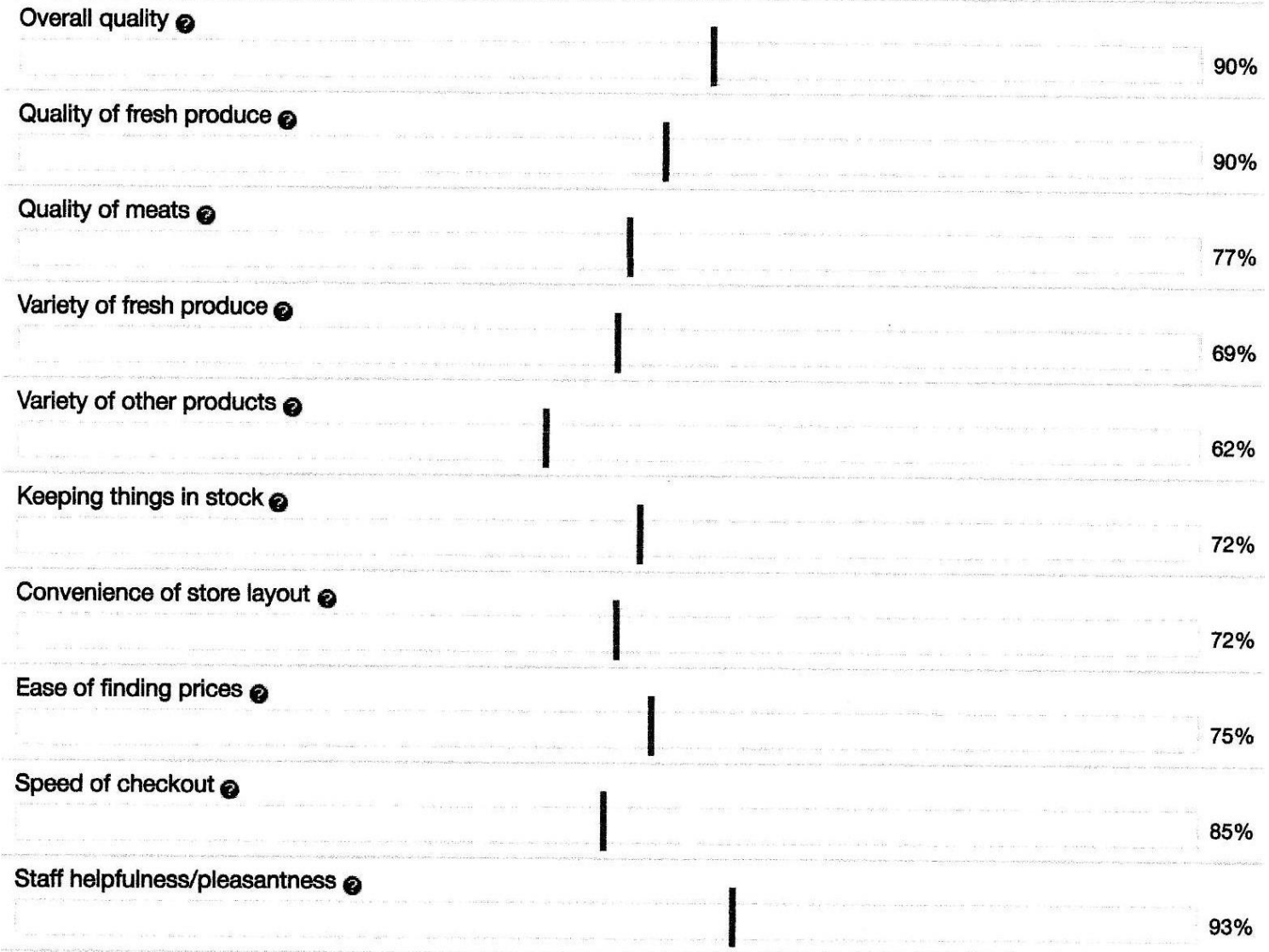
Articles & Advice

MOM¹s Organic Market

Consumer Ratings

Percent of customers who rated service "superior" for:

| = average for all grocery stores



— 191 Ratings

service "superior" for: