



Valley Advocates for *Responsible* Development

May 23, 2024

TO:

Victor Planning Staff, City Council,
Planning & Zoning Commission, & City Attorney
138 N Main Street
PO Box 122
Victor Idaho 83455

CORRECTED APPEAL BP2024-05 Site Plan & Design Review & Design Sherman Park Affordable Housing

This appeal is brought pursuant to the procedures enumerated in both the Victor Design Standards & Guidelines as well as Chapter 14 of the City Code.¹ This appeal is raised by several affected and interested parties including Valley Advocates for Responsible Development, a 501(c)3 organization with well-recognized legal organization standing regarding land use and planning claims throughout Teton County, Idaho, and four Victor property owners. All of these property owners own land directly abutting Sherman Park, or within extremely close vicinity of the project. All four have diligently attempted to raise their concerns (both verbally and via email) to the City of Victor regarding the Rezoning, Site Plan, and Design Review of the Sherman Park Project. All of these parties are joined herein to raise the following appeal.

Statement of Appeal:

At the May 9, 2024 Victor Planning & Zoning Commission (P&Z) public meeting to consider BP2024-05 Site Plan & Design Review, (Sherman Park Project) City staff expressly admonished P&Z that they could not discuss, consider, or deliberate on the project's enormous building size.

¹ Victor Design Standards & Guidelines. Section 2.06 (Appeal Procedure) and City Code 14.8 *et seq.*



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The buildings presented to P&Z in the [staff report](#) far exceeded the 120' limit on apartment buildings in the CX zone.² More specifically, the size of the buildings were presented follows:

- Buildings A, C, and D were just under 143' long. This is **19% (23 feet) longer** than the maximum of what the code allows.
- Building B is approximately 233' from end to end. This is a **whopping 94% (113 feet) longer** than the maximum of what the code allows.

There are two issues here: First, staff warned that building size had already been approved by City Council as a condition of the original April 26, 2023 zone change approval for the Sherman Park project.³ As such, staff strongly emphasized that the P&Z was not allowed to consider or make a determination on building size. By this action, building size for the Sherman Park project was wrongfully removed from the Victor Planning & Zoning Commission's jurisdiction.

Secondly, staff reasoned that because of the "dog leg" on the shape of Building B, only the side of the building facing Baseline road could be counted for length.⁴

² Victor City Code 8.10. 3 Height and Form of Apartment Buildings

³ See, Victor Planning & Zoning Commission May 9, 2024 public meeting [at 1hr, 13min, 58sec.](#)

City Planning Administrator Kolner: *"(sic) in this case it has been determined that the site plan that was approved as part of the rezoning, which included the site plan footprints, I think maybe only two or three potential renderings that are not too far off of the proposed details that we have now and that the approval of the rezoning and those site plans, because it is all subject to all of those application materials are the same building lengths and ultimately very similar total footprints as what you have in front of you today. So it has been determined that that has already been approved and the decision has been made."*

See also, Victor Planning & Zoning Commission May 9, 2024 public meeting [at 1hr, 27min, 34sec.](#)

Planning Commissioner Aslin: *"My understanding from Kim is that the 120ft has already been decided because that was a condition of the original zone change."*

Planning Administrator Kolner: *"Correct. That has been our interpretation and the direction we have gotten from Legal."*

⁴ See, Victor Planning & Zoning Commission May 9, 2024 public meeting [at 1hr, 27min, 40sec](#)

City Planning Administrator Kolner: *"The interpretation on that would be that it would just be the frontage would be the building length. We have applied that interpretation in a number of different instances around town."*



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Argument 1: The 2023 City Council rezone of the Sherman Park property did NOT address building size or length; Council did NOT implicitly or explicitly approve these jumbo-sized buildings.

A review of the record shows there is absolutely NO discussion of building length or size in the [April 10, 2023 staff report for LU 2023-04](#). Likewise, the [final motion](#) made by Council at this hearing does not contain ANY mention or discussion of building size, height or other physical restrictions regarding this rezone. The final effective [Rezone Ordinance 0608](#) also makes no mention of building size or length. There is not a single fact in the record to show that Council implicitly or explicitly approved a size deviation from the typical CX zoning requirements.

Argument 2: At the 2023 rezone hearing, the buildings depicted in Snavely's own submittals were all SMALLER than 120 feet.

The Snavely Group's application materials for the April 26, 2023 rezone hearing contain absolutely no discussion of the size of the buildings. However, [on page 9 of Snavely's 14-page submittal packet](#), there is a conceptual rendering that shows 4 buildings on the property. There is a teeny tiny little scale provided in the lower left corner of the page. On information and belief, the City has wrongfully argued that this somehow conveys enough information to confidently say that City Council already approved the jumbo size of these apartment buildings that far exceed the 120' limit in the CX zone.

Simply pick up a ruler and measure using Snavely's own scale; the answer is clear: the buildings did NOT exceed the 120' size limit for the CX zone. Snavely's "conceptual"⁵ drawings included in the record clearly show the buildings were depicted to be the following sizes:

- Buildings A, C, and D: Shown to be approx 100' each.
- Building B: Each side shown to be approx 60' to comprise a single building 120' long.

⁵ See, Victor City Council public hearings April 26, 2023 [at 58 min 55 sec](#).

Applicant Freddy Botour: "There is a rendering, but it's conceptual. It's not descriptive."



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Obviously, all of these sizes are equal to, or smaller than the 120' CX length limit. As such, there was no factual basis in the rezone record for the City Council to discuss, hypothesize, or in any way conclude that the building would exceed the typical CX apartment building limit of 120.'

Argument 3: The May 9, 2023 staff report misapplies City standards on building length.

With special regard to the jumbo-sized Building B, Victor's code simply does not allow buildings to exceed the size limits enumerated in the zoning standards.

"The City of Victor limits the size of the building footprint in order to maintain the small-town scale and character of the community. The footprint of a building occupied by a single business or use **shall not exceed that which is allowed in the LDC.**" (Emphasis added)⁶

The May 9, 2024 [staff report](#) wrongfully relies on the immediately subsequent statement in the code stating that "[a]ll buildings shall be broken into modules that are no greater than fifty (50) feet wide"⁷ as a misplaced justification for allowing a building that is nearly double the size limit.

The plain language of that very short, very simple, sentence clearly does not excuse or exempt a building from complying with the 120' limit on building length. That sentence clearly addresses breaking up the uniform **appearance** of the building into 50-foot modules. Just look at the opening sentence of the entire paragraph:

"The City of Victor limits the size of the building footprint **in order to maintain the small-town scale and character of the community.**"⁸
(Emphasis added)

That is what the 50-foot modules are used for: maintaining small-town scale and character. Likewise, the very next sentence that follows recommends using articulated walls and changes in roof elevations as a means "to reduce the **apparent size** and scale of larger buildings."⁹

⁶ Victor Design Standards & Guidelines. Section 8.03.A.2 (Massing and Floor Area Requirements)

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*



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(Emphasis added) The modules are a tool to break up the monotonous appearance, **not an exemption to get around limits on building length.**

Furthermore, there is no enabling language or any kind of precedent within Victor's Code for staff's secondary logic that the "jog" in the building somehow excuses the enormous length. Victor's Code is silent on how building length is determined; building length is not even addressed in Article 2 Measurements and Exceptions. As such, **Victor's code simply does not support the City's argument that only the portion of Building B that abuts Baseline Road shall be counted for length purposes.** Building B is a single structure: one free-standing building that is primarily facing Baseline Road. The slight 140° bend in the building (180° is a straight line) does not face another street. As such, it cannot be considered a building that "rounds a corner" and abuts two streets. For all these reasons, by applying any plain and simple every-day interpretation of "length," Building B is 233' from end to end - when the absolute limit on length is 120.'

Argument 4: The Planning Administrator does NOT have authority to modify building length.

Under a few limited circumstances the City Planning Administrator may slightly modify zoning standards, **however, building length is NOT one of them.** Under the "Modification of Standards" in the Victor Code, section 14.6.12.A states:

"The Administrator may modify the following standards during Site Plan Review. **Any other modification beyond those listed below must be approved by the Planning & Zoning Commission,** for Land Development Code standards or either Planning and Zoning Commission or Design Review Committee for items only in the Design Standards and Guidelines." (Emphasis added)

The code then goes on to list the **only** seven building standards that can be administratively modified, including how much they may be modified:

1. Setbacks



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2. Build-to
3. Ground floor elevation
4. Ground and upper story floor heights
5. Transparency
6. Blank wall area
7. Street-facing entrances.

Clearly, **building length is NOT one of the enumerated standards that can be modified** by the administrator. Because it is not listed as able to be modified outside of a public hearing, **it must be reviewed by the Planning & Zoning Commission** as outlined in Victor Code 14.6.12.A.

Argument 5: Building length can only be modified by P&Z via a variance; NO variance application or hearing has been completed to date.

Victor's zoning standards are firmly fixed, they cannot be waived without a variance. This is clearly stated in section 1.05.G.1 of the Design Standards and Guidelines:

While this document provides for flexibility and discretion in design reviews, **City zoning regulations shall not be waived without the City approving a variance under LDC Section 14.7.13** (Emphasis added)

Victor's variance provisions specifically reference changes to zoning requirements within the City's code, "more specifically relating to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots..."¹⁰ Despite this being the clear path forward, to date, there has been **NO application for a variance** from the building size limitations in the Sherman Park Project.

Argument 6: Victor City Council had no jurisdiction to conduct the Sherman Park Site Plan & Design Review on March 13, 2024; that action by Council is VOID.

¹⁰ Victor Code 14.7.13.Variance Application Review.



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On information and belief, the City has also wrongfully argued that the size of the buildings was somehow ratified by City Council at the March 13, 2024 public meeting pertaining to the Sherman Park Project. However, the [March 13th minutes](#) clearly show that the Council had no discussion of building length, made no findings of fact regarding building length, and never discussed any kind of variance, or deviation from zoning standards. Even *arguendo*, had the Council purportedly approved the jumbo-sized building length, the Council would be totally without jurisdiction to do so.

Victor City code mandates that P&Z is the final review authority for the Site Plan and Design Review of the Sherman Park Project.¹¹ P&Z does not issue mere recommendations regarding Design Review. Rather, their authority is far greater; **P&Z has final decision-making authority.**¹² Any final decision issued by the P&Z must first be formalized into a notice of decision.¹³

By contrast, **the City Council only has appellate authority** over Site Plan and Design Review.¹⁴ In order for Council to even have this appellate jurisdiction, three things must first happen:

1. Review must be conducted by the appropriate board, which in this case is the P&Z. Upon review, the Board must make a decision.
2. The Board must then issue a formalized notice of decision.¹⁵
3. Then, there must be a timely and proper appeal submitted to the City by an aggrieved party with standing.¹⁶

Only when these three steps are properly done, shall the City Council then have jurisdiction. **Not a single one of these critical steps were taken** when the City Council conducted their

¹¹ Victor Code 14.2.2.B.4 (Review Authority of the Planning & Zoning Commission) and 14.6. 11.C.2.a (Design Review Procedures).

¹² Victor Code 14.1 (Summary of Review Authority) and 14.2.2.B.4.(Review Authority of the Planning & Zoning Commission).

¹³ Victor Code 14.6.11.C.3. (Design Review Procedures) and 14.3.2.H (Notice of Decision).

¹⁴ Victor Code 14.1 (Summary of Review Authority) and 14.2.2.A.3 (Review Authority of City Council).

¹⁵ Victor Code 14.6.11.C.3. (Design Review Procedures) and 14.3.2.H (Notice of Decision).

¹⁶ Victor Code 14.7.F (Design Review Appeal) and 14.8 *et seq* (Administrative Appeal).



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review of the Sherman Park Site Plan & Design Review on March 13, 2024. As such, Council had no decision-making authority, and no jurisdiction to render a decision on the Site Plan or Design Review. **Council actions taken without jurisdiction or authority are VOID.**¹⁷ All actions and approvals taken by the Victor City Council pertaining to Site Plan & Design Review on March 13, 2024 **are simply void and require no further action to be vacated.**

Argument 7: At the May 9, 2024 Site Plan & Design Review hearing, affected parties were specifically denied their right to testify.

The Design Review process specifically allows that both “the applicant **and any other affected party may testify**” at a Site Plan & Design Review public meeting.¹⁸ The City’s own public comment informational [webpage](#) states that”

“If you require accommodation to participate remotely during council meetings, **we encourage you to contact the City Clerk in advance of the meeting.** We are committed to making reasonable efforts to accommodate individuals with specific needs, ensuring equal access and inclusivity, but we are unable (sic) provide such accommodations once the meeting begins.” (Emphasis added.)

At least one affected party [specifically asserted their standing and requested](#) to the clerk and staff, in advance, in writing, that they be given three minutes to present their testimony via

¹⁷ This issue of jurisdiction is a fundamental legal principle that not only applies to Courts, but also political subdivisions acting in a quasi judicial capacity. “A judgment of a court without jurisdiction is void, and void judgments may be attacked at any time.” *Burns v. Baldwin*, 138 Idaho 480,486, 65 P.3d 502, 508 (2003). When a municipal government acts without authority, such action is void. See, *Hillman v. City of Pocatello*, 74 Idaho 69, 256 P.2d 1072 (1953).

¹⁸ Victor Design Standards & Guidelines. Section 1.06.(Process Overview) See, Step 7. “The Commission or Design Review Committee will review the Design Review application at one or two public meetings, in which the applicant and any other affected party may testify.”



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Zoom at the May 9, 2024 public meeting. They made a second [written request for testimony](#) the day of the hearing. I personally attended the May 9, 2024 hearing and saw this affected party requesting testimony on Zoom and even asked the P&Z to allow said testimony. The P&Z wrongfully denied this interested party's testimony.

CONCLUSION:

This appeal is aimed at the P&Z's [final written decision](#) (dated May 14, 2024) from their May 9, 2024 public meeting where they failed to consider building length. However, it was really the determination of the Planning Administrator during the meeting that directed P&Z to NOT consider building length, and wrongfully took the issue out of their hands. As such, both actions are being appealed herein.

I request proper administration of Site Planning & Design Review of the Sherman Park Project which, in this case, requires either changing the size of the building to be compliant with the CX zoning standards, or processing a complete variance application for these buildings, to be considered by the P&Z pursuant to Victor Code 14.7.13.

Respectfully,

A handwritten signature in blue ink that reads "Anna Trentadue".

Anna Trentadue
Program Director/ Staff Attorney
Valley Advocates for Responsible Development

ATTACHED: Letters of Authorization from Tom Guheen, Bruce Smithhammer, Richard Adair, and one more forthcoming shortly.