

From: [Brennan Malanaphy](#)
To: [*CI-StPaul>Contact-Council](#)
Subject: Comment re: Sound level variance application at 170 Western Ave. S.
Date: Monday, January 10, 2022 6:48:24 PM

Dear St. Paul City Council Members,

Banfil Office Court hereby respectfully opposes the approval of the Sound Level Variance application at 170 Western Ave. S. as written.

Banfil Office Court has been under current management since 1999 and its operations are well known to DSI through the regular licensing inspections of its 3 office buildings.

Banfil's circa 1800's 557 office building sits exposed to Nor-Son's construction activity on three sides, each well inside the 50 foot sound buffer radius anticipated by the City's sound level ordinance. The Nor-Son construction site's bedrock excavation borders 557 by less than 10 feet – photos attached.

This proximity afforded the 557 building tenants and their clients no escape from the concussive sound levels of jackhammering and bedrock excavation during December construction activity, which routinely exceeded the 85 dBa City ordinance limit.

The businesses in the 557 building are principally longstanding health service providers whose services are very sensitive to sound disruption, and that have built their practices at this location since as early as 2003 and 2010. Patient schedules are set weeks in advance and are impossible adjust for the recurring, emergent interference of construction noise.

To date, excessive construction sound levels have prohibited Banfil tenants from using their offices on numerous occasions, resulting in loss of revenues and additional remedial costs, which Nor-Son and Bigos Management refuse to acknowledge or reimburse them for, not with-standing the undue stress to the tenants, their clients and their employees.

We can not imagine how further bedrock excavation followed by steel sheet pile driving and other heavy construction activity over 7 or more weeks will be any less prohibitive to conducting counseling and therapy sessions in the 557 building, or possibly even to similar tenants' businesses in our 555 and 561 buildings.

The conditions of this sound level variance application, in particular the 3rd and 4th, requiring "best practicable methods for controlling noise" and "continuous sound level monitoring" are deeply concerning. They lack specificity for what they are to achieve and how they will be implemented, include no 3rd party oversight, nor require any reimbursement of the past or inevitable future financial losses of the businesses harmed. Nor-Son and Bigos, seem only to alter their activity when City officials are called upon to intervene, and the City has indicated it lacks the resources for proactive monitoring.

It seems incongruous that the city would have the power to authorize activity that patently prohibits others from conducting normal business activity, but not the power to require compensation for the

financial losses suffered from that interference. It is especially unsettling when the offender is a very large business with extensive resources and the victims are comparatively very small businesses with much more limited resources, and are impacted to a much greater degree.

It is understandable that in this hearing the city council may not be able remedy an ordinance that is too broadly constructed to protect businesses' quiet enjoyment of their premises. However, it does offer the city council an opportunity to mitigate the financial costs to the victims by shifting the financial burden where it belongs, to Nor-Son Construction and Bigos Management who stand to profit from this construction / business venture. If the City can not properly shift these burdens by modifying conditions of the variance, we respectfully request the variance application be denied and that the City closely monitor and strictly enforce the existing city ordinance at this site.

Sincerely,
Brennan Malanaphy

Brennan Malanaphy | Partner

Banfil Office Court

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