

**From:** [Carson Starkey](#)  
**To:** [\\*CI-StPaul\\_PED-ZoningCommitteeSecretary](#)  
**Subject:** Lexington-James Apartments  
**Date:** Thursday, December 23, 2021 12:37:14 PM

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Zoning Committee,

My name is Carson Starkey, and I live at 659 Ivy Avenue in Saint Paul. I write to encourage you to deny a conditional use permit and setback variances for the Lexington-James apartments proposed at 470 S. Lexington. This project is simply too big for this neighborhood.

There is no reasonable excuse for the huge setback variances requested by the developer except to maximize the number of units that he can cram onto this site in order to maximize his profit. He's already proposing to turn six single family-homes into an apartment building. There's no need to violate reasonable setback requirements just to make sure he can fit 114 units on site.

I also believe that a project of this height and mass, especially considering the request to build so close to the property line, does not meet the required conditions for a CUP. It is out of scale with the surrounding neighborhood and would have a negative impact on the existing character of the neighborhood.

There is plenty of room on the site to build a reasonably-sized apartment building. That's what they should do.

Sincerely,

Carson Starkey

**From:** [Kris Fredson](#)  
**To:** [\\*CI-StPaul\\_PED-ZoningCommitteeSecretary](#)  
**Subject:** 470 S. Lexington Parkway, File # 21-327-115  
**Date:** Tuesday, December 28, 2021 6:42:52 PM

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December 28, 2021

Chair Reilly and Commissioners DeJoy, Grill, Hood, Rangel Morales, Syed and Taghioff,

Greetings, I hope you are well. I am writing to express my opposition to the issuance of a Conditional Use Permit and setback variances for the proposed James Avenue Apartments (470 S. Lexington Parkway, File # 21-327-115).

I hope you will find the project size does not fit the general scale of other buildings in the area. This project has changed substantially since earlier this year. It has changed in ways that significantly exacerbate the findings made by staff in a February 4, 2021 report that found that the project is:

“significantly greater than the general scale of other buildings in the immediate vicinity, especially to the north. This contrast is exacerbated by the requested variances that would allow the building to be constructed closer to the lot lines and adjacent single-family development. [Further, that] the additional height, especially where that height would be located on the lot with the requested variances, would be detrimental to the existing character of the much lower-scale development in the immediate neighborhood.”

Since these initial findings, the developers have only increased the size of the project - going from 91 units to 113 units. The elimination of parking minimums did not lead to a project more in line with neighborhood character, but rather a substantial increase in the footprint of the project. The developer is now asking for even larger variances for setbacks. The project can provide much needed housing and be economically viable without the requested setback variances.

I also want to express concerns about the possibility of irresponsible contractors being utilized on this project. According to evidence gathered by the North Central States Regional Council of Carpenters, one of the project developers, Yellow Tree, has used Absolute Drywall, Inc. and Painting America, Inc. on past projects - two subcontractors with documented evidence of worker exploitation. Absolute Drywall was cited by the U.S. Department of Labor for child labor, misclassifying their employees as independent contractors, and shorting their workers over \$100,000 in overtime pay. Painting America was cited by the Minnesota Department of Labor and Industry for misclassifying its employees as independent contractors. While not strictly in the purview of the Planning Commission, it is important that public officials are aware of issues of worker exploitation and that they take steps within their legal authority to prevent worker exploitation on new multifamily housing projects in Saint Paul. I hope efforts will be made to ensure that criminal wage theft and worker exploitation will not occur on this project.

Thank you for your consideration of these comments and for your continued service to the City of Saint Paul.

Sincerely,

Kris Fredson  
333 Warwick Street  
Saint Paul, Minnesota 55105

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Kris Fredson  
333 Warwick Street  
Saint Paul, Minnesota 55105  
651-235-4459  
[krisfredson@gmail.com](mailto:krisfredson@gmail.com)

**From:** [Robb Nelson](#)  
**To:** [\\*CI-StPaul\\_PED-ZoningCommitteeSecretary](#)  
**Subject:** Lexington-James Apartments Comments  
**Date:** Wednesday, December 29, 2021 8:24:31 AM

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Zoning Committee -

My name is Robb Nelson and my address is 1644 Hague Ave.

I write to object to the issuance of variances and a conditional use permit for the James Ave Apartments (470 S. Lexington Pkwy, zoning file number 21-327-115). I support increased density in the City, and this is a good spot for an apartment building, but it must be at an appropriate scale to the rest of the neighborhood. We've already upzoned this block to allow for multifamily apartments. Is it really appropriate to also let the developer build the largest possible building that can fit on this site? A conditional use permit for an additional 20 feet of height and setback variances on all four sides, including a 0 foot setback on one side? It's too much and isn't reasonable.

The developer says in the application that "this building offers 10% affordable housing relying on additional 0.5 additional FAR. In meaning to do so and still maintain and respect the approved setbacks, it is necessary for any balcony to be hung outside of the footprint to maintain square footage and FAR. Even though balconies are not part of FAR, they still must be within the setbacks which makes it impossible." This is totally wrong logic. Completely maxing out the FAR in an apartment building is not an entitlement - it is a maximum. The developer could simply make a slightly smaller building and live within the totally reasonable setbacks in the code. The only reason he isn't doing that is economics, which is not a legitimate argument for a variance from the code.

I can see giving him one setback variance on one side of the building. But really big variances on all four sides? It would make the building too imposing, out of scale for the neighborhood, and be detrimental to the existing character of the neighborhood.

Thank you,  
Robb Nelson

December 29, 2021

Chair Reilly and Commissioners,

My name is J. Kyle Makarios and I live at 851 Dayton Avenue in Saint Paul. I write to object to the issuance of a Conditional Use Permit and setback variances to the proposed James Ave Apartments (470 S. Lexington Pkwy, File # 21-327-115).

Having served for 5 years on the Planning Commission, I'm familiar with the good work done by Mr. Jerve and I think highly of him, which is why I was quite surprised at the findings in the staff report for this project. I recognize that the Commission did grant a CUP and setback variances earlier this year for a related project and came up with alternative findings when staff recommended denial of the CUP and variances, as is your right.

However, this project has changed substantially since the hearings in February and March and has changed in ways that significantly exacerbate the findings made by staff (Mr. Richardson at the time) about the project where he noted in his Staff Report Dated Feb. 4, 2021 (updated March 5 & 11) that

*“it is significantly greater than the general scale of other buildings in the immediate vicinity, especially to the north. This contrast is exacerbated by the requested variances that would allow the building to be constructed closer to the lot lines and adjacent single-family development.”*

He also found that,

*“However, the additional height, especially where that height would be located on the lot with the requested variances, would be detrimental to the existing character of the much lower-scale development in the immediate neighborhood.”*

There was discussion during the committee deliberation about the impact on this project of eliminating parking minimums. The hope was that requiring less parking could lead to a smaller building footprint that was more compatible with the neighborhood. But that isn't what happened.

The developer has eliminated 13 parking stalls (from 95 to 82), but has increased the size of the project by over 25% - going from 91 units to 113. This proposal is four feet taller, has a much larger footprint (please see Exhibits A and B below to compare this proposal to the previous one), has five floors for the entire building instead of having part of the building with 4 floors, and requires significantly larger variances for setbacks. It is clear that the developer is trying to maximize the number of units in this proposal in order to maximize financial return on the project – and that is not a sufficient reason to grant a Conditional Use Permit for height, and it certainly isn't a good reason to grant setback variances.

I would like to address some specific concerns with the findings of the 12/23/21 staff report.

1. Regarding the findings on the application for a Conditional Use Permit.

The staff report notes that the Planning Commission previously approved a CUP for a height of 65 feet 8 inches, and that the applicant has updated the building plans requiring a new CUP. That is true, but this project is not only taller than the previous

proposal, it's also much larger (25% more units, and a larger building footprint, as previously noted).

- a. I disagree that condition a is met. While some of the policies cited by staff clearly support an apartment building on this site, this project is not in substantial compliance with the Comprehensive Plan.
    - i. Staff cites LU-34. *Provide for medium-density housing that diversifies housing options, such as townhouses, courtyard apartments and smaller multi-family developments, compatible with the general scale of Urban Neighborhoods.*
    - ii. This project is clearly not medium-density housing, or a smaller multi-family development, and it is not compatible with the general scale of this neighborhood. The variances requested make is especially out-of-scale. It would be feasible and desirable to build an apartment building on this site that fits in better.
  - b. I disagree that condition c is met. This project would be detrimental to the existing character of the much lower-scale development in the immediate neighborhood, especially if granted the variances that are requested.
2. I strongly disagree with the way the report addresses the application for a front yard setback variance (Point 3, page 3). This building has a required 25' front yard setback, acknowledged by the applicant, who applied for a variance to allow the building setback to be 13'9".
- a. First, it's important to note that while the applicant uses the language "previously entitled" throughout their application and tries to make it seem that the only difference here is the addition of balconies, this proposal is for a much larger building that should have more of a setback, not less. Further, there is no provision in the code to allow balconies to extend into the setback.
  - b. The staff report uses unique reasoning and appears to allow a front yard setback of 12'5" as-of-right (page 3, number 3), using a point from the code allowing a building to have a similar setback to other buildings on the block. This reasoning is absolutely wrong.
    - i. First, the math is wrong. As noted in the report, the only principal building on that block, on the corner of Lexington and Randolph, has a 0' setback. The average of 0' is 0', not 12.5 feet. Using this logic, the applicant would need no setback at all.
    - ii. This is clearly an incorrect use of this section of the code and would make the project drastically out of character with the surrounding neighborhood. All of the homes facing Lexington Parkway, on both sides, across from this development and to the north, have much greater setbacks. They appear to be much closer to 25', or in line with the setback requirement for this project.
    - iii. This section of code cited in the staff report is intended to allow a project to be in line with surrounding properties if the required setback would force it further back. The building on the corner of Lexington and

Randolph is a 2-story small building with commercial use on the first floor. Using this as a justification to allow a 5-story apartment building to be closer to the Parkway than any of the surrounding homes is unreasonable and an attempt to grant a de facto variance where one cannot be reasonably justified.

- c. This finding should be rejected and a 25' setback should be required.
3. Regarding the findings for a variance for the rear (east) setback
    - a. I disagree with the staff report on point 4.c (on page 4) regarding practical difficulties. This finding should not be met. Staff correctly points out that the Lexington setback is important because it is a parkway, and that shifting the building to the east and preserving the front yard setback would be preferable. But this proposal does neither. Yes, there is a slope on this property. But the fact that the developer has significantly increased the overall size of the project and wants to reduce the front yard setback even further while maintaining a 0 foot rear setback shows clearly that this is an economic consideration, and not a practical one.
    - b. I strongly disagree with staff on point 4.d (page 4) regarding the plight of the landowner. This finding should not be met. While the slope does create a challenge, it could be addressed if the developer was not intent on maximizing the number of rentable square feet in this building.
  4. Regarding the findings for a variance for the side (south) setback (Number 6, page 6).
    - a. I strongly disagree with the staff report on 6.c (page 6) regarding practical difficulties. The proposal to only have a 4'5" setback on the entire length of the south side of the building is one of the more dramatic changes since the proposal in February. Where the previous proposal would only have needed a variance for about 1/3 of the building (toward the front/west side), the developer now proposes to bump the entire south wall out 10 feet from the property line (a very significant increase in building mass), and to go further into the required setback with extended balconies. Please refer to the Exhibits below for diagrams of these changes.
      - i. If this were a practical difficulty and not due to economic circumstances, there would be no need to add to the overall size of the building here. The developer is clearly expanding into space that he describes as "previously entitled" for purely economic reasons. However, the fact that the entire south wall, and not just the western third of it, now comes right to the 10 foot line makes the need for a proper setback even more acute.
      - ii. There is no practical difficulty that requires a balcony to extend into a setback. Balconies are nice amenities and look nice from the outside. They make a building seem less imposing. But they are also desirable to tenants and add profitable square footage to the developer. The need

for an even greater variance to allow for a balcony is purely an economic consideration.

- b. I strongly disagree with the staff report on 6.d (page 7).
  - i. Again, a significant slope is a plight that may require some variance. But it does not require a variance to the extent that the entire wall of a 114-unit apartment building reduce a required 18'11" setback to 4'5". That is a huge variance that is not to scale of the plight faced.

In summary, I urge the Committee to overrule the staff findings 2a. and 2c. regarding the Conditional Use Permit. This project, as proposed, is not compatible with the general scale of this neighborhood, and the height and mass of the building would be detrimental to the existing character of the neighborhood. This is especially true with the increased need for variances on the project.

I also urge the Committee to overrule the staff finding 3 regarding the front yard setback. The idea that this project doesn't need a variance for a front yard setback is wrong, and they wouldn't meet the conditions for them otherwise.

Finally, I encourage the Committee to overrule staff findings 4.c and 4.d regarding the rear (east) setback, and findings 6.c and 6.d regarding the south side yard setback.

Thank you for your consideration of these comments.

Sincerely,

Kyle Makarios

851 Dayton Ave  
St. Paul, MN



**From:** [Martin Moen](#)  
**To:** [\\*CI-StPaul\\_PED-ZoningCommitteeSecretary](#)  
**Subject:** public testimony - 470 S Lexington Parkway development  
**Date:** Wednesday, December 29, 2021 8:00:27 AM

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Could you reply to us with a confirmation that you received this? Also, could you provide a link to instructions for watching Thursday's hearing online? Thank you!

December 29, 2021

TO: St. Paul Planning Commission – Zoning Committee

FR: Martin Moen & Gail Tischler  
1136 James Ave, St. Paul, MN 55105

RE: 470 S Lexington Pkwy site plan review

We are writing to express our opposition to the proposed site plan and requested conditional use permit and variances. Our opposition is based primarily on the building's scale relative to our neighborhood and to its expected impact on street parking.

1. As proposed, the 114-unit 470 S Lexington Pkwy project is the largest, most dense project on either Randolph Avenue (from West 7<sup>th</sup> to Fairview) or Lexington Parkway (from Elway to I-94). Only the nearby Wilder Park Condominiums development exceeds this density. The people-related impacts on our immediate area will be significant:
  - a. We understand and are supportive of the transition to a transit-oriented future, but we are not there yet. Street parking on our block in particular is consumed daily by employees of businesses in the nearby Trader Joe's development. Eventually, fewer people will own cars, but in the near-term most of the people moving into the proposed 470 S Lexington property will own a car. The proposed development's growing imbalance of units-to-parking stalls will greatly intensify the pressure on our block's street parking.
    - i. It has been stated multiple times that residents do not own the street parking in front of their home. If we do not own it, why are we required to pay annual assessments? Do large multi-family projects pay higher rates to account for their "spillover" use of adjacent public streets for parking?
  - b. A second example of increased infrastructure use is increased demand for public and private infrastructure such as electricity, natural gas, Internet, and water. These are not limitless resources. We have seen no consideration by city planning staff of these items.
    - i. Why are there no renewable energy requirements for this development...

- i.e. solar, wind or geothermal?
  - c. From a traffic safety perspective, the added vehicle traffic (renters, guests, deliveries, service providers, etc.) generated by this proposed development will eliminate the benefits derived from the recent re-design of the Lexington-Randolph intersection. Consequently, additional investment of our taxpayer dollars will be required to alleviate future congestion.
  - d. It is likely that the impacts of this development will be doubled when the southern half of this block is developed to a similar density.
- 2. We also oppose the 470 S Lexington proposal because of the developers' lack of transparency. Since first proposed in June 2020, the developers have increased the number of units from 60 to 114. Meanwhile, the number of parking stalls has increased by one. Their related decisions to minimize green space to extract greater revenue from the property help create a strong impression of a development team that "push" the boundaries and do only the minimum that is required. Their stated commitment to affordable units also reflects this minimalist mindset.
  - a. During their June 2020 presentation, the developers stated a desire to build a "gateway" housing project for our neighborhood. If their greed forces them to request exceptions to zoning standards, what can we expect in terms of construction quality? This proposed development does not meet our definition of a "gateway" project of which our neighborhood can be proud.

As stated earlier, this project represents the "tip of the iceberg" for our immediate neighborhood in terms of people- and property-density. We are primarily a residential community with very few walkable businesses. The impact of 470 S Lexington will be dramatic and largely negative. That the proposal has gone this far without "push back" from city officials shows a callous disregard for existing residents. Remember that the impact of decisions you make now will be doubled when the southern half of the block is re-developed.



December 29, 2021

Chair Reilly and Commissioners,

On behalf of our 28,000 LIUNA Minnesota and North Dakota members and family members, including more than 1,000 St. Paul residents, we write to oppose the issuance of a Conditional Use Permit and setback variances to the proposed James Avenue Apartments (470 S. Lexington Parkway, File # 21-327-115). We ask the Zoning Commission to deny the Conditional Use Permit and setback variances. We also ask that the City of St. Paul consider taking measures within its statutory authority to ensure that worker exploitation does not occur if the project moves forward without requested variances.

While LIUNA generally supports beneficial development in St. Paul, we do not believe that the applicant, in this case, has provided adequate justification for the Commission to approve a building that would substantially change the character of the area based on the proposed height and footprint. We are also concerned that the project could be a potential site of wage theft or other forms of worker exploitation based on the track record of subcontractors employed on past Yellow Tree projects.

Staff previously raised concerns about the scale of this project and its proximity to adjacent single-family development. An initial staff report earlier this year found that, “the additional height, especially where that height would be located on the lot with the requested variances, would be detrimental to the existing character of the much lower-scale development in the immediate neighborhood.”<sup>1</sup> We agree with this initial assessment and do not believe that the applicant has shown the net public benefits outweigh these impacts.

This project has changed in ways that significantly exacerbate the findings made by staff in their February 2021 report. Since these initial findings, the developers have only increased the size of the project - going from 91 units to 113 units. The elimination of parking minimums did not lead to a project more in line with neighborhood character, but rather a substantial increase in the footprint of the project. The developer is now asking for even larger variances for setbacks. The project can provide much needed housing and be economically viable without the requested setback variances.

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<sup>1</sup> Zoning Committee Staff Report, Zoning File #21-225-115, page 3:  
[https://www.stpaul.gov/sites/default/files/2021-02/21-225-115%20James%20Avenue%20Apartments%20staff%20report%20packet1\\_0.pdf](https://www.stpaul.gov/sites/default/files/2021-02/21-225-115%20James%20Avenue%20Apartments%20staff%20report%20packet1_0.pdf)

Beyond concerns about the impact of the building itself on the neighborhood, we worry about how construction of the project could impact workers. According to evidence gathered by the North Central States Regional Council of Carpenters, one of the project developers, Yellow Tree, has used Absolute Drywall, Inc. and Painting America, Inc. on past projects. Both subcontractors have a history of evident worker exploitation.

Absolute Drywall was cited by the U.S. Department of Labor for child labor, misclassifying their employees as independent contractors, and shorting their workers over \$100,000 in overtime pay.<sup>2</sup> Painting America was cited by the Minnesota Department of Labor and Industry for misclassifying its employees as independent contractors.<sup>3</sup> While enforcement of labor law is not within the purview of the Planning Commission, it is important that public officials are aware of issues of worker exploitation, consider those risks when weighing the public benefit of proposed projects, and take other steps within their legal authority to prevent wage theft and exploitation on new multifamily housing projects in Saint Paul. We hope efforts will be made to ensure that wage theft and worker exploitation will not occur on this project.

Thank you for your consideration of these comments.

Sincerely,

Lucas Franco, PhD  
Research Manager  
LIUNA Minnesota and North Dakota  
81 Little Canada Road East  
St. Paul, MN 55117

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<sup>2</sup> More information can be found here:  
<https://northcountrycarpenter.org/news/carpenters-community-groups-demand-accountability>.

<sup>3</sup> Minnesota Department of Labor and Industry Consent Order available upon request.

**From:** [Diego Morales](#)  
**To:** [\\*CI-StPaul\\_PED-ZoningCommitteeSecretary](#)  
**Subject:** 12/30/21 Zoning Committee meeting.  
**Date:** Wednesday, December 29, 2021 12:10:33 PM  
**Attachments:** [Polivios english edit. .docx](#)  
[Polivio Spanish Revised .docx](#)

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My name is Diego Morales, and I'm submitting this testimony to the planning commission for the 12/30 zoning committee hearing on the James Avenue Apartments (470 S. Lexington Pkwy, file #21-327-115) on behalf of Angel Polivio Merino. Mr. Merino lives at in St Paul. But doesn't want to disclose he's exact address because he fears retribution from Yellow Tree Construction. He doesn't speak English, and asked me to translate his statement into English for him, which I did, and submit it for this hearing. I've included both his statement in Spanish and the version I translated into English for him.

Thank you,  
Diego Morales

Diego Morales  
651-341-4454 Cell  
[dmorales@ncsrcc.org](mailto:dmorales@ncsrcc.org)

Business Agent

North Central States Regional Council of Carpenters  
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To receive text messages, text the phrase "NCSRCC" to the number 91990. Message and data rates may apply

## Polivio's Statement for The Planning Commission

My name is Angel Polivio Merino I heard about an opportunity to work in Minnesota in October of 2020, from a friend by the name of Christian in Illinois. Christian used to work for Jaime Rocha, the owner of Strong Framing. After that, Jaime called me frequently on the phone, offered me work, and asked me to work for him in St Paul MN for Yellow Tree Construction at Paster Apartments. I agreed to work for Jaime in early 2021. I asked him in a phone conversation if he would be at the job in Saint Paul (the Paster Apartments). He did not give me an answer, but instead referred me to a US Framing (1<sup>st</sup> tier subcontractor) superintendent by the name of Craig. Craig showed me the job and explained that he would be supervising daily. Craig never mentioned rates of pay to me. Up to that point, neither had Jaime. Craig told me to find 20 carpenters so that we could start the wood framing work as soon as possible.

I could not find 20 guys for the job, but I managed to bring 10 instead. We started working without knowing what our rates of pay because Craig and Jaime never explained what our wages would be. After working for a week, I called Jaime and asked about prices or a contract of some kind for the work. Neither responded. Craig told me on the jobsite that I should not worry about the prices, that I would be paid well. After that, Jaime called me on the phone, and he said that he would pay me 75 cents per square foot. Jaime and Craig told me to focus on getting more guys to do the work because progress was slow, and we were behind schedule. I explained that it would be difficult for me to recruit more guys due to the low rate of 75 cents per square foot for the work.

We completed 2 more weeks of work and framed the 1<sup>st</sup> floor of the building. Jaime paid me with a check, from his company Strong Framing, of \$4,000. After 2 more weeks of work, Jaime paid me with another check of \$15,000 for a total of \$19,000 for me and all 15 of the workers that I brought to the jobsite. We worked 6 days a week, for 11 to 12 hours a day, without overtime pay. I was not paid by US Framing or Strong Framing for the cost of lodging that I provided to house the workers. 2 weeks later, we finished 50,000 square feet of work for the 2<sup>nd</sup> floor of the building. Strong Framing paid me another \$8,000 for that work with a check. My best estimate is that either Strong Framing or US Framing owes us, the other workers and I, around \$20,000 plus overtime and the costs I incurred for hotel room rentals.

After that, I asked Jaime to pay me around \$30,000 for the cost of our unpaid wages plus the hotel rooms. Jaime said that he would not pay me because I failed to bring 20 guys to the jobsite. I approached Craig of US Framing and asked for our unpaid wages. Craig told me not to come back to the job and told me that US Framing supervisors would call the police on me for trespassing if I did come back. I came back to the site on at least one more occasion, and spoke to somebody from JJ Framing, who said that I was not supposed to be on the jobsite. He said that if US Framing supervisors saw me, they would call the cops. I heard that Yellow Tree might be doing another project in Saint Paul. They shouldn't because they and their subcontractors treat workers poorly.

## Declaración de Polivio

Mi nombre Angel Polivio Merino escuché sobre una oportunidad de trabajar en Minnesota en octubre de 2020, de un amigo llamado Christian en Illinois. Christian solía trabajar para Jaime Rocha, el dueño de Strong Framing. Después de eso, Jaime me llamó con frecuencia por teléfono, me ofreció trabajo y me pidió que trabajara para él en St Paul MN para Yellow Tree Construction en Paster Apartments. Acepté trabajar para Jaime a principios de 2021. Le pregunté en una conversación telefónica si estaría en el trabajo en Saint Paul (los Apartamentos Paster). No me dio una respuesta, sino que me remitió a un superintendente de US Framing (subcontratista de 1er nivel) llamado Craig. Craig me mostró el trabajo y me explicó que estaría supervisando diariamente. Craig nunca me mencionó las tasas de pago. Hasta ese momento, Jaime tampoco. Craig me dijo que encontrara 20 carpinteros para que pudiéramos comenzar el trabajo de enmarcado de madera lo antes posible.

No pude encontrar 20 chicos para el trabajo, pero logré traer 10 en su lugar. Empezamos a trabajar sin saber cuáles serían nuestras tasas de pago porque Craig y Jaime alguna vez explicaron cuáles serían nuestros salarios. Después de trabajar durante una semana, llamé a Jaime y le pregunté por los precios o un contrato de algún tipo para el trabajo. Ninguno de los dos respondió. Craig me dijo en el sitio de trabajo que no debería preocuparme por los precios, que me pagarían bien. Después de eso, Jaime me llamó por teléfono y me dijo que me pagaría 75 centavos por pie cuadrado. Jaime y Craig me dijeron que me concentrara en conseguir que más chicos hicieran el trabajo porque el progreso era lento y estábamos atrasados. Le expliqué que sería difícil para mí reclutar a más chicos debido a la baja tasa de 75 centavos por pie cuadrado para el trabajo.

Completamos 2 semanas más de trabajo y enmarcamos el 1er piso del edificio. Jaime me pagó con un cheque, de su empresa Strong Framing, de \$4.000. Después de 2 semanas más de trabajo, Jaime me pagó con otro cheque de \$ 15,000 por un total de \$ 19,000 para mí y los 15 trabajadores que traje al sitio de trabajo. Trabajábamos 6 días a la semana, de 11 a 12 horas al día, sin pago de horas extras. US Framing o Strong Framing no me pagaron por el costo de alojamiento que proporcioné para alojar a los trabajadores. 2 semanas después, terminamos 50,000 pies cuadrados de trabajo para el 2do piso del edificio. Strong Framing me pagó otros \$ 8,000 por ese trabajo con un cheque. Mi mejor estimación es que Strong Framing o US Framing nos deben a nosotros, a los otros trabajadores y a mí, alrededor de \$ 20,000 más horas extras y el costo en el que incurrí por el alquiler de habitaciones de hotel.

Después de eso, le pedí a Jaime que me pagara alrededor de \$ 30,000 por el costo de nuestros salarios no pagados más las habitaciones de hotel. Jaime dijo que no me pagaría porque no traje a 20 chicos al lugar de trabajo. Me acerqué a Craig de US Framing y le pedí nuestros salarios impagos. Craig me dijo que no volviera al trabajo y me dijo que los supervisores de US Framing llamarían a la policía por allanamiento de morada si regresaba. Regresé al sitio en al menos una ocasión más, y hablé con alguien de JJ Framing, quien dijo que se suponía que no debía estar en el sitio de trabajo. Dijo que si los supervisores de US Framing me

veían, llamarían a la policía. Escuché que Yellow Tree podría estar haciendo otro proyecto en Saint Paul. No deberían hacerlo porque ellos y sus contratistas tratan mal a los trabajadores.



December 29, 2021

Zoning Committee,

Please accept these comments on behalf of the North Central States Regional Council of Carpenters (the Carpenters Union) regarding the application for a Conditional Use Permit and setback variances for the James Ave Apartments (470 S. Lexington Pkwy, Zoning File 21-327-115). Our regional headquarters is located at 700 Olive Street in Saint Paul.

The Carpenters Union encourages the Committee to reject the application for a Conditional Use Permit and setback variances. This development, as proposed, would be detrimental to the existing character of the neighborhood and could impede the normal and orderly development and improvement of the surrounding property. It would also endanger the public health, safety, and general welfare.

The project developer is teaming up with Yellow Tree Development, who will also serve as the general contractor for the project, according to a Dec. 14 article in *Finance and Commerce* (“Developers team up in St. Paul”). In the article, Mr. Funk had this to say about Yellow Tree:

“They’ve done a lot of successful projects in town. Their development expertise on urban infill is was very attractive to me. And the ability to control the construction budgets, as well... in this climate, that’s very helpful and valuable,” Funk said.

Unfortunately, Yellow Tree’s track record of “controlling” construction budgets and managing construction projects has resulted in large amounts of wage theft and the exploitation of immigrant workers on numerous projects. Wage theft occurs when workers are not paid wages for all hours worked, including overtime for hours over forty per week.

For instance, on Yellow Tree’s Paster Apartments (2225 University Ave W, Saint Paul), 15 workers assert that the first-tier framing subcontractor U.S. Framing (from Jefferstown, Kentucky) and its labor-broker subcontractor Strong Framing (Olathe, Kansas) engaged in wage theft and worker misclassification related to work performed in June-July, 2021. These workers, with the help of Centro de Trabajadores Unidos En La Lucha (CTUL), have filed a mechanic’s lien on the property for unpaid wages. This dispute is ongoing. These workers claim they are owed more than \$30,000.

At Yellow Tree’s Nicollet II Apartments project (1724 Nicollet Ave, Minneapolis), Black Diamond Nationwide (Oklahoma City, Oklahoma) is the framing subcontractor. Fourteen workers who worked on a Black Diamond project in International Falls, MN in September and October, 2021 have reported that they have been the victims of wage theft and unlawful intimidation.

Workers from the International Falls project claim they are owed between \$30,000 and \$44,000 in wages. When these workers asked a project manager from for their owed wages, a project

manager threatened to contact federal immigration authorities and have the workers detained or deported. Black Diamond remains the prime framing contractor on Yellow Tree's Nicollet II project. These workers, along with the Carpenters Union and CTUL, approached Yellow Tree about the issues related to Black Diamond on the International Falls project on Dec. 14 and at the main office in Minneapolis. This issue remains unresolved.

Yellow Tree relies on similarly unscrupulous subcontractors like Painting America at its Nicollet II Apartments and Absolute Drywall at its Marshall Avenue Apartments (1428 Marshall Street Northeast, Minneapolis). In 2019, the Minnesota Department of Labor and Industry determined that Painting America misclassified workers as independent contractors ("\*Consent Order: Licensing Order vacated; \$5,000 monetary penalty stayed with conditions – 1/08/2019 \*REG1608-00028/JOR"). In 2017, the federal Department of Labor and the Minnesota Department of Labor and Industry respectively imposed penalties on Absolute Drywall (Absolute Drywall Case ID: 1800777 for failing to pay wages in the form of overtime, failing to maintain payroll records, misclassifying workers as independent contractors, and for violating child labor laws. The Minnesota Department of Labor and Industry also issued a penalty against Absolute Drywall in 2018 that concluded that Absolute had misclassified employees as independent contractors and that Absolute had "submitted false and misleading information in violation of Minn. Stat. Sec. 326B.082" (REG1702-00038/MG),

Yellow Tree's projects have also been cited for numerous safety violations, calling into question the impact of the proposed project on public safety and health in the community. Since January 2020, their projects in Minneapolis and St. Paul have produced 26 OSHA complaints and seven citations for serious safety infractions, including not building safety railings on the roof of the apartment project at the Paster Apartments and not providing workers with proper fall arrest protection equipment at the Hall Sweeny Apartments (4601 Minnehaha Avenue, Minneapolis), the Paster Apartments, or the Harrison Apartments (232 Humboldt Avenue North, Minneapolis). Please see the attached photos, which were reported to MnOSHA, who promptly investigated potential violations. MnOSHA independently investigated and issued seven citations on Yellow Tree projects, primarily for serious safety infractions involving fall hazards.

Yellow Tree's history of OSHA citations, especially when combined with a project that is applying for a conditional use permit to build a taller building and setback variances to allow the building to come right to the property line (east side) or very close to it (south side), presents a very real threat to the immediate neighborhood and will endanger the public health, safety and general welfare (finding 2.c, page 3) and should be grounds to reject their application for a Conditional Use Permit and setback variances.

This project is not in substantial compliance with the St. Paul Comprehensive Plan:

- *Policy LU-6. Foster equitable and sustainable economic growth by. . .supporting family-sustaining jobs and enhancing workers' skills to excel at those jobs;. . . supporting business, real estate and financial models that keep more money locally, such as locally-owned businesses and commercial land trusts.*

Yellow Tree has shown that its model for economic growth is not equitable. Yellow Tree's projects have numerous contractors that do not participate in state or federally registered apprenticeship programs that include partnering with local community organizations to provide opportunities to local workers of color to start construction careers.

We believe that the Committee should deny the developer a conditional use permit for height and the setback variances it has applied for. This project would be detrimental to the existing character of the neighborhood, is not in substantial compliance with the Comprehensive Plan, could impede the normal and orderly development and improvement of the surrounding property, and would endanger the public health, safety, and general welfare.

Yellow Tree's projects exhibit a lamentable track record of OSHA citations combined with widespread wage theft and worker exploitation. It is unconscionable to allow workers to continue to be victims of wage theft and safety violations, and Yellow Tree has shown it is unwilling to stop it on their own. They're more interested in "controlling their construction budget." Workers on Yellow Tree's Paster Apartment jobsite, have provided statements that they are being paid by personal check with no withholdings at all. Since workers paid "off-the-books" in this manner are rarely provided with workers compensation coverage, unemployment insurance, overtime pay, or any other benefits, we question whether Yellow Tree subcontractors are in compliance with St. Paul's Earned Sick and Safe Time Ordinance.

If the Planning Commission does approve this application, we request that an additional condition be placed on the CUP. The project's general contractor and all subcontractors on the site should be required to submit to an audit by the City's Human Rights & Equal Economic Opportunity Department to ensure compliance with St. Paul Earned Sick and Safe Time ordinance.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'BJ', with a long horizontal flourish extending to the right.

Burt Johnson  
General Counsel

Photo 1: A worker on Yellow Tree’s Harrison Apartment project in Minneapolis on which a complaint and inspection number 1563184.015 – 103711 followed.



Photo 2: Workers on the Nicollet Avenue Yellow Tree project in Minneapolis working on a rooftop on which citation 1541728.015 - 103131 for a “serious” violation was issued.



Photo 3: Workers on the Paster Apartment Yellow Tree project in Saint Paul working on which citation 1551225.015 – 103389/19260501 B15/19261408 A02 for a “serious” violation was issued.



**From:** [Rick Dushaw III](#)  
**To:** [\\*CI-StPaul\\_PED-ZoningCommitteeSecretary](#)  
**Subject:** FW: James Ave Apartments, 470 S. Lexington Pkwy  
**Date:** Thursday, December 30, 2021 1:29:52 PM

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I am re-submitting this comment from 9:40am yesterday so that it makes it to the public comment portion. Thank you for your time and consideration.

Rick Dushaw

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**From:** Rick Dushaw III  
**Sent:** Wednesday, December 29, 2021 9:40 AM  
**To:** PED-ZoningCommitteeSecretary@ci.stpaul.mn.us  
**Subject:** James Ave Apartments, 470 S. Lexington Pkwy

Zoning Committee -

My name is Rick Dushaw and my address is 1080 Wilson Ave in Saint Paul.

I understand that YellowTree Development is teaming up with Mr. Chet Funk to propose a large apartment building at 470 S. Lexington Ave. I am opposed to this project and encourage you to deny them the variances they are asking for. YellowTree is a bad player in the local development market. I work for the carpenters union in Saint Paul and have seen the negative impact that their projects have on workers in our community, including on their Paster apartment project on University Ave. They maximize their profit by hiring subcontractors who engage in wage theft, especially against immigrant workers. Corners are cut on their projects on worker safety and there have been citations for numerous OSHA violations on recent projects in the Twin Cities, putting the lives of these workers in peril. All workers deserve safe workplaces and to be paid a living wage for the hard work that they perform, and our community should not approve projects where this is very unlikely to happen. Please stand with me to oppose this project and stand up for workers' rights, and social and economic justice for all construction workers.

It is not surprising to me that they also want to build as many apartments as can possibly fit onto the property for the James Ave apartments. They want a conditional use permit and setback variances in order to get every possible penny of profit out of the project. They do not meet the requirements for the variances because the only reason they need such dramatic variances is to maximize the number of units and increase their profit. This proposal would be much too large for this site and would be out of scale for the existing character of the neighborhood. I encourage you to reject their application.

Sincerely,  
Rick Dushaw