



## Legislation Details (With Text)

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**Title:** Memorializing City Council action taken on November 5, 2014 granting the appeal of the West 7th Federation of a decision of the Planning Commission approving reestablishment of a nonconforming use at 543 James Avenue.

**Sponsors:** Dave Thune

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
12/15/2014	1	Mayor's Office	Signed	
12/10/2014	1	City Council	Adopted	Pass

Memorializing City Council action taken on November 5, 2014 granting the appeal of the West 7th Federation of a decision of the Planning Commission approving reestablishment of a nonconforming use at 543 James Avenue.

WHEREAS, on August 7, 2014, Todd Jones, on behalf of Premier Storage LLC ("Premier"), in PED Zoning File No.14-319-416 and pursuant to the provisions of Leg. Code §§ 62.109(c) and .109(e), duly made application to the Planning Commission ("Commission") for nonconforming use permits to reestablish and change the use of property commonly known as 543 James Ave, [PIN No.122823230131] and legally described as Schmidt Brewery Addition Lot 5 Blk 2, for the purpose of operating an indoor rental storage facility; and

WHEREAS, on August 28, 2014, the Commission's Zoning Committee conducted a public hearing in accordance with Leg. Code § 61.303 at which all persons present were given an opportunity to be heard and, at the close of the hearing, moved to recommend approval of Premier's permit applications subject to certain conditions; and

WHEREAS, on September 5, 2014, the Commission considered the recommendation of its Zoning Committee and, based on all the reports and records including the evidence presented to its Zoning Committee at the public hearing, as substantially reflected in the minutes, duly moved to approve the said application, with conditions, as specified in Commission Resolution No. 14-55 which is incorporated herein by reference, upon the following findings:

- "1. The application requests reestablishment of nonconforming use as warehousing and storage, and a change of nonconforming use to an indoor rental storage facility.
2. The proposed use would occupy the eastern portion of the subject site and building, and would create two levels of storage within the former warehouse space. No building addition is proposed.
3. Ingress/egress are proposed via an overhead door north to Palace Drive, and south to the existing parking lot along James Avenue and the railroad tracks.

4. Leg. Code § 62.109(e) states: When a legal nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:

(a) The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose. This finding is met. The building is constructed of tilt-up concrete and steel with few windows, and placed in the portion of the former Schmidt Brewing property farthest from West Seventh Street with poor visibility - both the building construction and its location make it uneconomical to use for the commercial and residential uses allowed in T3 rather than the proposed reestablished warehousing and storage use.

(b) The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use. This finding is met. Warehousing and storage are the previous legal nonconforming use.

(c) The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare. This finding is met. The warehousing and storage use is part of the area's existing development character.

(d) The proposed use is consistent with the comprehensive plan. This finding is met. The Comprehensive Plan in Figure LU-B designates the entire Schmidt Brewing complex, including the subject site, as both a Neighborhood Center and a Mixed Use Corridor, which call for more dense and compact mixed commercial and residential uses, with only small-scale production or industrial uses, such as warehousing. Viewed in isolation, the proposed use would not meet the aims of a Neighborhood Center or Mixed Use Corridor designation. However, viewed as part of the larger Schmidt Brewing campus project, it contributes to the feasibility of the rest of the site to allow it to meet the aims of a Neighborhood Center or Mixed Use Corridor designation with higher density housing and commercial uses that make use of the established historic buildings and site layout.

(e) A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the use. This finding is met. The petition was found sufficient on August 14, 2014: 24 parcels eligible; 16 parcels required; 17 parcels signed.

5. Leg. Code § 62.109(c) states: The planning commission may allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location if the commission makes the following findings:

(a) The proposed use is equally appropriate or more appropriate to the neighborhood than the existing nonconforming use. This finding is met. The indoor rental storage facility use is more appropriate to the neighborhood than the previous warehousing and storage use due to the significantly lesser traffic impact, especially truck traffic. Since the proposed rental storage facility is completely indoors, no significant noise or visual impacts are anticipated, as compared to warehousing and storage with its truck traffic impacts.

(b) The traffic generated by the proposed use is similar to that generated by the existing nonconforming use. This finding is met. The application provides a traffic generation analysis showing that the proposed indoor rental storage facility use will generate an estimated 41 customer trips per day, compared to an industry average for warehouse uses of 283 daily truck trips.

(c) The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare. This finding is met. The proposed indoor rental storage

facility use will not be detrimental to the existing character of development nearby, nor endanger the public health, safety, or general welfare.

(d) The use is consistent with the comprehensive plan. This finding is met. As stated in Finding 4(d), the Comprehensive Plan designates the entire Schmidt Brewing complex, including the subject site, as both a Neighborhood Center and a Mixed Use Corridor, which call for more dense and compact mixed commercial and residential uses, with only small scale industrial-type uses such as storage. However, if the proposed indoor storage facility use is viewed as part of the larger Schmidt Brewing campus project, it contributes to the feasibility of the rest of the site to allow it to meet the aims of a Neighborhood Center or Mixed Use Corridor designation with higher density housing and commercial uses that make use of the established historic buildings and site layout. The proposed use serves as an effective transition from the more dense uses envisioned for the rest of the Schmidt Brewery campus and the adjacent neighborhood to the north.

6. The subject site is located within the Jacob Schmidt Brewing Company Historic District.”

WHEREAS, on September 11, 2014, and pursuant to the provisions of Leg. Code § 61.702(a), the West 7th Federation (“Federation”), in PED Zoning File No. 14-328-911, duly filed an appeal from the determination made by the Commission to approve Premier’s applications and requested a hearing before the City Council for the purpose of considering the action taken by the Commission; and

WHEREAS, on November 5, 2014, and acting pursuant to Leg. Code § 61.702(b), the City Council, with notice to affected parties, duly conducted a public hearing on the Federation’s appeal where all interested parties were given an opportunity to be heard; and

WHEREAS, the Council of the City of Saint Paul, having heard the statements made, and having considered the application, the staff report, the record, minutes and recommendation of the Zoning Committee and the Commission’s Resolution in this matter; does hereby

RESOLVE, that the Council, pursuant to Leg. Code § 61.704 hereby reverses the decision of the Planning Commission in this matter, based upon the following findings:

The Council finds that the Commission erred in Resolution 14-55’s Finding No. 4(d) regarding the consistency of Premier’s proposed use with the comprehensive plan. The Council finds that the Commission erred when it found that reestablishing a nonconforming storage facility “contributes to the feasibility of the rest of the Schmidt Brewery Campus to meet the aims of a Neighborhood Center or Mixed Corridor designation with higher density housing and commercial uses that make use of the established historic buildings and the site layout” if the use is viewed as part of the larger Schmidt Brewery Campus.

The Council notes that the Schmidt Brewery Campus site was rezoned to TN3 in 2008 and that warehousing or storage is not a permitted use in TN3 districts. The Council further notes that Premier’s application states that the former warehouse has been vacant since 2009. Accordingly, the Council finds that a 5-year long vacancy period is sufficient time to conclude that the nonconforming use was discontinued as provided under the City’s Zoning Code. Allowing reestablishment of a warehouse/storage use on the Brewery Campus after 5-years of vacancy is not consistent with the goal of nonconforming uses becoming conforming uses and is not consistent with the comprehensive plan’s specific goal of having the Brewery Campus become a Neighborhood Center having high density housing and commercial activities that provide goods and services for the residents of the Neighborhood Center or meeting the goals of Mixed Use Corridors specified in the Comprehensive Plan.

The Council finds that reestablishing this nonconforming warehouse/storage use will not create housing or promote the adaptive reuse of historical structures called for under the District 9 Plan which was adopted as part of the Comprehensive Plan in 2013 or the Fort Road Development Plan which was adopted in 2005. The Commission justification of reestablishment of a warehouse/storage use under the guise of the preservation

historic buildings on the Brewery Campus was erroneous.

The District 9 Plan also calls for the effective reuse of under-used sites. The Council finds that although the warehouse has sat vacant for 5-years, reestablishing a non-conforming warehouse is not an effective reuse of this under-used site within the context of the Brewery Campus which is now being successfully redeveloped with residential Artists' Lofts. The Council finds that reestablishing an industrial warehouse or storage facility is a step backward from the overall goals of the Comprehensive Plan for this site that is transforming itself into exactly the type of mixed use district envisioned in the Comprehensive Plan.

For these same reasons, the Council finds that the Commission erred regarding its finding No. 5(d).

AND, BE IT FURTHER RESOLVED, for the reasons stated above and on the record, that the appeal of the Federation be and is hereby granted; and,

BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to the Federation, to Premier, and to the Planning Commission and the Zoning Administrator.