



Roll Call Number

Agenda Item Number

53C

Date November 18, 2013

An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 5035 Hubbell Avenue from the "A-1" Agricultural District to a Limited "M-1" Light Industrial District classification",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Roger K. Brown
Roger K. Brown
Assistant City Attorney

NOTE: Six affirmative votes required for passage. A sufficient protest petition has been received.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

Prepared by:	Michael F. Kelley, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309 515/283-4124
Return Address:	City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309
Taxpayer:	No change
Title of Document:	Acceptance of Rezoning Ordinance
Grantor's Name:	Homemakers Plaza Inc.
Grantee's Name:	City of Des Moines, Iowa
Legal Description:	Lots 44 and 45, Glen Acres, an Official Plat, and the West 330 feet of the North 660 feet of the Northeast ¼ of the Northwest ¼ of Section 22, Township 79 North, Range 23 West of the 5 th P.M. , all now included in and forming a part of the City of Des Moines, Polk County, Iowa, except streets.

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That Homemakers Plaza Inc., is the sole owner of the Property and 5035, LLC is the purchaser of the Property in the vicinity of 5035 Hubbell Avenue, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the "A-1" Agricultural District to Limited "M-1" Light Industrial District classification, we agree and accept on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

A. The following uses of structures and land shall be prohibited upon the Property:

1. Residential dwellings, duplexes, town homes, apartments, group homes, institutional residential facilities, mobile homes, or any other residential facility of any kind, except that hotels and motels who rent to transient guests are permitted.
2. Farms, except growing crops on any land that has not been improved.
3. Asphalt or concrete mixing or production facilities.
4. Refining, smelting or mining operations, including, but not limited to gravel extraction, or drilling for or extraction of subsurface substances.

5. Electrical, or gas generating facilities, except for use primarily on the premises where the same is generated.
6. Cemeteries.
7. Adult entertainment businesses.
8. Arcades or game rooms as a substantial portion of a business.
9. Taverns and nightclubs.
10. Animal rendering or slaughter facility.
11. Off-premises advertising signage.
12. Sanitary sewer treatment facility (other than for waste material generated on the premises) or solid waste disposal facility.
13. Jail, prison, or any other correctional facility of any kind.
14. Any public or private nuisance or illegal activity.
15. Any use that presents an undue hazard of pollution, fire or explosion, including, but not limited to, the manufacture, storage, display or sale of explosives or fireworks.
16. Any use that creates hazardous or otherwise unreasonable levels of smoke, noise, vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions; provided, that what level is "unreasonable" shall be determined with consideration given to the fact that the Property is dedicated for use as a retail commercial and light industrial area.
17. Temporary structures of any kind other than during construction for construction purposes, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.
18. Pole buildings, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.
19. Package goods store for the sale of alcoholic beverages.
20. Vehicle display lots, including but not limited to used car sales lot.
21. Pawn brokerages.
22. Financial institutions where the majority of revenue is derived from lending guaranteed by collateral of future payroll or vehicle titles.

B. The following standards shall apply to any building hereafter constructed for miniwarehouse use:

1. All storage unit building walls facing external to the site shall consist of a stone, masonry, or brick exterior material, or other durable material as approved by the Community Development Director.

2. No storage access doors shall be oriented toward a public street, any adjoining residential zoning or development, or toward the west property line.
- C. Any fencing along the north, west, and south perimeter of the site shall consist of wrought iron style fencing unless providing a privacy fence is necessary to provide screening for an adjoining property.
- D. Outside storage on the premises shall be prohibited unless it occurs within an area fully screened by a fencing or landscaping that is at least as tall as the items being stored.
- E. Provision of downward directed, shielded lighting to avoid shining obtrusively onto adjoining properties.
- F. All facades on the exterior wall of any building facing a public street must be comprised of no less than 20% in windows, doors, or masonry materials such as brick, cut stone, or decorative pre-cast concrete units, unless unique in architectural design and such design is approved by the Community Development Director as being comparable in overall quality.
- G. All overhead doors and loading docks on any principal or accessory building shall not face Hubbell Avenue or East Broadway Avenue, unless determined by the Community Development Director that no other reasonable location for the overhead doors and loading docks exists and that they are adequately screened and designed in such a manner that their visual impact would be minimal.
- H. Any development of the property shall comply with the City's Landscaping Standards applicable to the "C-2" District.

3. A certified copy of the rezoning ordinance shall be attached hereto, and a certified copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

4. That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited "M-1", then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Homemakers Plaza Inc.

By: David Merschman - President
David Merschman, President

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on Nov 11, 2013,
by David Merschman as the President of Homemakers Plaza Inc., who is personally known to
me and has been authorized by the Board of Directors to execute this document on behalf of
Homemakers Plaza Inc.



Cheryl Voyek
Notary Public in the State of Iowa

5035, LLC
an Iowa limited liability company

By: Gary Galinsky
Print Name & Title: GARY GALINSKY PARTNER

And by: [Signature]
Print Name & Title: Jared Johnson Partner

NOTE: Article IX of the Certificate of Organization for 5035, LLC, provides that any conveyance of an interest in real estate must be executed by the operating manager or the assistant operating manager, together with the secretary or the assistant secretary.

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on NOV 7, 2013, by Gary Galinsky and Jared Johnson as the Operating Manager and Secretary of 5035, LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.

[Signature]
Notary Public in the State of Iowa
My commission expires: 4-23-15



ORDINANCE NO. _____

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 5035 Hubbell Avenue from the "A-1" Agricultural District to a Limited "M-1" Light Industrial District classification.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located in the vicinity of 5035 Hubbell Avenue, more fully described as follows, from the "A-1" Agricultural District to Limited "M-1" Light Industrial District classification:

Lots 44 and 45, Glen Acres, an Official Plat, and the West 330 feet of the North 660 feet of the Northeast ¼ of the Northwest ¼ of Section 22, Township 79 North, Range 23 West of the 5th P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa, except streets (hereinafter referred to as the "Property").

Section 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said Property and are binding upon the owners and their successors, heirs, and assigns as follows:

- A. The following uses of structures and land shall be prohibited upon the Property:
 1. Residential dwellings, duplexes, town homes, apartments, group homes, institutional residential facilities, mobile homes, or any other residential facility of any kind, except that hotels and motels who rent to transient guests are permitted.
 2. Farms, except growing crops on any land that has not been improved.
 3. Asphalt or concrete mixing or production facilities.
 4. Refining, smelting or mining operations, including, but not limited to gravel extraction, or drilling for or extraction of subsurface substances.

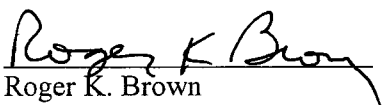
5. Electrical, or gas generating facilities, except for use primarily on the premises where the same is generated.
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 9. Taverns and nightclubs.
 10. Animal rendering or slaughter facility.
 11. Off-premises advertising signage.
 12. Sanitary sewer treatment facility (other than for waste material generated on the premises) or solid waste disposal facility.
 13. Jail, prison, or any other correctional facility of any kind.
 14. Any public or private nuisance or illegal activity.
 15. Any use that presents an undue hazard of pollution, fire or explosion, including, but not limited to, the manufacture, storage, display or sale of explosives or fireworks.
 16. Any use that creates hazardous or otherwise unreasonable levels of smoke, noise, vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions; provided, that what level is "unreasonable" shall be determined with consideration given to the fact that the Property is dedicated for use as a retail commercial and light industrial area.
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 22. Financial institutions where the majority of revenue is derived from lending guaranteed by collateral of future payroll or vehicle titles.
- B. The following standards shall apply to any building hereafter constructed for miniwarehouse use:
1. All storage unit building walls facing external to the site shall consist of a stone, masonry, or brick exterior material, or other durable material as approved by the Community Development Director.

- 2. No storage access doors shall be oriented toward a public street, any adjoining residential zoning or development, or toward the west property line.
- C. Any fencing along the north, west, and south perimeter of the site shall consist of wrought iron style fencing unless providing a privacy fence is necessary to provide screening for an adjoining property.
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- F. All facades on the exterior wall of any building facing a public street must be comprised of no less than 20% in windows, doors, or masonry materials such as brick, cut stone, or decorative pre-cast concrete units, unless unique in architectural design and such design is approved by the Community Development Director as being comparable in overall quality.
- G. All overhead doors and loading docks on any principal or accessory building shall not face Hubbell Avenue or East Broadway Avenue, unless determined by the Community Development Director that no other reasonable location for the overhead doors and loading docks exists and that they are adequately screened and designed in such a manner that their visual impact would be minimal.
- H. Any development of the Property shall comply with the City's Landscaping Standards applicable to the "C-2" District.

Section 3. This ordinance shall be in full force and effect from and after the later of its passage and publication as provided by law.

Section 4. The City Clerk is hereby authorized and directed to cause a certified copy of the Acceptance of Rezoning Ordinance, this ordinance, a vicinity map, and proof of publication of this ordinance, to be properly filed in the office of the Polk County Recorder.

FORM APPROVED:


 Roger K. Brown
 Assistant City Attorney

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