

★ **Roll Call Number**

**Agenda Item Number**

41A

Date November 6, 2006

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 2276 Hubbell Avenue from the "C-1" Neighborhood Retail Commercial and "C-2" General Retail and Highway Oriented Commercial Districts to a Limited "C-2" General Retail and Highway Oriented Commercial 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

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
VLASSIS				
TOTAL				
MOTION CARRIED			APPROVED	

**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.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

41A

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Prepared by: Roger K. Brown, Assist City Atty, 400 Robert Ray Dr., Des Moines, IA 50309 515/283-4541  
Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309  
Title of Document: City of Des Moines, Ordinance No. \_\_\_\_\_  
Legal Description: See below on this page.

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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 2276 Hubbell Avenue from the "C-1" Neighborhood Retail Commercial and "C-2" General Retail and Highway Oriented Commercial Districts to a Limited "C-2" General Retail and Highway Oriented Commercial 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 2276 Hubbell Avenue, more fully described as follows, from the "C-1" Neighborhood Retail Commercial and "C-2" General Retail and Highway Oriented Commercial Districts to a Limited "C-2" General Retail and Highway Oriented Commercial District classification:

Lot 64, Hubbell Avenue Addition, an Official Plat; and, Lot 64, Allen Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

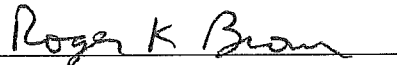
Sec. 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Conditions by all owners of said property and are binding upon the owners and their successors,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

- A. Only the following uses of structures or land shall be permitted upon the Property:
  - 1. Any use as permitted in and as limited in the "C-1" District.
  - 2. Garage for general vehicle repair, but not including body and fender work or overall painting and steam cleaning, but including upholstering, scratch and dent repair, and minor painting within a completely enclosed building.
- B. No vehicular access to the Property shall be permitted from Searle Street.
- C. All improvements made to the Property shall be in substantial compliance with a site plan approved by the City of Des Moines Permit and Development Center.
- D. Hours of operation of any commercial activity upon the Property shall be limited to 9 a.m. to 6 p.m. Monday through Friday and 9 a.m. to 4 p.m. on Saturdays.
- E. Any site plan for the Property shall be presented for review and comment by the Plan and Zoning Commission prior to final approval.
- F. Use of the Property for general vehicle repair should be limited as follows:
  - 1. Display of vehicles for sale is prohibited.
  - 2. Outdoor repair and servicing of vehicles is prohibited.
  - 3. Outdoor display of automobile accessories and storage of materials or equipment such as barrels, tires and tools is prohibited.
  - 4. All refuse and trash disposal containers shall be contained within an enclosure that complies with the Site Plan regulations.
  - 5. Parking of all vehicles associated with the business such as tow trucks shall be located outside of the required 25' front yard setback.
  - 6. Landscaping and screening shall be provided in accordance with the adopted Landscape Standards for development in the "C-2" District.
  - 7. Automobiles shall only be parked in marked parking spaces in accordance with an approved site plan.
  - 8. Provision of a solid fence instead of an opaque fence in the required bufferyard to eliminate headlights intruding into the neighboring homes.

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

Sec. 4. That the City Clerk is hereby authorized and directed to cause a certified copy of the Acceptance of Rezoning Conditions, 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

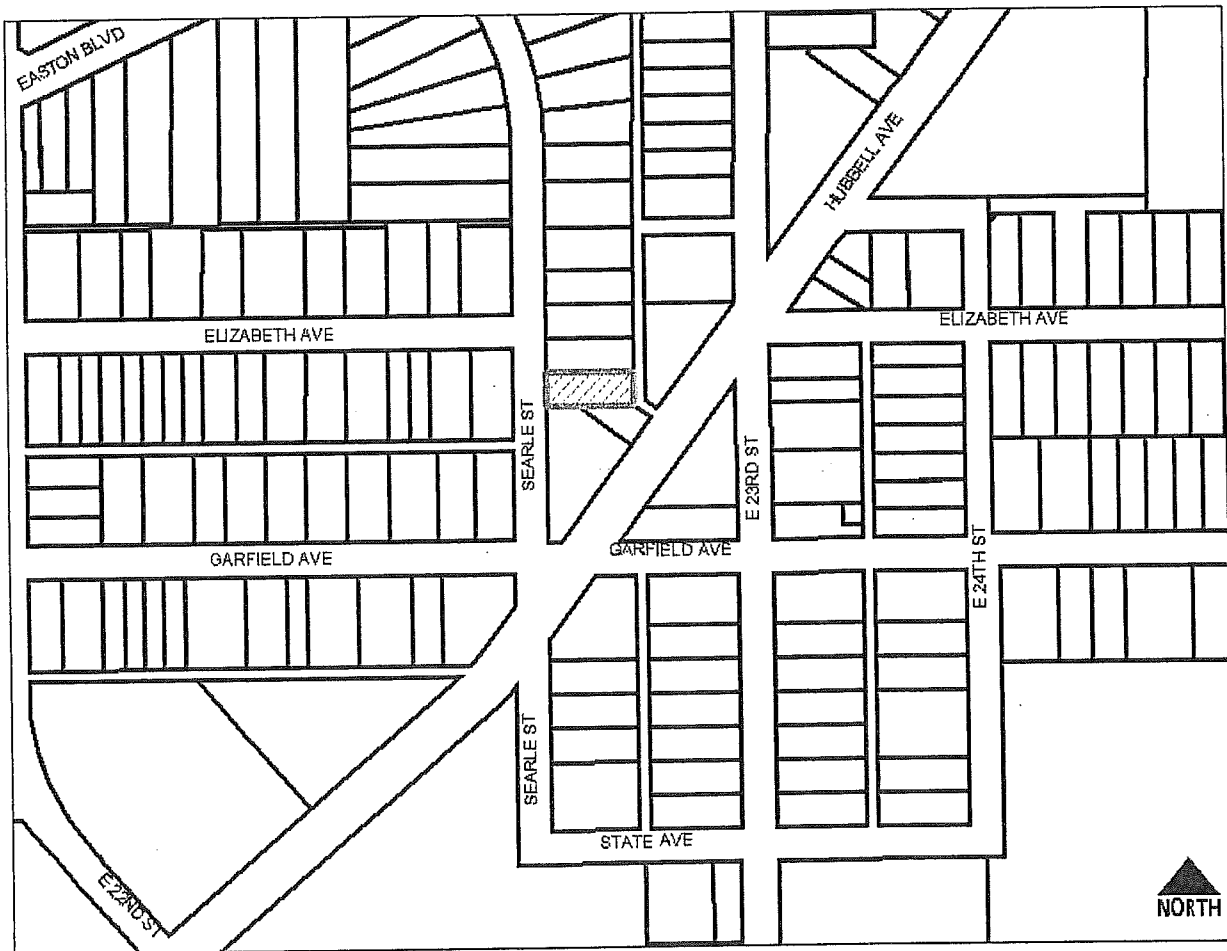
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41A

Request from Paula Avalos (developer) to rezone property located at 2276 Hubbell Avenue. The subject property is owned by Fernando Soltero.		File # ZON2006-00138		
<b>Description of Action</b>	Rezone subject property from a Limited "C-1" Neighborhood Retail Commercial District to a "C-2" General Retail and Highway-Oriented Commercial District, to allow for the proposed conversion of the site to an automobile service and repair establishment for tire sales, service and installation.			
<b>2020 Community Character Plan</b>	Commercial: Auto-Oriented Small-Scale Strip Development			
<b>Horizon 2025 Transportation Plan</b>	No Planned Improvements			
<b>Current Zoning District</b>	"C-1" Neighborhood Retail Commercial District			
<b>Proposed Zoning District</b>	"C-2" General Retail and Highway-Oriented Commercial District			
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area	0	3	0	<20%
<b>Plan and Zoning Commission Action</b>	Approval	8-3	<b>Required 6/7 Vote of the City Council</b>	Yes
	Denial			No

Paula Avalas - 2276 Hubbell Avenue

ZON2006-00138



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## ACCEPTANCE OF CONDITIONAL REZONING

The undersigned hereby state, warrant and agree as follows:

(1) That SRS, Inc., as titleholder, and Fernando Soltero and Gliselda Soltero, as contract purchasers, are the sole owners of the Property in the vicinity of 2276 Hubbell Avenue, more specifically described as follows:

Lot 64, Hubbell Avenue Addition, an Official Plat; and, Lot 64, Allen Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

(2) That in the event the City of Des Moines, Iowa, acts to rezone the Property from the "C-1" Neighborhood Retail Commercial and "C-2" General Retail and Highway Oriented Commercial Districts to a Limited "C-2" General Retail and Highway Oriented Commercial 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. Only the following uses of structures or land shall be permitted upon the Property:
  - 1. Any use as permitted in and as limited in the "C-1" District.
  - 2. Garage for general vehicle repair, but not including body and fender work or overall painting and steam cleaning, but including upholstery, scratch and dent repair, and minor painting within a completely enclosed building.
- B. No vehicular access to the Property shall be permitted from Searle Street.
- C. All improvements made to the Property shall be in substantial compliance with a site plan approved by the City of Des Moines Permit and Development Center.
- D. Hours of operation of any commercial activity upon the Property shall be limited to 9 a.m. to 6 p.m. Monday through Friday and 9 a.m. to 4 p.m. on Saturdays.
- E. Any site plan for the Property shall be presented for review and comment by the Plan and Zoning Commission prior to final approval.
- F. Use of the Property for general vehicle repair should be limited as follows:
  - 1. Display of vehicles for sale is prohibited.
  - 2. Outdoor repair and servicing of vehicles is prohibited.
  - 3. Outdoor display of automobile accessories and storage of materials or equipment such as barrels, tires and tools is prohibited.
  - 4. All refuse and trash disposal containers shall be contained within an enclosure that complies with the Site Plan regulations.
  - 5. Parking of all vehicles associated with the business such as tow trucks shall be located outside of the required 25' front yard setback.

- 6. Landscaping and screening shall be provided in accordance with the adopted Landscape Standards for development in the "C-2" District.
- 7. Automobiles shall only be parked in marked parking spaces in accordance with an approved site plan.
- 8. Provision of a solid fence instead of an opaque fence in the required bufferyard to eliminate headlights intruding into the neighboring homes.

(3) This Acceptance of Conditional Rezoning shall be recorded by the City in the land records of the County Recorder as an attachment to the rezoning ordinance.

(4) That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited "C-2", 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.

\_\_\_\_\_  
Fernando Soltero

\_\_\_\_\_  
Gliselda Soltero  
*Contract Buyers*

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK )

BE IT REMEMBERED that on this \_\_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned a Notary Public in and for Polk County, Iowa, personally appeared Fernando Soltero and Gliselda Soltero, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

41A

**SRS, Inc.,**  
an Iowa corporation

By: \_\_\_\_\_  
Steven R. Smith, President  
*Titleholder and Contract Seller*

STATE OF IOWA    )  
                          ) ss:  
COUNTY OF POLK )

BE IT REMEMBERED, that on this \_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned, a Notary Public in and for Polk County, Iowa, personally appeared Steven R. Smith, to me personally known, who, being by me duly sworn did say that he is the President of **SRS, Inc.**; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that he acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, and by it and by him voluntarily executed.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_