



**Roll Call Number**

**Agenda Item Number**

37

**Date** December 22, 2008

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 1930 Indianola Avenue from the C-1 Neighborhood Retail Commercial District to a Limited C-2 General Retail and Highway Oriented Commercial District classification",

which was considered and voted upon for the first time under Roll Call No. 08- 2084 of November 24, 2008, and considered and voted upon for the second time under Roll Call No. 08- 2143 of December 8, 2008, again presented.

Moved by \_\_\_\_\_ that this ordinance do now pass.

ORDINANCE NO. \_\_\_\_\_

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
<b>TOTAL</b>				
<b>MOTION CARRIED</b>			<b>APPROVED</b>	
_____ 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

08-2143 08-2084  
 08-1845  
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Request from R Way's, Inc. Indy Road Auto (lessee) represented by Don Roberts (officer) to rezone property located at 1930 Indianola Avenue. The subject property is owned by Stratford Holding, LLC.			File # ZON2008-00145		
<b>Description of Action</b>	Rezone property from "C-1" Neighborhood Retail Commercial District to a Limited "C-2" General Retail and Highway-Oriented Commercial District, to allow for reuse of the property for Garage for general motor vehicle repair.				
<b>2020 Community Character Plan</b>	Commercial: Pedestrian-Oriented Commercial Corridor				
<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>	"Limited C-2" General Retail and Highway-Oriented Commercial District				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area		1	1	<20%	
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval	8-4	<b>Required 6/7 Vote of the City Council</b>	Yes	
	Denial			No	X

R Way's Inc - Indy Road Auto - 1930 Indianola Avenue

ZON2008-00145



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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 1930 Indianola Avenue from the C-1 Neighborhood Retail Commercial District 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 1930 Indianola Avenue, more fully described as follows, from the C-1 Neighborhood Retail Commercial District to a Limited C-2 General Retail and Highway Oriented Commercial District classification:

(Except Street) - Lots 8 thru 12. East of Line beginning 170.9 feet SW of SE corner Lot 8 thence Northwesterly 184.7 feet North line Lot 12 First Plat of Clifton Heights, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

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 Ordinance by all owners of said property and are binding upon the owners and their successors, heirs, and assigns as follows:

- A. Only permitted uses of the property shall be those uses as permitted in the "C-1" District and garage for general motor vehicle repair as permitted in the "C-2" District.
- B. The site, including landscaping, shall be brought into conformance with an approved Site Plan.
- C. Striping of the off-street parking in accordance with the approved Site Plan or in accordance with a newly submitted plan for review indicating the current parking pattern.

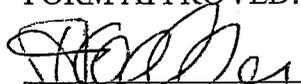
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- D. Any inoperable vehicles on the site shall be kept indoors when kept on premises for more than a 24-hour period in an inoperable condition.
- E. Hours of operation shall be limited to those allowed in the "C-1" District for any "C-1" District use and between 6:00 AM and 10:00 PM for any garage for general motor vehicle repair.
- F. No materials or equipment related shall be stored outside of a building.
- G. The trash and waste oil tank enclosure is made of significant construction (concrete block, brick) with steel gates.

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

Sec. 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:

  
\_\_\_\_\_  
Michael F. Kelley  
Assistant City Attorney

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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:	Stratford Holding, LLC
Grantee's Name:	City of Des Moines, Iowa
Legal Description:	

(Except Street) - Lots 8 thru 12. East of Line beginning 170.9 feet SW of SE corner Lot 8 thence Northwesterly 184.7 feet North line Lot 12 First Plat of Clifton Heights, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

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### ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That Stratford Holding, LLC, as titleholder, is the sole owner of the Property in the vicinity of 1930 Indianola Avenue, Des Moines, IA 50315, more specifically described above.
  
2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the "C-1" to a Limited "C-2" 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 permitted uses of the property shall be those uses as permitted in the "C-1" District and garage for general motor vehicle repair as permitted in the "C-2" District.
  
  - B. The site, including landscaping, shall be brought into conformance with an approved Site Plan.
  
  - C. Striping of the off-street parking in accordance with the approved Site Plan or in accordance with a newly submitted plan for review indicating the current parking pattern.
  
  - D. Any inoperable vehicles on the site shall be kept indoors when kept on premises for more than a 24-hour period in an inoperable condition.

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E. Hours of operation shall be limited to those allowed in the "C-1" District for any "C-1" District use and between 6:00 AM and 10:00 PM for any garage for general motor vehicle repair.

F. No materials or equipment related shall be stored outside of a building.

G. The trash and waste oil tank enclosure is made of significant construction (concrete block, brick) with steel gates.

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 a limited "C-2" classification, 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.

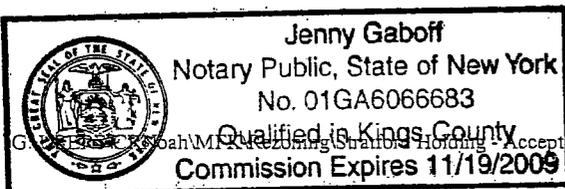
The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

STRATFORD HOLDING, LLC  
a New York Limited Liability Company

By: Mark Langfan  
Mark Langfan, Manager

STATE OF NEW YORK )  
) SS.  
COUNTY OF new york

On this 12<sup>th</sup> day of November, 2008, before me, the undersigned, a Notary Public in the State of New York, personally appeared Mark Langfan, to me personally known, and who, being by me duly sworn did state that he is the person executing the within and foregoing instrument; that the instrument was signed on his behalf, and on behalf of and as authorized by Stratford Holding, LLC; and that Mark Langfan, acknowledged the execution of the instrument to be his voluntary act and deed.



Jenny Gaboff  
Notary Public in the State of new york