

★ **Roll Call Number**

Agenda Item Number

*66A*

Date..... December 18, 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 2426 SE 14th Street from a Limited "C-1" Neighborhood Retail Commercial District 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

G:\SHARED\LEGAL\BROWN\WORK\REZONING\Kontz.doc

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

66A

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 2426 SE 14th Street from a Limited "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 2426 SE 14th Street, more fully described as follows, from a Limited "C-1" Neighborhood Retail Commercial District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification:

The West 57.00 feet of the East 73.00 feet of the South 1/2 of Lot 21, Tallmadge's Subdivision, 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 Ordinance by all owners of said property and are binding upon the owners and their successors, heirs, and assigns as follows:

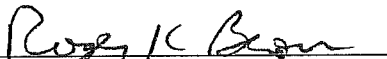
- A. A 10 foot wide buffer yard shall be installed along the west boundary of the Property in accordance with the Des Moines Landscape Standards prior to any commercial use of the Property, or as soon thereafter as weather permits, and shall thereafter be maintained for as long as the Property continues to be used for any commercial use and the adjoining property to the west continues to be vacant or used for residential use. The required 10 foot buffer yard may be located upon the adjoining land by easement or agreement with the owner of that land, provided however that if for any reason the required buffer yard ceases to be provided on the adjoining land, the required buffer yard shall be replaced on the Property within 30 days, or as soon thereafter as weather permits.

- B. Provision of a vehicular access easement through the Property serving any permitted commercial use of the adjoining property to the west.
  
- C. The following uses of land and structures shall be prohibited on the Property:
  - 1. All residential use, excepting use as a single-family residential dwelling which shall be permitted.
  - 2. Packaged goods liquor stores
  - 3. Pawn shops
  - 4. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity
  - 5. Adult entertainment business
  - 6. Billiard parlors, pool halls, and game rooms
  - 7. Taverns and nightclubs
  - 8. Freestanding garages for general motor vehicle repair and automobile washing establishments when not accessory to a permitted vehicle display use.

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 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

G:\SHARED\LEGAL\BROWN\WORK\REZONING\Kotz.doc

**COPY**

**CO**

---

Prepared by: Roger K. Brown, Assistant City Attorney, 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  
Taxpayer: Acceptance of Rezoning Ordinance  
Title of Document: Rezoning Ordinance  
Grantor's Name: Margaret Ann Kotz and Burlington Auto Finance, L.C.  
Grantee's Name: City of Des Moines, Iowa  
Legal Description:

The West 57.00 feet of the East 73.00 feet of the South 1/2 of Lot 21, Tallmadge's Subdivision, 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").

---

## **ACCEPTANCE OF REZONING ORDINANCE**

The undersigned hereby state, warrant and agree as follows:

(1) That Margaret Ann Kotz, as titleholder, and Burlington Auto Finance, L.C., as contract purchaser, are the sole owners of the Property in the vicinity of 2426 SE 14th Street, more specifically described above.

(2) That in the event the City of Des Moines, Iowa, acts to rezone the Property from a Limited "C-1" Neighborhood Retail Commercial District 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. A 10 foot wide buffer yard shall be installed along the west boundary of the Property in accordance with the Des Moines Landscape Standards prior to any commercial use of the Property, or as soon thereafter as weather permits, and shall thereafter be maintained for as long as the Property continues to be used for any commercial use and the adjoining property to the west continues to be vacant or used for residential use. The required 10 foot buffer yard may be located upon the adjoining land by easement or agreement with the owner of that land, provided however that if for any reason the required buffer yard ceases to be provided on the adjoining land, the required buffer yard shall be replaced on the Property within 30 days, or as soon thereafter as weather permits..

- B. Provision of a vehicular access easement through the Property serving any permitted commercial use of the adjoining property to the west. The location of the easement to be determined in the site plan approval process.
- C. The following uses of land and structures shall be prohibited on the Property:
  - a. All residential use, excepting use as a single-family residential dwelling which shall be permitted.
  - b. Packaged goods liquor stores
  - c. Pawn shops
  - d. Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity
  - e. Adult entertainment business
  - f. Billiard parlors, pool halls, and game rooms
  - g. Taverns and nightclubs
  - h. Freestanding garages for general motor vehicle repair and automobile washing establishments when not accessory to a permitted vehicle display use.

(3) A copy of the rezoning ordinance shall be attached hereto as Exhibit "A", and a certified copy of this document and Exhibit "A" 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 "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.

**COPY**

*Margaret Ann Kotz*  
Margaret Ann Kotz  
Titleholder

STATE OF IOWA     ) ss:  
COUNTY OF POLK    )

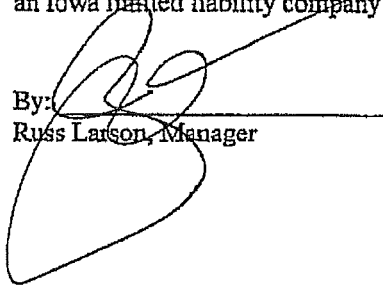
BE IT REMEMBERED that on this 11 day of December, 2006, before me, the undersigned a Notary Public in and for Polk County, Iowa, personally appeared **Margaret Ann Kotz**, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her voluntary act and deed.

**RUSSELL D. LUNDY**  
Commission Number 225812  
My Commission Expires  
December 3, 2008

*Russell D. Lundy*  
Notary Public  
My commission expires: 12-03-08


Acceptance of Rezoning Ordinance  
page 3

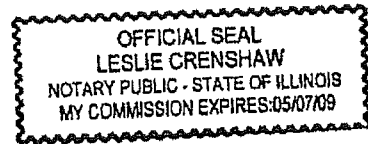
**Burlington Auto Finance, L.C.,  
an Iowa limited liability company**

By:   
Russ Larson, Manager

STATE OF IOWA     )  
                          ) ss:  
COUNTY OF POLK    )

BE IT REMEMBERED, that on this 12 day of December, 2006, before me, the undersigned, a Notary Public in and for Polk County, Iowa, personally appeared Russ Larson, to me personally known, who being by me duly sworn did say that he is a Manager of Burlington Auto Finance, L.C., an Iowa limited liability company, and that the foregoing instrument was signed on behalf of said company by authority of its managers, and he acknowledged the execution of the said instrument to be the voluntary act and deed of said company, by it voluntarily executed.

  
Notary Public in the State of Iowa  
My commission expires: 05-07-09



Request from Burlington Auto Finance (purchaser), represented by Russ Larsen (officer) to rezone property located at 2426 SE 14 <sup>th</sup> Street. The subject property is owned by Margaret A. Kotz.			File # <b>ZON2006-00177</b>	
<b>Description of Action</b>	Rezone property from Limited "C-1" Neighborhood Retail Commercial District to Limited "C-2" General Retail and Highway-Oriented Commercial District.			
<b>2020 Community Character Plan</b>	Commercial: Auto-Oriented Small Scale Strip Development.			
<b>Horizon 2025 Transportation Plan</b>	Widen SE 14 <sup>th</sup> Street from 4-lane divided to 6-lane divided from SE 15 <sup>th</sup> Street extension to E Park Avenue.			
<b>Current Zoning District</b>	Limited "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				
Outside Area	6	0	0	0
<b>Plan and Zoning Commission Action</b>	<b>Approval</b>	10-0	<b>Required 6/7 Vote of the City Council</b>	Yes
	<b>Denial</b>			No

Burlington Auto Finance - 2426 SE 14th Street

ZON2006-00177

