

★ **Roll Call Number**

Agenda Item Number

48C ✓

Date..... December 21, 2009


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 the 4000 block of Dubuque Avenue from the R1-60 One-Family Low-Density Residential District and R-2 Two-Family Residential District to Limited R-3 Multiple-Family Residential classification,"

presented.

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

FORM APPROVED:

(First of three required readings)

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

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
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

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 the 4000 block of Dubuque Avenue from the R1-60 One-Family Low-Density Residential District and R-2 Two-Family Residential District to Limited R-3 Multiple-Family Residential 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, by rezoning and changing the district classification of certain property located in the vicinity of the 4000 block of Dubuque Avenue from the R1-60 One-Family Low-Density Residential District and R-2 Two-Family Residential District to Limited R-3 Multiple-Family Residential classification:

Outlots X & Y, Eastern Mounds Plat 1, an Official Plat, and Parcel A Book 12014 Page 130 East ½ Lot 63, Broadacre, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk and Warren 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:

- (1) Any use of the property shall be restricted to elderly living or persons with disability living arrangements.
- (2) Development of the site shall not exceed 25 bi-attached residential buildings (50 total units).
- (3) Development of the site shall include structures along the north side of Dubuque Avenue being oriented toward Dubuque Avenue rather than backing to Dubuque Avenue.

- (4) The developer shall be required to improve Dubuque Avenue to urban standards including sidewalks on both sides of the street.
- (5) Any development of the site is subject to provision of storm water management in accordance with State Wide Urban Design and Specifications (SUDAS) standards for a two-year frequency storm event developed release rate.
- (6) Design and materials for any structure built on the subject property shall be demonstrate compatibility with the adjoining residential properties as part of review of a Site Plan Under the Design Guidelines for Multiple-Family Residential uses by the Plan and Zoning Commission.
- (7) Any trash enclosures shall be constructed with masonry materials and steel gates to match the multiple-family residential structures.
- (8) Any chain link fencing on the site shall be clad with black vinyl.
- (9) Any structure constructed on the site shall have architectural shingles.
- (10) Any bi-attached dwelling unit shall have at least 1,040 square feet of floor space excluding basements and at least a one-car attached garage.
- (11) The exterior of each bi-attached dwelling unit must be constructed of masonry (brick or stone) and/or vinyl, cedar, or Hardi-Plank siding. If vinyl siding is selected, it must be greater than 42 mills thick.
- (12) The front elevation of each bi-attached dwelling unit must contain either 1/3 to 1/2 stone or brick masonry or a front porch of not less than 60 square feet.
- (13) The front elevation of each bi-attached dwelling unit constructed must include either shutters on each side of each window or window trim not less than 4 inches in width.
- (14) Any tree removals on the site will be subject to the provisions of the tree mitigation ordinance that was adopted by the City Council on September 28, 2009.
- (15) The property owner will agree not to object to a future special assessment for paving/widening of E. 41<sup>st</sup> Street.

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: 1<sup>st</sup> Choice Realty Group, LLC  
Grantee's Name: City of Des Moines, Iowa  
Legal Description:

Outlots X & Y, Eastern Mounds Plat 1, an Official Plat, and Parcel A Book 12014 Page 130 East ½ Lot 63, Broadacre, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk and Warren County, Iowa

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## ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That 1<sup>st</sup> Choice Realty Group, LLC, as titleholder, is the owner of the Property in the vicinity of 4015 and 4040 Dubuque Avenue, more specifically described above.

2. That in the event the City of Des Moines, Iowa acts to rezone the Property from the R1-60 One-Family Low-Density Residential District and R-2 Two-Family Residential District to Limited R-3 Multiple-Family Residential classification, I agree and accept on behalf of the owner 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:

- (1) Any use of the property shall be restricted to elderly living or persons with disability living arrangements.
- (2) Development of the site shall not exceed 25 bi-attached residential buildings (50 total units).
- (3) Development of the site shall include structures along the north side of Dubuque Avenue being oriented toward Dubuque Avenue rather than backing to Dubuque Avenue.

- (4) The developer shall be required to improve Dubuque Avenue to urban standards including sidewalks on both sides of the street.
- (5) Any development of the site is subject to provision of storm water management in accordance with State Wide Urban Design and Specifications (SUDAS) standards for a two-year frequency storm event developed release rate.
- (6) Design and materials for any structure built on the subject property shall demonstrate compatibility with the adjoining residential properties as part of review of a Site Plan Under the Design Guidelines for Multiple-Family Residential uses by the Plan and Zoning Commission.
- (7) Any trash enclosures shall be constructed with masonry materials and steel gates to match the multiple-family residential structures.
- (8) Any chain link fencing on the site shall be clad with black vinyl.
- (9) Any structure constructed on the site shall have architectural shingles.
- (10) Any bi-attached dwelling unit shall have at least 1,040 square feet of floor space excluding basements and at least a one-car attached garage.
- (11) The exterior of each bi-attached dwelling unit must be constructed of masonry (brick or stone) and/or vinyl, cedar, or Hardi-Plank siding. If vinyl siding is selected, it must be greater than 42 mills thick.
- (12) The front elevation of each bi-attached dwelling unit must contain either 1/3 to 1/2 stone or brick masonry or a front porch of not less than 60 square feet.
- (13) The front elevation of each bi-attached dwelling unit constructed must include either shutters on each side of each window or window trim not less than 4 inches in width.
- (14) Any tree removals on the site will be subject to the provisions of the tree mitigation ordinance that was adopted by the City Council on September 28, 2009.
- (15) The property owner will agree not to object to a future special assessment for paving/widening of E. 41<sup>st</sup> Street.

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.

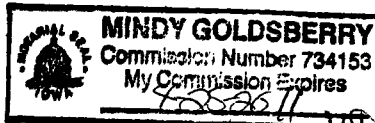
4. That in the event any portion of the Property is hereafter rezoned to a district classification different from R-3, then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered 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.

**1<sup>st</sup> Choice Realty Group, LLC**

By Victoria Swanson  
Victoria Swanson  
Titleholder

State of Iowa )  
County of Polk ) ss:



This instrument was acknowledged before me on 14<sup>th</sup> Dec, 2009, by **Victoria Swanson who is the Managing Member of 1<sup>st</sup> Choice Realty Group, LLC**, who is personally known to me and has been authorized by its board or other governing body to execute this document on behalf of 1<sup>st</sup> Choice Realty Group, LLC.

Mindy Goldsberry  
Notary Public in the State of Iowa  
My commission expires: 4/28/2011