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**CITY OF KELOWNA**  
**MEMORANDUM**

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**Date:** December 17, 2003  
**File No.:** HAP03-0011

**To:** City Manager

**From:** Planning and Corporate Services Department

**Subject:**

APPLICATION NO. HAP03-0011  
AT: 124 Lake Avenue

OWNER: Jan Dommasch  
APPLICANT: Peter J. Chataway

PURPOSE: TO CONSTRUCT A NEW SINGLE FAMILY DWELLING ON THE  
SUBJECT PROPERTY

TO VARY THE STREAM PROTECTION LEAVE STRIP  
SETBACK FROM 15M REQUIRED TO 10.0M PROPOSED  
(PROPOSED SINGLE FAMILY DWELLING)

TO VARY THE SREAM PROTECTION LEAVE STRIP SETBACK  
FROM 15M REQUIRED TO 5.9M FOR THE EXISTING  
DWELLING ON THE SUBJECT PROPERTY

EXISTING ZONE: RU1 – LARGE LOT HOUSING

PROPOSED ZONE: RU1s ZONE – LARGE LOT HOUSING WITH SECONDARY  
SUITE

REPORT PREPARED BY: RYAN SMITH

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**SEE ATTACHED FACT SHEET FOR COMPLETE APPLICATION DETAILS**

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**1.0 RECOMMENDATION**

THAT Final Adoption of Zone Amending Bylaw No. 9103 be considered by Council;

AND THAT Council not authorize the issuance of Heritage Alteration Permit No. HAP03-0011; for Lot 13, Section 24, Township 25, ODYD Plan 6424, located on Lake Avenue, Kelowna, B.C.,

AND THAT variances to the following sections of Zoning Bylaw No. 8000 not be granted:

Section 6.14: Stream Protection Leave Strips: Subsection: 6.14.1:

- Vary the Mill Creek leave strip from 15.0m required to 10.0m proposed for the construction of a new single family dwelling;
- Vary the Mill Creek Leave strip from 15.0m required to 5.9m for the existing single family dwelling (will become a secondary suite);

## 2.0 SUMMARY

The applicants are seeking a heritage alteration permit for the form and character of a proposed single family dwelling in the Abbott Street Heritage Conservation Area. The applicant is also seeking variances to the required 15m leave strip setback from Mill Creek.

In conjunction with this application the applicants are seeking to rezone the subject property from the RU1 – Large Lot Housing to the RU1s – Large Lot Housing with Secondary Suite to permit a secondary suite in an existing building on the subject property.

## 3.0 COMMUNITY HERITAGE COMMISSION

At the September 9, 2003 meeting it was resolved:

*THAT the Community Heritage Commission support Heritage Alteration Permit Application HAP03-0011 and Z03-0048 - 124 Lake Avenue, subject to the front shed dormer being replaced with a gable dormer.*

## 4.0 BACKGROUND

### 4.1 The Proposal

The applicants are seeking to rezone the subject property from the RU1 – Large Lot Housing to the RU1s – Large Lot Housing with Secondary Suite to allow a secondary suite in an existing building on the subject property. The small single family dwelling which currently exists on the subject property will become a secondary suite as the property owner is seeking to build a new larger single family dwelling on the lot. As the rear of the subject property abuts Mill Creek the available building envelope is relatively small and therefore the applicant is seeking to vary the required 15m setback from the creek.

The subject property is located in the Abbott Street Heritage Conservation Area on the north side of Lake Avenue, east of McDougall Street. The existing house is a one-storey structure that is located on the westernmost side of the lot. The applicant is proposing to construct a new single family dwelling on the eastern side of the lot, separated from the existing dwelling by three parking stalls.

The applicant is also proposing to add a carport to the existing dwelling in order to conform to the bylaw. The applicant has also indicated that the existing shed which is located on the northwest corner of the property will be removed from the Riparian Management Area.

The new dwelling that is proposed for the site is 1.5 storeys in height and will measure 163.6m<sup>2</sup>. The building will be finished in a heritage style that complements the guidelines of the Heritage Conservation Area. The applicant is proposing a thirty year asphalt heritage style shingle in a light brown colour a roofing material and dark olive green

stucco for the walls of the proposed house. The trim will be painted in a caramel light brown.

The application meets the requirements of the proposed RU1s – Large Lot Housing with Secondary Suite zone as follows:

CRITERIA	PROPOSAL	RU1s ZONE REQUIREMENTS
Lot Area (m <sup>2</sup> )	825.0m <sup>2</sup>	550.0m <sup>2</sup>
Lot Width (m)	37.86m	17.0m
Lot Depth (m)	23.77m	30.0m
Site Coverage (%)	24%	40% (building)
Total Floor Area (m <sup>2</sup> ) -House -Secondary suite	163.6m <sup>2</sup> Approx. 89.7m <sup>2</sup>	N/A 90m <sup>2</sup> or 75% of the total floor area of the building, whichever is less
Storeys (Accessory)(existing)	1 storey	4.5m
Setbacks-Suite (m)		
-Front	3.14m (existing)	4.5m
-Rear	5.9m (existing)	(15m from Mill Creek)
-West Side	2.0m	2.0m
Setbacks-House (m)		
-Front	4.5m	4.5m
-Rear (New dwelling)	10.0m ❶	15.0m
-Rear (Existing dwelling)	5.9m ❷	
-East Side	2.0m	2.0m
Proximity of Accessory Building to Principal Building	5.9m	5.0m
Parking Spaces	3	3

- ❶ Note: The applicant is seeking to vary the setback from Mill Creek from 15m required to 10.0m proposed.
- ❷ Note: The applicant is seeking to vary the setback from Mill Creek from 15m required to 5.9m existing.

#### 4.2 Site Context

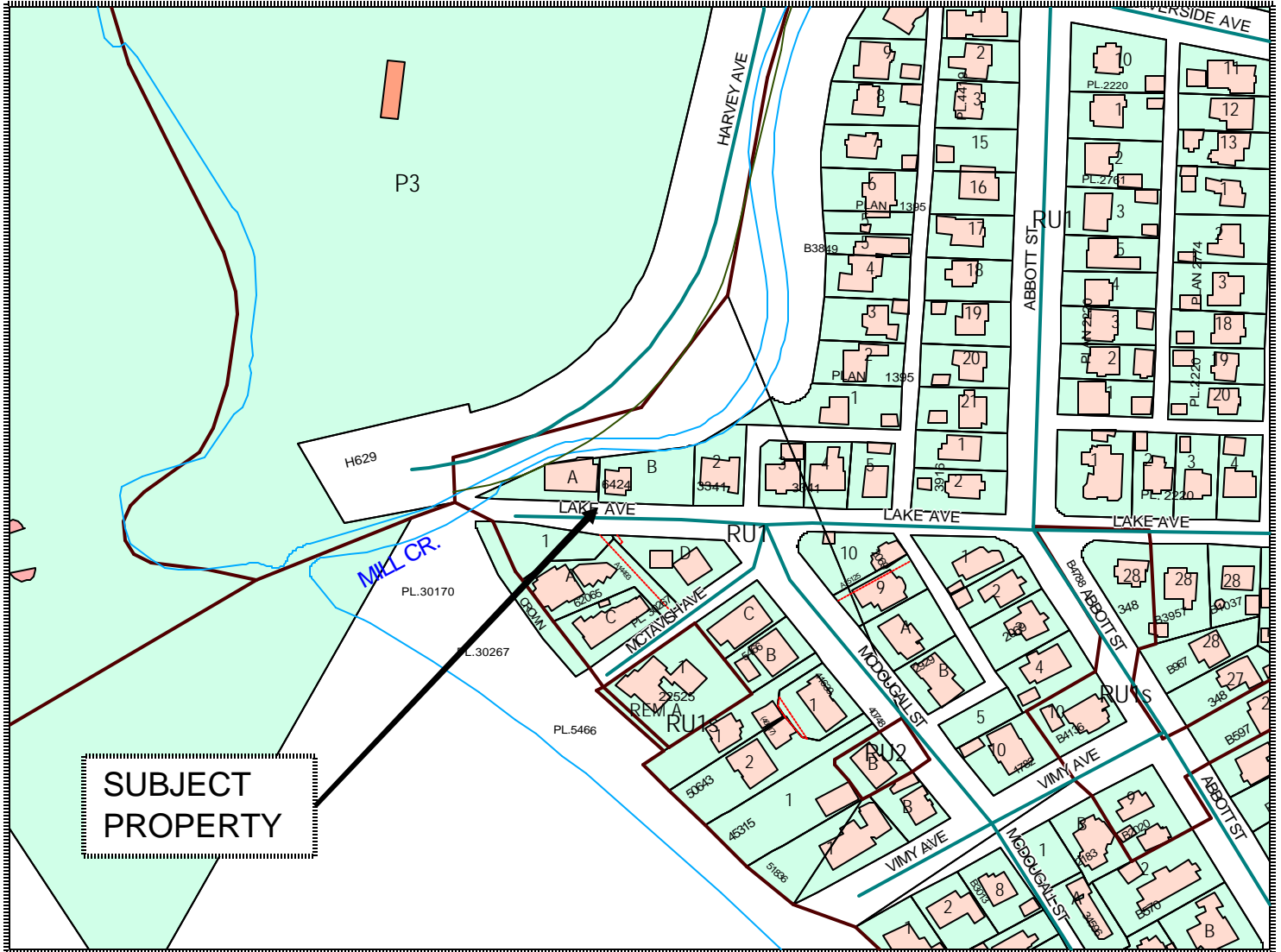
The subject property is located in the Abbott Street Heritage Conservation Area on the northern side of Lake Avenue, to the east of its intersection with McDougall Street. The neighbourhood is zoned predominantly for single family housing. Several lots in the area have been re-zoned from RU1- Large lot housing to RU1s - Large lot housing with secondary suite. These include the two lots on the corners of Abbott St. and Vimy Ave, a lot on McTavish Avenue and another lot at the corner of Lake Avenue and Abbott Street.

Adjacent zones and uses are:

- North - Mill Creek
- East - RU1 - Large lot housing – single family dwelling
- South - RU1 - Large lot housing – single family dwelling
- West - RU1 - Large lot housing – single family dwelling

Site Location Map

Subject Property: 124 Lake Avenue



4.3 Existing Development Potential

The property is zoned RU1 – Large Lot Housing. The purpose of this zone is to provide for single detached housing as a principal use, and compatible secondary uses, such as bed and breakfast homes, minor care centres and group homes, as well as home based businesses.

Secondary suites are allowed on lots with RU1s – Large Lot Housing with Secondary Suite zoning.

#### 4.4 Current Development Policy

##### 3.4.1 Kelowna Official Community Plan

###### a) **Future Land Use and Heritage**

The proposal is consistent with the designation of Single/Two Family Residential in the Official Community Plan future land use designation. The Single/Two Family Residential designation covers single detached homes for occupancy by one family, single detached homes with a secondary suite, semi-detached buildings used for two dwelling units, and complementary uses (OCP, Chapter 15).

The OCP designates the area in which the subject property is located as the Abbott Street Heritage Conservation Area. The purpose of the Heritage Conservation Area designation is to provide objectives and guidelines for the conservation of the areas' heritage resources and distinct character. One of the objectives of Conservation Areas is to encourage additions that are compatible with the form and character of the existing neighbourhood context.

###### b) **Riparian Management Areas**

###### i) **Stream Management**

Prohibit obstructions and impediments to the flow of a stream, creek, watercourse, ditch, drain, or sewer whether or not it is located on private property.

Require that the natural stream channel geometry be retained insofar as is feasible.

Protect and manage natural watercourses as open streams (except as authorized by way of Ministry of Water, Land and Air Protection approval).

###### ii) **Riparian Management Area Requirements**

Retain, in a largely undisturbed state throughout and after the development process (unless there exists a hazardous condition which can only be addressed by disturbing the site), an area of land immediately adjacent to the streams. The area to remain free of development is referred to as the "*riparian management area*." Permanently protected riparian management areas shall be provided as listed in **Table 7-1**. Relaxations will be considered only under the following circumstances:

- As a general rule, *Riparian Management Areas* should be of sufficient width to include any significant natural attribute and adjacent terrestrial ecosystem (i.e., vegetation, water features, fish and wildlife habitat, escarpments, terraces, steep valley sides and cliffs).

- Where the *Riparian Management Area* occupies more than 30 % of an existing lot, the *Riparian Management Area* may be relaxed to occupy the equivalent of 30 % of the lot.
- Within the *Riparian Management Area*, where relaxation is considered, environmental mitigation and restoration will be a requirement of the development process.
- Relaxation of the Riparian Management Area may require habitat mitigation measures acceptable to the Ministry of Water, Land and Air Protection (e.g., planting, diversion of storm water, fencing, or restoration works), or compensation authorized by DFO.
- Any proposed relaxation of *Riparian Management Area* widths, storm water mitigation requirements, or erosion & sediment control requirements are to be referred to the Ministry of Water, Land and Air Protection for authorization prior to review by the City.
- The City may consider zoning bylaw variances, where necessary, in order to prevent, or minimize encroachment into the *Riparian Management Area*. The changes that may be considered include, but are not limited to:
  - a) Reducing front and/or rear yard setbacks
  - b) Increasing the maximum site coverage of buildings (provided density is not increased)
  - c) Increasing maximum building height (provided density is not increased)
  - d) Reducing parking space requirements.

#### 3.4.2 City of Kelowna Strategic Plan (1992)

One of the objectives of the Strategic Plan is “to develop a more compact urban form by increasing densities through infill and re-development within existing urban areas and to provide for higher densities within future urban areas” (Objective 1.1). The proposal is consistent with these objectives and with their accompanying strategies.

### 5.0 TECHNICAL COMMENTS

The application has been submitted to various technical agencies and City departments, and the following relevant comments have been submitted:

#### 5.1 Inspection Services Department

No concerns.

## 5.2 Environment Manager

The existing house and shed are existing non-conforming with regard to the required creek setbacks. An increase in density or land use may only serve to increase the existing non-conformity--the result of adding a second residence (second building footprint) AND providing for the required parking.

We could support a new single family home to replace the existing home, or support an addition to the existing single-family home, provided all opportunities to minimise encroachment to the creek setback are explored; recognising that the required 15-m setback is not achievable. Regardless of the proposal, an application to reduce the Provincial floodplain protection provisions will be required.

## 5.3 Works and Utilities Department

### a) General

The proposed rezoning application does not compromise Works and Utilities requirements.

### b) Domestic water and fire protection

The existing lot is serviced with a small diameter (13-mm) copper water service, which is substandard. Adequate metered water service must be provided to meet current by-law requirements.

Water service issues will be reviewed when a Building Permit application including a mechanical plan is submitted. The installation of the new service will be by City forces. The applicant will be responsible for the cost of the new service.

### c) Sanitary Sewer

This property is currently serviced by the municipal sanitary sewer system. The existing 100mm-diameter service will be adequate for the proposed additional suite and may be retained. An inspection chamber (IC) must be installed on the service at the owner's cost as required by the sewer-use bylaw.

### d) Electric Power and Telecommunication Services

The electric service to the existing house must be converted to underground services in the street.

### e) Site Related Issues

A 'no-build' creek setback must be registered against the subject property as a Section 219 Restrictive Covenant. The building permit must stipulate the 'no-build' setbacks for any building structure.

The environmental ramifications of landscaping, retaining walls, protection of existing mature trees, non-conforming and proposed building setbacks, additional dedication along the Mill Creek frontage, must be considered.

Development Engineering will defer comment on those issues to the City Environment Manager and the Provincial Government

5.4 Ministry of Water, Land and Air Protection

**The Ecosystem Section of MWLAP provides the following comments:**

We have reviewed the information package dated November 13, 2003. We support the proposal provided the following conditions are adhered with:

- a) The riparian vegetation, important for fish habitat, is planted according to the Landscape Plan dated October 28, 2003, by Don Burnett.
- b) A covenant be registered to ensure riparian vegetation remains for the purpose of fish habitat, as designed, in perpetuity.

**The Floodplain Management Section of MWLAP provides the following comments:**

The proponent enter into a Section 219 covenant saving harmless the City and the Province from any flood damage if any buildings are to be built within 15m of Mill Creek. Minimum conditions to be included in the covenant are detailed in the letter from the ministry dated October 24, 2003.

6.0 PLANNING AND CORPORATE SERVICES DEPARTMENT

The Planning and Corporate Services Department has concerns with the proposed heritage alteration permit. Staff is concerned that the applicant is proposing “too much on too little”. The department feels that there are other options available to the applicant that would both reduce the impact on the site, and complement the intent of Riparian Management Area policy and Heritage Conservation area guidelines. Staff would rather see the existing house removed in favour of a new structure that respected at least a 10m setback and would be willing to compromise on reduced front yard setbacks to achieve this goal. Staff would also support the location of a secondary suite in the main house and the removal of the existing dwelling as long as the proposed building did not encroach into a minimum 10m rear yard setback. While not opposed to the rezoning to accommodate a secondary suite, staff do not feel it is appropriate to increase the potential density for this property without addressing the Riparian Management Area for Mill Creek.

The applicant has submitted letters of support from the following neighbours: 124 McTavish Avenue, 1904 McDougall street, 1915 McDougall Street, 1925 McDougall Street, 1930 McDougall Street, 1900 Abbot Street, 1907 Abbott Street, 166 Lake Avenue, 1912 Abbott Street, 156 Lake Avenue, 1894 Abbot Street, 1902 Abbott Street, 125 Lake Avenue, 151 Lake Avenue, 148 Lake Avenue, 114 Lake Avenue, 134 Lake Avenue. The Kelowna South-Central Association of Neighbourhoods has also indicated their support for this proposal by way of written submission.



## 7.0 ALTERNATE RECOMMENDATION

THAT Final Adoption of Zone Amending Bylaw No. 9103 be considered by Council;

AND THAT Council authorize the issuance of Heritage Alteration Permit No. HAP03-0011; for Lot 13, Section 24, Township 25, ODYD Plan 6424, located on Lake Avenue, Kelowna, B.C.; subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted:

Section 6.14: Stream Protection Leave Strips: Subsection: 6.14.1:

- Vary the Mill Creek leave strip from 15.0m required to 10.0m proposed for the construction of a new single family dwelling;
- Vary the Mill Creek Leave strip from 15.0m required to 5.9m for the existing single family dwelling (will become a secondary suite);

AND THAT the applicant be required to enter into a Section 219 covenant to ensure riparian vegetation remains for the purpose of fish habitat, as designed, in perpetuity;

AND FURTHER THAT the applicant be required enter into a Section 219 covenant saving harmless the City of Kelowna and the Province from any flood damage for any buildings within 15 metres of Mill Creek.

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Andrew Bruce  
Development Services Manager

Approved for inclusion

R.L. (Ron) Mattiussi, ACP, MCIP  
Director of Planning & Corporate Services

RM/AB/rs  
Attach.



**FACT SHEET**

1. **APPLICATION NO.:** HAP03-0011 (Also see Z03-0048)
2. **APPLICATION TYPE:** Heritage Alteration Permit
3. **OWNER:** Jan Dommasch  
· **ADDRESS** 124 Lake Avenue  
· **CITY** Kelowna, BC  
· **POSTAL CODE** V1Y 2W5
4. **APPLICANT/CONTACT PERSON:** Peter J. Chataway  
· **ADDRESS** 368 Cadger Avenue  
· **CITY** Kelowna, BC  
· **POSTAL CODE** V1Y 5N1  
· **TELEPHONE/FAX NO.:** 763-1335/763-5367
5. **APPLICATION PROGRESS:**  
    **Date of Application:** August 28, 2003  
    **Date Application Complete:** August 28, 2003  
    **Servicing Agreement Forwarded to Applicant:** N/A  
    **Servicing Agreement Concluded:** N/A  
    **Staff Report to Council:** September 30, 2003
6. **LEGAL DESCRIPTION:** Lot 13, Section 24, Township 25, ODYD Plan 6424
7. **SITE LOCATION:** The subject property is located in the Abbott Street Heritage Conservation Area on the northern side of Lake Avenue, to the east of its intersection with McDougall Street.
8. **CIVIC ADDRESS:** 124 Lake Avenue
9. **AREA OF SUBJECT PROPERTY:** 825m<sup>2</sup>
10. **AREA OF PROPOSED REZONING:** 825m<sup>2</sup>
11. **EXISTING ZONE CATEGORY:** RU1 – Large Lot Housing
12. **PROPOSED ZONE:** RU1s – Large Lot Housing with Secondary Suite

**13. PURPOSE OF THE APPLICATION:**

TO CONSTRUCT A NEW SINGLE FAMILY DWELLING ON THE SUBJECT PROPERTY

TO VARY THE STREAM PROTECTION LEAVE STRIP SETBACK FROM 15M REQUIRED TO 10.0M PROPOSED (PROPOSED SINGLE FAMILY DWELLING)

TO VARY THE SREAM PROTECTION LEAVE STRIP SETBACK FROM 15M REQUIRED TO 5.9M FOR THE EXISTING DWELLING ON THE SUBJECT PROPERTY

**14. MIN. OF TRANS./HIGHWAYS FILES NO.:  
NOTE: IF LANDS ARE WITHIN 800 m OF A  
CONTROLLED ACCESS HIGHWAY**

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**15. DEVELOPMENT PERMIT MAP 13.2  
IMPLICATIONS**

N/A

**ATTACHMENTS**

**(not attached to the electronic version of the report)**

- Location of subject property
- Site plan and main floor plan
- Plan of upper floor with suite
- Elevations
- Cross-section
- Photos of existing house