

City of Surrey  
**PLANNING & DEVELOPMENT REPORT**

File: 7909-0249-00

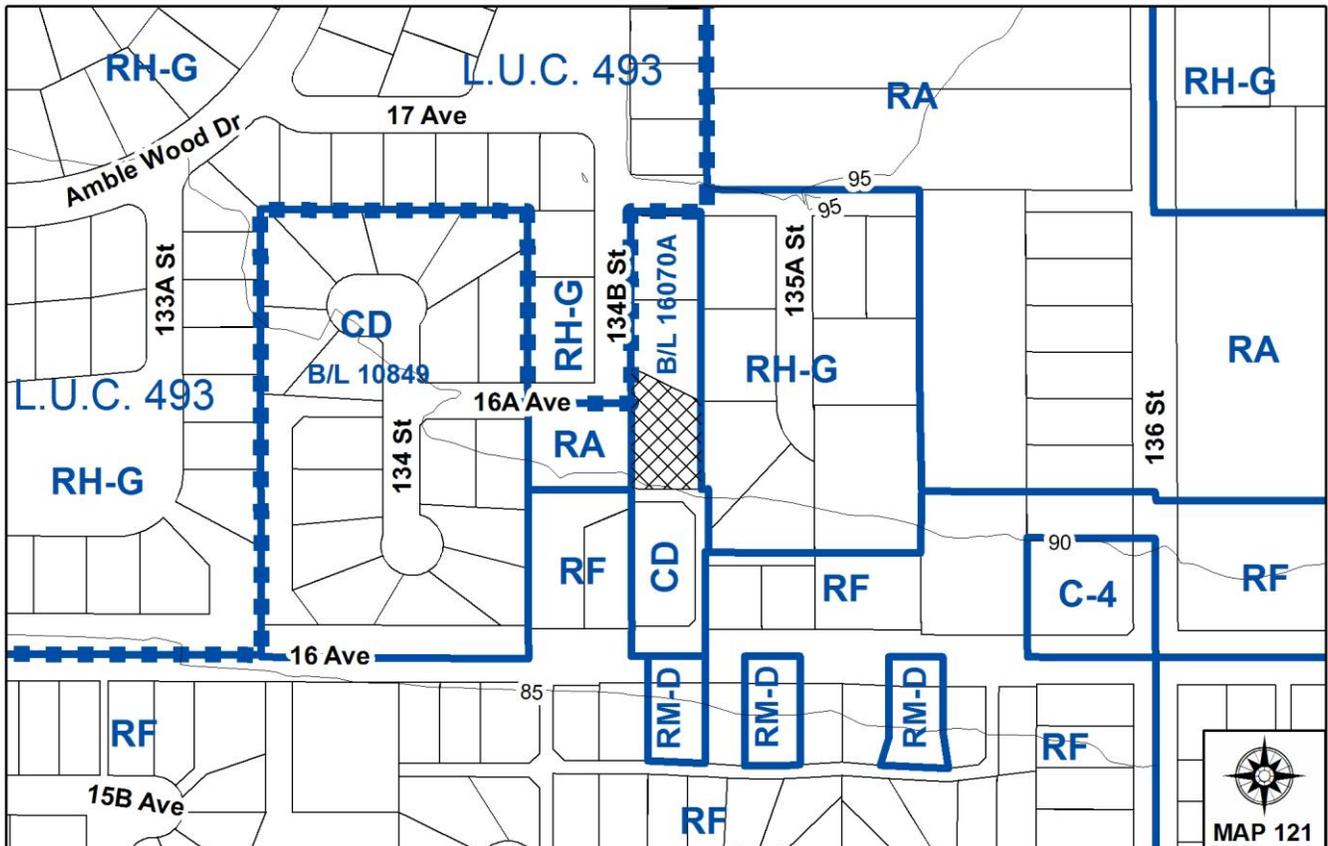
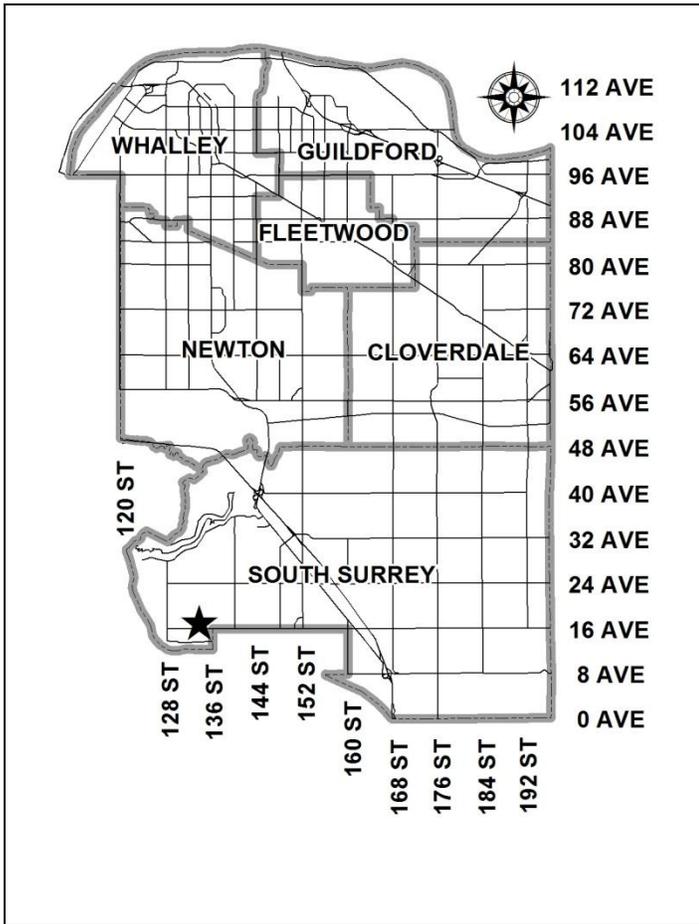
Planning Report Date: January 25, 2010

**PROPOSAL:**

- Restrictive Covenant Amendment
- Restrictive Covenant Discharge

in order to reduce the rear setback covenant area from 5.0 metres (16 ft.) to 3.2 metres (10.5 ft.) and allow driveway access to 134B Street for a new single family dwelling.

**LOCATION:** 1648 - 134B Street  
**OWNER:** Deep Blue Investment Corporation, Inc. No. 751211  
**ZONING:** CD (By-law No. 16070A)  
**OCP DESIGNATION:** Suburban  
**LAP DESIGNATION:** Suburban Residential (1/2 Acre)



### RECOMMENDATION SUMMARY

- Council approve an amendment to Restrictive Covenant No. BB538955 to reduce the rear yard setback covenant area from 5.0 metres (16 ft.) to 3.2 metres (10.5 ft.).
- Council deny the proposed discharge of Restrictive Covenant No. BB538952 requiring that driveway access to the lot be from the rear lane only (i.e. not from 134B Street).

### DEVIATION FROM PLANS, POLICIES OR REGULATIONS

- None.

### RATIONALE OF RECOMMENDATION

#### Proposed Amendment to Restrictive Covenant No. BB538955 (Tree Preservation and Rear Setback)

- The lot orientation and house design require that the rear yard be located along the south property line, thus negating the need for the full 5-metre (16 ft.) setback established in the Restrictive Covenant along the east property line.
- The proposed amendment fully satisfies the intent of the Restrictive Covenant which is to preserve trees on the lot.
- The applicant has discussed the proposal with the adjacent property owner to the east and to other surrounding property owners and has received no objections.

#### Proposed Discharge of Restrictive Covenant No. BB538952 (Driveway Access via Lane)

- Restrictive Covenant No. BB538952 prohibits construction of a vehicular access from the subject lot to 134B Street and requires that any new dwelling achieve vehicular access from the rear lane. This restriction was established during the rezoning process for this site in order to reduce the number of vehicles on 134B Street and to respond to community concerns regarding the traffic volumes and potential traffic safety issues they have witnessed in the neighbourhood as a result of the road network limitations in the area. Since these road network limitations still exist, the covenant is still deemed necessary.
- Public responses to pre-notification letters and the development proposal sign indicate that concerns with the proposal to add a driveway to 134B Street still remain, and that the community expectation was that the subject lot would achieve access from the rear lane.
- The City arborist advises that the proposed driveway to 134B Street introduces an unnecessary risk to the health of the trees on the northwest portion of the lot.
- The size, configuration, and characteristics of the lot do not limit the applicant's ability to construct a garage at the rear of the property with driveway access to the lane and to achieve the maximum dwelling size under the existing zoning as well as sufficient outdoor space in the southern portion of the lot.

RECOMMENDATION

The Planning & Development Department recommends that:

1. Council approve an amendment to Restrictive Covenant No. BB538955 to reduce the rear (easterly) yard setback covenant area from 5.0 metres (16 ft.) to 3.2 metres (10.5 ft.).
2. Council deny the proposed discharge of the Restrictive Covenant No. BB538952.

REFERRALS

Engineering: The Engineering Department does not support driveway access to 134B Street on the subject site.

SITE CHARACTERISTICS

Existing Land Use: The subject site is current vacant.

Adjacent Area:

Direction	Existing Use	OCP/LAP Designation	Existing Zone
North:	Vacant lot.	Suburban/Suburban Residential (1/2 acre)	CD (By-law No. 16070A)
East:	Single family dwellings.	Suburban/Suburban Residential (1/2 acre)	
South:	Vacant lot.	Suburban/Suburban Residential (1/2 acre)	CD (By-law No. 16070A)
West (Across 134B Street):	Single family dwellings.	Suburban/Suburban Residential (1/2 acre)	RA and RH-G

DEVELOPMENT CONSIDERATIONSBackground

- The subject lot, located on the southeast corner of 134B Street and 16A Avenue (1648 – 134B Street), and neighbouring lots to the north and south, were created under rezoning and subdivision application No. 7905-0365-00. The rezoning component of this application, which proposed a rezoning from "One-Acre Residential Zone (RA)" and "Single Family Residential Zone (RF)" to "Comprehensive Development Zone (CD)" and "Half-Acre Gross Density Residential Zone (RH-G)", was approved by Council on June 26, 2007. The associated subdivision was approved on July 31, 2007.

- The original subdivision application included not only a parent parcel (13487 – 16 Avenue), but also a 10-metre (33 ft.) wide portion of unopened road allowance for 135 Street between 16 Avenue and 17 Avenue, which was deemed surplus by the City. As part of the subdivision, the westerly seven (7.0) metres (23 ft.) of this unopened road allowance was sold and consolidated with 3 of the newly created single family lots (including the subject lot). The remaining 3.0 metres (10 ft.) was sold and consolidated with 3 existing neighbouring lots to the east.

#### Restrictive Covenant No. BB538955 (Tree Preservation and Rear Setback)

- During the original rezoning and subdivision application (No. 7905-0365-00), concerns were raised by neighbouring residents regarding tree preservation on the site. The site was heavily treed, particularly within the unopened road allowance area, and neighbouring residents sought to ensure that these trees would be retained. In response to these concerns, Council approved the registration of a no-build Restrictive Covenant (RC) for tree preservation over the unopened road allowance area, as a condition of final approval.
- The RC registered on the subject property, as well as the two other newly created lots to the north, includes two restricted zones: a 7.0-metre (23 ft.) tree protection zone; and an additional 5.0-metre (16 ft.) rear yard setback requirement to ensure that the homes on the new lots would not be constructed immediately next to the covenant area, and to provide some functional rear yard space outside of the tree protection zone (Appendix II).

#### Restrictive Covenant No. BB538952 (Driveway Access via Lane)

- During the rezoning process concerns were also raised by area residents about the additional traffic generated by the development in the area, which currently only has one access in and out at 17 Avenue and Amble Wood Drive. Eventually, a secondary access to the area will be provided through the completion of 17 Avenue through to 136 Street, however, land is required from the CoCo Nursery property (13557 – 16 Avenue) to achieve this connection. Concerns were also expressed about pedestrian safety at the corner of 16A Avenue and 134B Street due to high vehicle speeds and the fact that the section of 16A Avenue immediately west of 134B Street is only a half road. The completion of the other half of 16A Avenue requires redevelopment of the property at 13467 – 16 Avenue.
- The City's Engineering Department reviewed these issues and determined that land acquisition from CoCo Nursery to achieve the connection of 17 Avenue through to 136 Street was not possible at that time and that the missing section of road would be realized with the redevelopment of the CoCo nursery property in the future. Traffic calming measures were not warranted in this area, however, to respond to concerns regarding pedestrian safety at the corner of 16A Avenue and 134B Street, it was recommended that the subject property (Lot 2) not be permitted to have driveway access onto 134B Street. Access and egress to the lot could be restricted to the rear lane, which was to be constructed on the south side of the subject property as part of the subdivision.
- In accordance with the Engineering Department's suggestion, Council required that a Restrictive Covenant be registered over the subject property requiring that any driveway constructed on the lot be designed to have access and egress from the rear lane only (i.e. not from 134B Street).

## Proposal

- A prospective purchaser of the subject property has completed the design for a new dwelling on the lot and advises that complying with the 5.0-metre (16 ft.) rear yard setback required in addition to the 7.0-metre (23 ft.) tree protection area results in a building envelope that is too narrow to accommodate a functional house design and floor plan. As a result, the applicant seeks an amendment to Restrictive Covenant No. BB538955 to reduce the setback area from 5.0-metres (16 ft.) to 3.2 metres (10.5 ft.). Additionally, the applicant seeks to construct a front access garage with driveway access to 134B Street, therefore a request to discharge Restrictive Covenant No. BB538952 has also been submitted. Both of these proposal are discussed below.

## RESTRICTIVE COVENANT AMENDMENT AND DISCHARGE EVALUATION

- (a) Amend Restrictive Covenant No. BB538955 to reduce the required rear yard setback area adjacent the tree preservation area from 5.0 metres (16 ft.) to 3.2 metres (10.5 ft.).

### Applicant's Reasons:

- The applicant advises that complying with the 5.0-metre (16 ft.) rear yard setback required in addition to the 7.0-metre (23 ft.) tree preservation area results in a building envelope that is too narrow to accommodate a functional house design and floor plan.

### Staff Comments:

- The proposed amendment will not impact any of the existing trees within the covenant area. The trees being retained within the covenant area are on the easternmost edge of the site and the proposed 1.8 metre (6 ft.) encroachment into the additional 5.0-metre (16 ft.) rear yard setback requirement will not adversely impact any of these trees (Appendix IV). As such, the original intent of the covenant, which was to ensure tree preservation, is being fully protected under this proposal.
- While the covenant defines the east yard as being the rear yard for all 3 lots on which the covenant applies, the subject lot orientation actually results in the rear yard being located along the south property line. As such, encroachment of the dwelling within the 5.0-metre (16 ft.) setback protection area will not actually eliminate the functional rear yard, which is located on the south of the lot.
- A similar amendment was approved for one of the neighbouring lots to the north (1688 – 134B Street (File No. 7907-0343-00) which is a similar size and configuration as the subject lot. Similar to the rationale utilized to justify the amendment for that neighbouring lot, it can be argued that the additional 5.0-metre (16 ft.) rear yard setback requirement results in an unnecessary burden on the build-able area of this lot and is too onerous given that the trees are being fully preserved.
- The applicant has canvassed surrounding property owners including the immediate property owner to the east, and has received no objections to the proposed building envelope location. In addition, staff has received no comments or concerns with respect to this proposed amendment in reply to the development proposal sign which was erected on the property or the pre-notification letters which were sent to surrounding property owners on December 21, 2009.

- On this basis, staff recommend that Council approve the proposed amendment to Restrictive Covenant No. BB538955 (Tree Preservation and Rear Yard Setback) to allow a single family dwelling to encroach 1.8 metres (6 ft.) into the 5.0 metre (16 ft.) setback area, adjacent the 7.0 metre (23 ft.) wide tree preservation covenant area.
- (b) Discharge Restrictive Covenant No. BB538952 to allow driveway access to 134B Street.

Applicant's Reasons:

- The applicant contends that the addition of a driveway and garage in the rear yard restricts the amount of available yard space for personal enjoyment and relaxation. The applicant also argues that since the dwelling will be addressed off of 134B Street most visitors and deliveries will be from 134B Street. A driveway to 134B Street would allow these visitors and delivery vehicles an alternative to parking on the street.
- The applicant also contends that the proposal will only result in one additional driveway to 134B Street, and serve one home, and therefore minimal additional traffic can be expected.
- The applicant has provided staff with copies of e-mails from 4 neighbouring residents indicating support for the proposed driveway to 134B Street.

Staff Comments:

- The intent of the restrictive covenant prohibiting construction of a driveway with access and egress to 134B Street on the subject lot was to respond to community concerns regarding the traffic volumes and potential traffic safety issues they have witnessed in the neighbourhood as a result of the road network limitations in the area. Specifically, the lack of a secondary access route in and out of the area, and the fact that 16A Avenue immediately west of 134B Street is only constructed to a half road standard. The section of 16A Avenue immediately west of 134B Street is still only constructed to a half road standard.
- Staff received the following responses to the development proposal sign that was erected on the property and the pre-notification letters sent to surrounding property owners on December 21, 2009.
  - Staff received 3 phone calls, in addition to the 4 e-mails provided by the applicant, from neighbouring residents who stated they had no objections to the proposed covenant discharge which would permit a driveway with access and egress to 134B Street.
  - Staff received 6 letters, 2 phone calls and an email from neighbouring residents who object to the proposed covenant discharge which would permit construction of a driveway with access and egress to 134B Street. All nine (9) neighbouring residents raised concerns regarding traffic volume in the neighbourhood and pedestrian and child safety at the intersection of 134B Street and 16A Avenue.
- Responses to pre-notification letters and the development proposal sign indicate there are still community concerns with respect to traffic volume and safety issues in the area and the potential worsening of these issues that could be caused by adding a driveway to 134B Street at the proposed location. The expectation in the community after the original rezoning and subdivision application was approved was that this lot would be required to take driveway access from the rear lane and not from 134B Street.

- The Engineering Department has reviewed the property owner's proposal to discharge the driveway access covenant and does not support the proposal on the basis that the road network limitations in the area that existed when the covenant was registered, and which formed the basis of community concerns, are still in existence today, no improvements have been made that would render the covenant no longer necessary.
- The City arborist has reviewed the proposed covenant discharge and advises that, while certain construction techniques, such as suspended slabs, could be utilized to mitigate the impact of the proposed front access driveway on the surrounding trees in the northwest portion of the site, since there is an alternate access to the site via the rear lane, it is unnecessary to risk the health of the trees by pursuing the front access driveway.
- The size, configuration, and characteristics of the lot do not limit the applicant's ability to construct a garage at the rear of the property with driveway access to the lane and to achieve the maximum dwelling size under the existing zoning with appropriate outdoor space in the south yard.
- On this basis, staff recommend that Council deny the proposed discharge of Restrictive Covenant No. BB538952 (Driveway Access via Lane) requiring any driveway constructed on the lot to have access and egress from the lane only.

#### INFORMATION ATTACHED TO THIS REPORT

The following information is attached to this Report:

Appendix I.	Lot Owners, Action Summary and Project Data Sheets
Appendix II.	Explanatory Plan Restrictive Covenant No. BB538955
Appendix III.	Preliminary Proposed House Plan
Appendix IV.	Tree Preservation Plan

Jean Lamontagne  
General Manager  
Planning and Development

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Information for City Clerk

Legal Description and Owners of all lots that form part of the application:

1. (a) Agent:      Name:              Gary Miller  
                         Address:            13356 – 26 Avenue  
                                                    Surrey, BC  
                                                    V4P 1Y3  
                         Tel:                    604-536-0631
  
2.      Properties involved in the Application
  - (a)      Civic Address:            1648 – 134B Street
  
  - (b)      Civic Address:            1648 – 134B Street  
            Owner:                    Deep Blue Investment Corporation, Inc. No. 751211  
            PID:                        027-178-765  
            Lot 2 Section 17 Township 1 New Westminster District Plan BCP31929
  
3.      Summary of Actions for City Clerk's Office

## SITE DATA SHEET

Existing Zoning: CD (By-law No. 16070A)

Required Development Data	Minimum Required / Maximum Allowed	Proposed
LOT AREA* (in square metres)		
Gross Total		
Road Widening area		
Undevelopable area		
Net Total		1,498 m <sup>2</sup>
LOT COVERAGE (in % of net lot area)		
Buildings & Structures	25%	25%
Paved & Hard Surfaced Areas		
Total Site Coverage		
SETBACKS ( in metres)		
Front	7.5 m	7.5 m
Rear	7.5 m	10.2 m
Side #1 (N,S,E, or W)	3.0 m	3.0 m
Side #2 (N,S,E, or W)	3.0 m	3.0 m
BUILDING HEIGHT (in metres/storeys)		
Principal	9 m	9 m
Accessory	4 m	4 m
NUMBER OF RESIDENTIAL UNITS		
Bachelor		
One Bed		
Two Bedroom		
Three Bedroom +		
Total		
FLOOR AREA: Residential	479 m <sup>2</sup>	479 m <sup>2</sup>
FLOOR AREA: Commercial		
Retail		
Office		
Total		
FLOOR AREA: Industrial		
FLOOR AREA: Institutional		
TOTAL BUILDING FLOOR AREA	479 m <sup>2</sup>	479 m <sup>2</sup>

*\* If the development site consists of more than one lot, lot dimensions pertain to the entire site.*

## Development Data Sheet cont'd

Required Development Data	Minimum Required / Maximum Allowed	Proposed
DENSITY		
# of units/ha /# units/acre (gross)		
# of units/ha /# units/acre (net)		
FAR (gross)		
FAR (net)	0.32	0.32
AMENITY SPACE (area in square metres)		
Indoor		
Outdoor		
PARKING (number of stalls)		
Commercial		
Industrial		
Residential Bachelor + 1 Bedroom		
2-Bed		
3-Bed		
Residential Visitors		
Institutional		
Total Number of Parking Spaces		
Number of disabled stalls		
Number of small cars		
Tandem Parking Spaces: Number / % of Total Number of Units		
Size of Tandem Parking Spaces width/length		

Heritage Site	NO	Tree Survey/Assessment Provided	YES
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