



File No.: **DE-DVP-2024.1**  
**(Nielsen)**

DATE OF MEETING: January 21, 2025

TO: Denman Island Local Trust Committee

FROM: Marlis McCargar, Island Planner  
Northern Team

COPY: Warren Dingman, Manager of Bylaw Compliance and Enforcement

SUBJECT: **Development Variance Permit DE-DVP-2024.1**  
Applicant: Henning Nielsen.  
Location: 3223 Lacon Road, Denman Island (PID 004-172-337)

## RECOMMENDATION

1. That the Denman Island Local Trust Committee approve issuance of Development Variance Permit DE-DVP-2024.1 (Nielsen).

## REPORT SUMMARY

The purpose of this staff report is to introduce Development Variance Permit application DE-DVP-2024.1 for consideration by the Denman Island Local Trust Committee (LTC) to authorize the following:

- a) Vary the minimum setback from 4.5m to 3.8m to permit the siting of an existing studio;
- b) Vary the minimum setback from 4.5m to 0.2m to permit the siting of the existing “covered area” structure attached to the “studio”;
- c) Vary the minimum setback from 4.5m to 0.8 to permit the siting of the existing “covered gate” structure;
- d) Vary the minimum setback from 4.5m to 2.7m to permit the siting of the existing “covered area” structure attached to the “2 storey home”;
- e) Vary the minimum setback from 4.5 m to 0.0 m to permit the siting of the existing retaining walls on eastern side lot;
- f) Vary the minimum setback to permit the siting of the existing “retaining walls” on western side lot;
- g) To reduce the minimum setback to permit the siting of the existing “heat pumps”; and
- h) Vary the existing wooden fence with heights varying from 2.1m to a maximum of 2.6m along the eastern exterior side lot line.

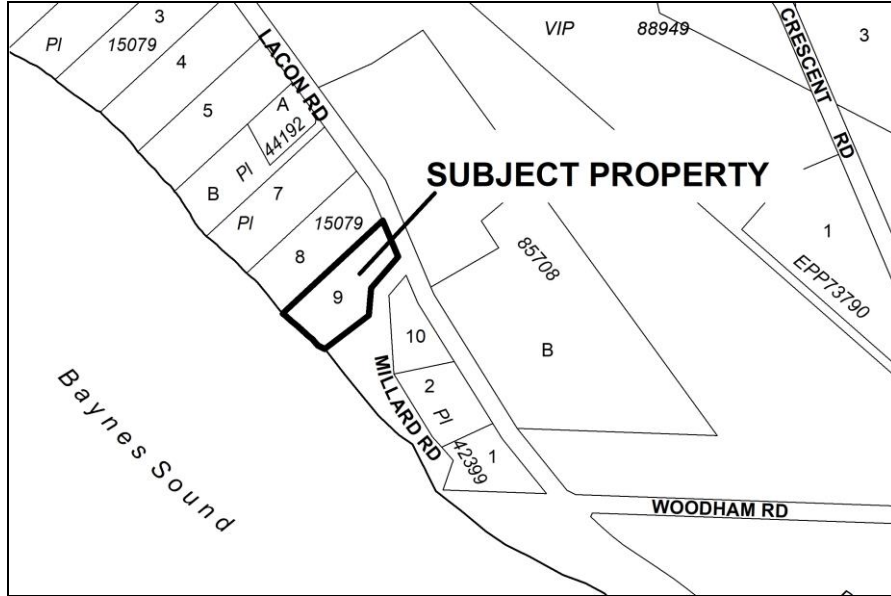
Staff are recommending approval of this variance request.

## RATIONALE FOR VARIANCE

All the structures for which the variances are requested are already built, and the encroachments are minor in nature. The applicant is seeking a retroactive approval for these encroachments due to bylaw infraction complaints. The structures are largely non-intrusive and have minimal impact on the surrounding area or neighboring properties. The applicant has indicated they have applied for an encroachment permit from the Ministry of Transportation and Transit.

**BACKGROUND**

The application is the result of a Bylaw Compliance and Enforcement action for works undertaken without a permit, specifically numerous structures in the side yard setbacks and an over height fence. The subject property is 0.77 hectares (1.91 acres) in size and located on Lacon Road as shown on Figure 1. It is zoned Residential (R1).



**Figure 1 – Subject Property Map**



**Figure 2 – Orthophoto**

The scope of development for the property is shown in Figure 3 and entails:

- Retaining wall structures in the setback
- Over height fence
- Portion of the fence in highway right-of-way
- Accessory buildings and structures in the setback

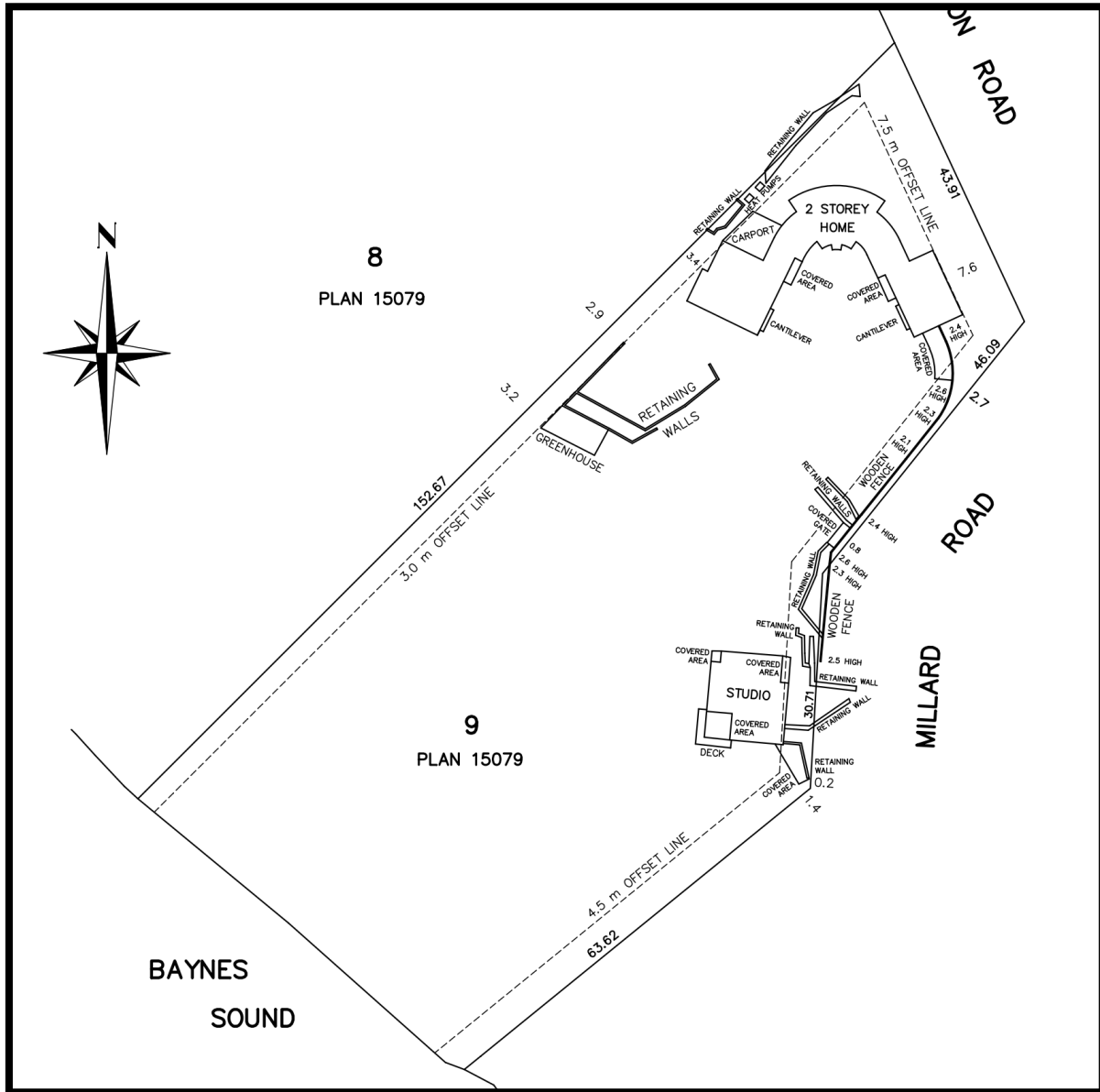


Figure 3: Site Plan

The draft DVP is included as Attachment 2, and the Notice that was circulated to neighbouring property owners is included as Attachment 3.

## ANALYSIS

### Policy/Regulatory

A comprehensive site context analysis is provided in Attachment 1. The policies and regulations that pertain to this application are summarized below.

#### ***Denman Island Land Use Bylaw No. 186:***

The subject property is zoned as Residential (R1) in the Denman Land Use Bylaw (LUB). Single family residential is a permitted use in that zone. The existing dwelling complies with the LUB regulations. However, the accessory buildings and structures do not comply with Section 3.3, RESIDENTIAL ZONING TABLES, Table 5 – Setbacks, Line 1, the siting and setback regulation for buildings and structures from the exterior and side lot lines. Thus, it is regulation Section 3.3, RESIDENTIAL ZONING TABLES, Table 5 – Setbacks, Line 1 that requires a variance for the siting of the existing buildings and structures. Additionally, the fence does not comply with Section 3.3 RESIDENTIAL ZONING TABLES, Table 4 – Height, Line 3, the “maximum height of a fence” and will require a variance.

### Issues and Opportunities

The applicant is requesting a variance to the side and exterior lot line setbacks. These setbacks are designed to ensure that buildings and structures are sufficiently distanced from property lines, promoting safety, privacy, aesthetics, and maintaining a consistent development pattern within the neighbourhood. Specifically, setbacks contribute to fire safety, allow for emergency access, and preserve views and privacy.

The Ministry of Transportation and Transit (MOTT) manages provincial highways and has authority over activities within highway right-of-ways. Property owners with structures or fences located within 4.5 meters from a highway right-of-way must obtain a permit to reduce the setback. The applicant is currently in the process of contacting MOTT to determine whether an encroachment permit is required for the existing fence.

### Consultation

#### Notification

Public notification of the DVP was sent out on December 23, 2024 in accordance with statutory requirements. (Attachment 3). At the time of writing this report, no public submissions were received from neighbouring property owners or tenants in response to the notice.

#### ***First Nations***

The property does fall within the K’omoks First Nation Area of Potential. At the time the Application was submitted, the Applicant was made aware of the possibility that the lot may contain previously unrecorded archaeological material protected under the *Heritage Conservation Act*. If such material is encountered during development, all work should cease and the provincial Archaeology Branch should be contacted immediately, as a *Heritage Conservation Act* permit may be needed before further development is undertaken. Provincial Chance Find Procedures<sup>1</sup> are in place and must be followed.

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<sup>1</sup> <https://islandstrust.bc.ca/document/province-of-bc-archaeology-chance-find-procedure/>

The K’omoks First Nation (KFN) Archaeology & Referrals Department has confirmed that a Cultural Heritage Investigation Permit (CHIP) is only required for future ground disturbance greater than 10m<sup>2</sup>. This DVP is being sought retroactively for existing structures.

**Rationale for Recommendation**

Staff are recommending approval of this variance request, as noted on page 1 of this report.

**ALTERNATIVES**

The LTC may consider the following alternatives to the staff recommendation on page 1 of this report:

**1. Request further information**

The LTC may request further information prior to making a decision. If selecting this alternative, the LTC should describe the specific information needed and the rationale for this request. Recommended wording for the resolution is as follows:

*That the Denman Island Local Trust Committee request further information prior to making a decision on application DE-DVP-2024.1 [specify information requested].*

**2. Amend the permit**

The LTC may choose to amend the permit. If this option is chosen, the LTC should first pass a resolution to amend the permit accordingly and then render a decision on issuance.

**3. Deny the application**

The LTC may deny the application. Staff advise that the implications of this alternative are that bylaw compliance and enforcement action will continue and the applicant will be asked to move the structures outside of the lot line setback area and reduce fence heights. The applicant will not receive a refund of the DVP application fee, since a staff report has already been brought forward. If this alternative is selected, the LTC must state the reasons for denial. Recommended wording for the resolution is as follows:

*That the Denman Island Local Trust Committee deny application DE-DVP-2024.1 for the following reasons [specify reasons].*

**NEXT STEPS**

Should the LTC concur with staff’s recommendations outlined on page 1 of this report, staff will proceed with issuing the Development Variance Permit as drafted in Attachment 2. Approval of this permit will effectively resolve the current bylaw enforcement action.

Submitted By:	Marlis McCargar, Island Planner	December 20, 2024
Concurrence:	Renée Jamurat, RPP MCIP, Regional Planning Manager	January 8, 2025

**ATTACHMENTS**

- 1. Site Context
- 2. Draft Development Variance Permit (DVP)

### 3. DVP Notice

# ATTACHMENT # 1 – SITE CONTEXT

FILE No.: DE-DVP-2024.1 (NIELSEN)

## LOCATION

Legal Description	LOT 9, SECTION 12, DENMAN ISLAND, NANAIMO DISTRICT, PLAN 15079
PID	004-172-337
Civic Address	3223 Lacon Road


## LAND USE

Current Land Use	Residential
Surrounding Land Use	Neighbouring properties are residential, ALR to the north and east, ocean shoreline to the west.

## HISTORICAL ACTIVITY

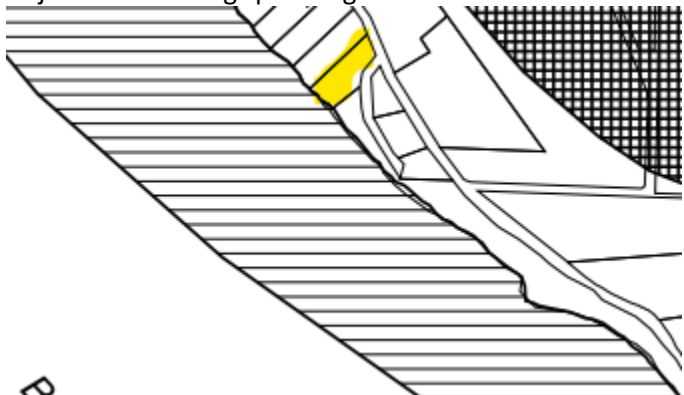
File No.	Purpose
DE-SUP-2024.2	Retroactive SUP application for existing retaining walls, greenhouse, pergola and storage shed. OPEN/concurrent with this DVP application.
DE-SUP-2021.11	SUP issued for new workshop.
DE-SUP-1999.16	SUP issued for dwelling with studio, workshop and gallery for arts and crafts production and sales.
UN-SUP-1992.85	File not retrieved.

## POLICY/REGULATORY

Official Community Plan Designations	<p>Land Use Designation: Residential</p> <p>The Residential designation includes the smaller lot subdivisions on the Island in which the existing principal use is single family residential. Not in a DPA or ALR.</p> 
Land Use Bylaw	Zoning: Residential (R1)
Other Regulations	none
Covenants	Restrictive covenant – 372672G
Bylaw Enforcement	DE-BE-2021.7

Z:\09 Current Planning\02 DE\3190 DVP\25 Applications (P)\2024\DE-DVP-2024.1 Nielsen\06 Staff Reports\DE-LTC\_2024-12-10\_DE-DVP-2024.1\_SITE-CONTEXT\_ATT01.docx

**SITE INFLUENCES**

Islands Trust Conservancy	n/a – This application does not directly affect an ITC-owned property or conservation covenant; nor does it directly affect a property adjacent to an ITC-owned property or conservation covenant. It also does not pertain to terrestrial or intertidal Crown Land located within 100m of an ITC-owned property or conservation covenant. Therefore referral to ITC for comment is not required.
Regional Conservation Strategy	The <a href="#">Regional Conservation Plan 2018-2027</a> estimated importance of habitat composition in the area of the subject property is MEDIUM. This application does not appear to be inconsistent or contrary to the goals and objectives set out in the ITC Regional Conservation Plan
Species at Risk	None mapped
Sensitive Ecosystems	<p>None mapped Adjacent to herring spawning area</p> 
Hazard Areas	None mapped
Archaeological Sites	<p>According to provincial information, all coastal areas including the Denman Island Local Trust Area are identified as having the potential to contain recorded or unrecorded areas of archeological and cultural significance.</p> <p>Notwithstanding the foregoing, and by copy of this report, the owners and applicant should be aware that there is still a chance that the lot may contain previously unrecorded archaeological material that is protected under the <i>Heritage Conservation Act</i>. If such material is encountered during development, all work should cease and the BC Archaeology Branch should be contacted immediately as a <i>Heritage Conservation Act</i> permit may be needed before further development is undertaken. This may involve the need to hire a qualified archaeologist to monitor the work.</p>
Climate Change Adaptation and Mitigation	This DVP application seeks to lawfully site existing structures on the property and as such does not propose any additional intensity of use or development beyond what is currently permitted by zoning. GHG emissions can be expected to be commensurate with normal levels associated with Single Family Residential development patterns and use, including the use of personal vehicles for transport on and off island.



# PROPOSED



Islands Trust

## DENMAN ISLAND LOCAL TRUST COMMITTEE DEVELOPMENT VARIANCE PERMIT NO. DE-DVP-2024.1

**TO:** Henning Nielsen and Bente Pilgaard

**1.** This Development Variance Permit applies to the land described below:

PID: 004-172-337

Legal Description: LOT 9, SECTION 12, DENMAN ISLAND, NANAIMO DISTRICT, PLAN 15079

**2.** Pursuant to Section 498 of the *Local Government Act*, the *Denman Island Land Use Bylaw, 2008* is varied as follows:

1. PART 3 ZONE REGULATIONS, Section 3.3 RESIDENTIAL ZONING TABLES, Table 4 – Height, Line 3, the “maximum height of a fence”, is varied:

**To permit the existing heights and locations of an existing wooden fence with heights varying from 2.1m to a maximum of 2.6m along the eastern exterior side lot line, as shown on Schedule ‘A’ attached to this permit.**

2. PART 3 ZONE REGULATIONS, Section 3.3 RESIDENTIAL ZONING TABLES, Table 5 – Setbacks, Line 1, the “Minimum setback of buildings or structures, except for a fence, pump/utility house or pit privy from the exterior side lot line”, is varied for the eastern exterior side lot line adjacent to Millard Road as follows:

**A. Studio**

- To reduce the minimum setback from 4.5m to 3.8m to permit the siting of an existing studio labeled "STUDIO" as shown on the plans attached as Schedule ‘A’;

**B. Covered Area (Studio)**

- To reduce the minimum setback from 4.5m to 0.2m to permit the siting of the existing “covered area” structure attached to the “studio”, as shown on the plans attached as Schedule ‘A’;

**C. Covered Gate**

- To reduce the minimum setback from 4.5m to 0.8 to permit the siting of the existing “covered gate” structure, as shown on the plans in Schedule ‘A’;

**D. Covered Area (2 Storey Home)**

- To reduce the minimum setback from 4.5m to 2.7m to permit the siting of the existing “covered area” structure attached to the “2 storey home”, as shown on the plans in Schedule ‘A’; and

**E. Retaining Walls**

# PROPOSED

- To reduce the minimum setback from 4.5 m to 0.0 m to permit the siting of the existing retaining walls as shown in Schedule 'A' attached to this permit.
3. PART 3 ZONE REGULATIONS, Section 3.3 RESIDENTIAL ZONING TABLES, Table 5 – Setbacks, Line 1, the “Minimum setback of buildings or structures, except for a fence, pump/utility house or pit privy from the rear or side lot line”, is varied for the western side lot line as follows:
- To reduce the minimum setback to permit the siting of the existing “retaining walls” as shown in Schedule 'A' attached to this permit; and
  - To reduce the minimum setback to permit the siting of the existing “heat pumps” as shown in Schedule 'A' attached to this permit.
3. The proposed development shall be consistent with **Schedule “A” – Site Plan** attached to and forming part of this permit. This permit is not a Building Permit or a Siting and Use Permit, and does not remove any obligation on the part of the permittee to comply with all other requirements of the Denman Island Land Use Bylaw, 2008 including use and density, and to obtain other appropriate approvals necessary for completion of the proposed development.

**AUTHORIZING RESOLUTION PASSED BY THE DENMAN ISLAND LOCAL TRUST COMMITTEE THIS XX DAY OF XX, 202X.**

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**Deputy Secretary, Islands Trust**

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**Date of Issuance**

**IF THE DEVELOPMENT DESCRIBED HEREIN IS NOT COMMENCED BY THE XX DAY OF FEBRUARY 202X, THIS PERMIT AUTOMATICALLY LAPSES.**

# PROPOSED

DENMAN ISLAND LOCAL TRUST COMMITTEE  
DEVELOPMENT VARIANCE PERMIT

DE-DVP-2024.1

Schedule "A" – Site Plan

BRITISH COLUMBIA LAND SURVEYOR'S CERTIFICATE OF LOCATION  
FOR LOT 9, SECTION 12, DENMAN ISLAND, NANAIMO DISTRICT, PLAN 15079.

3223 LACON ROAD, DENMAN ISLAND  
SCALE 1 : 600 (METRIC)

P.I.D. 004-172-337

THE INTENDED PLOT SIZE OF THIS PLAN IS 280mm  
IN WIDTH BY 432mm IN HEIGHT (B SIZE)  
WHEN PLOTTED AT A SCALE OF 1:600.



8  
PLAN 15079

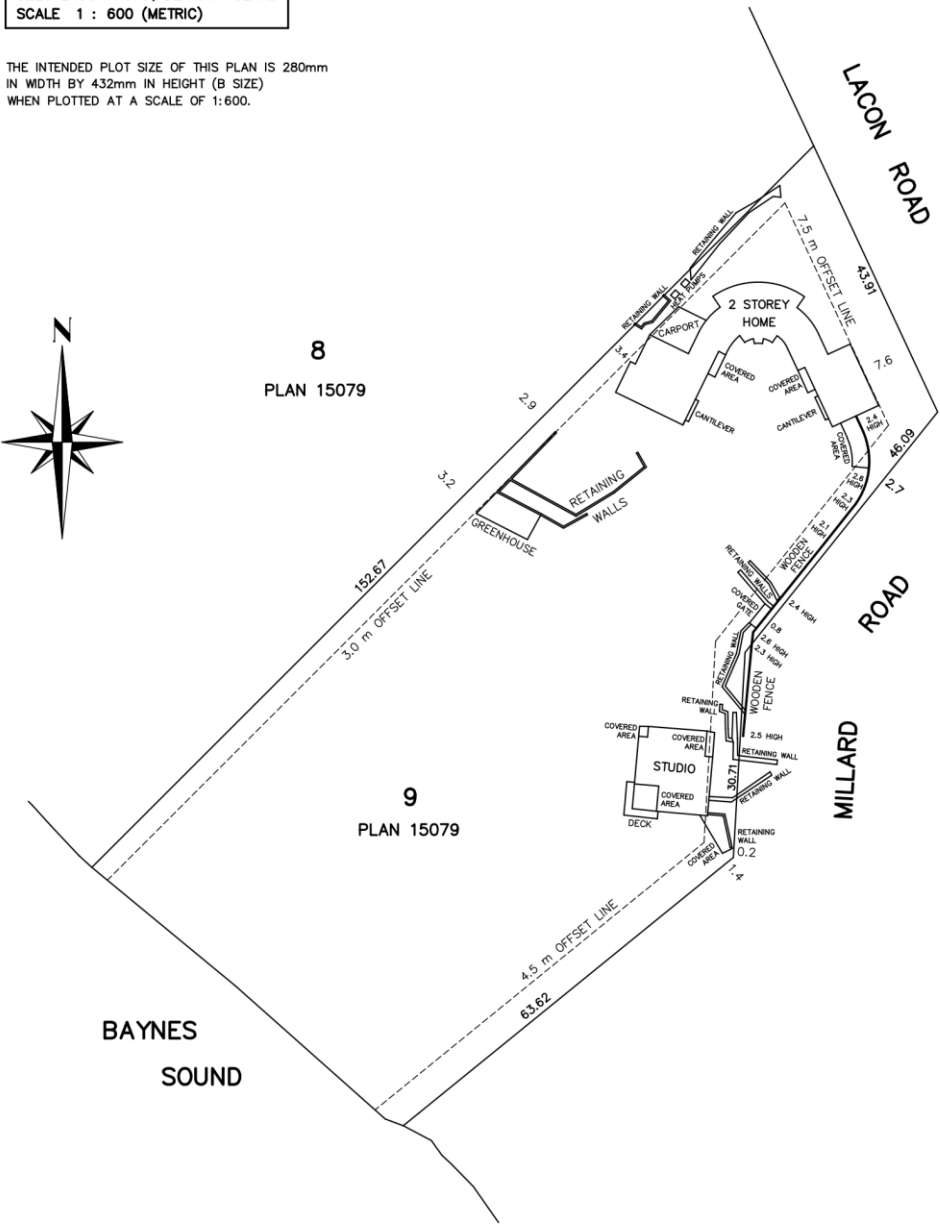
9  
PLAN 15079

BAYNES  
SOUND

LACON ROAD

ROAD

MILLARD



Eric  
Hoerburger  
8YPFDR

Digitally signed by Eric  
Hoerburger 8YPFDR  
Date: 2024.09.23  
10:45:20 -0700

*Eric Hoerburger*  
THIS DOCUMENT IS NOT VALID UNLESS  
ORIGINALLY SIGNED AND SEALED

THE FIELD SURVEY REPRESENTED BY THIS PLAN WAS  
COMPLETED ON THE 18th DAY OF SEPTEMBER, 2024.  
ERIC A. HOERBURGER, BCLS #704.

NOTES:

OFFSETS SHOWN ARE NOT TO BE USED FOR DEFINING LOT BOUNDARIES.  
LOT DIMENSIONS AND OFFSET DISTANCES SHOWN COULD VARY  
UPON A COMPLETE RESURVEY OF THE SUBJECT PROPERTY.  
THIS PLAN LIES WITHIN THE COMOX VALLEY REGIONAL DISTRICT.

HOERBURGER LAND SURVEYORS  
280-A ANDERTON ROAD, COMOX, B.C.  
PH. (250) 890 - 0100 © 2024  
FILE: 2449CRT2/187.23 FB. 94/22

**NOTICE  
DE-DVP-2024.1  
DENMAN ISLAND LOCAL TRUST COMMITTEE**

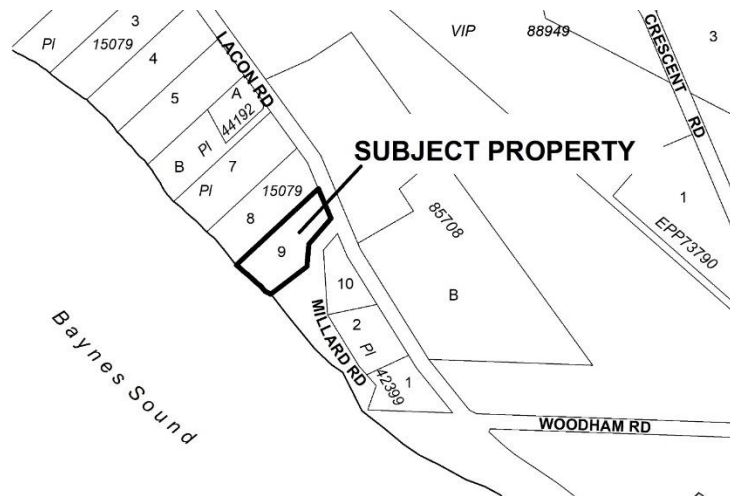
**NOTICE** is hereby given pursuant to Section 499 of the *Local Government Act* that the Denman Island Local Trust Committee will be considering a resolution allowing for the issuance of a Development Variance Permit. The proposed permit would vary the Denman Islands Land Use Bylaw, 2008 by:

- a) Reducing the minimum setback from 4.5m to 3.8m to permit the siting of an existing studio;
- b) Reducing the minimum setback from 4.5m to 0.2m to permit the siting of the existing “covered area” structure attached to the “studio”;
- c) Reducing the minimum setback from 4.5m to 0.8 to permit the siting of the existing “covered gate” structure;
- d) Reducing the minimum setback from 4.5m to 2.7m to permit the siting of the existing “covered area” structure attached to the “2 storey home”;
- e) Reducing the minimum setback from 4.5 m to 0.0 m to permit the siting of the existing retaining walls on eastern side lot;
- f) Reducing the minimum setback to permit the siting of the existing “retaining walls” on western side lot;
- g) Reducing the minimum setback to permit the siting of the existing “heat pumps”;
- h) Reducing the existing wooden fence with heights varying from 2.1m to a maximum of 2.6m along the eastern exterior side lot line.

The property is legally described as:

LOT 9, SECTION 12, DENMAN ISLAND, NANAIMO DISTRICT, PLAN 15079 (PID 004-172-337)

The general location of the subject property is shown on the following sketch:



A copy of the proposed permit may be inspected at the Islands Trust Office, 700 North Road, Gabriola Island, BC V0R 1X3 between the hours of 8:30 a.m. to 4:00 p.m. Monday to Friday inclusive, excluding statutory holidays, commencing January 6, 2025 and continuing up to and including January 20, 2025 and is also available on the Islands Trust website here: <https://islandstrust.bc.ca/island-planning/denman/current-applications/>

Enquiries or comments should be directed to Marlis McCargar, Island Planner at (250) 247-2210, for Toll Free Access, request a transfer via Enquiry BC: In Vancouver (604) 660-2421 and elsewhere in BC 1-800-663-7867; or by fax (250) 405-5155; or by email to: [northinfo@islandstrust.bc.ca](mailto:northinfo@islandstrust.bc.ca) before 4:30 pm, January 20, 2025.

The Denman Island Local Trust Committee may consider a resolution allowing for the issuance of the permit during the business meeting starting at **10:00 am, January 21, 2025, located at the Denman Activity Centre, 1111 Northwest Road Denman Island, BC.**

All applications are available for review by the public with prior appointment. Written comments made in response to this notice will also be available for public review.

# PROPOSED



Islands Trust

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2. PART 3 ZONE REGULATIONS, Section 3.3 RESIDENTIAL ZONING TABLES, Table 5 – Setbacks, Line 1, the “Minimum setback of buildings or structures, except for a fence, pump/utility house or pit privy from the exterior side lot line”, is varied for the eastern exterior side lot line adjacent to Millard Road as follows:

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**B. Covered Area (Studio)**

- To reduce the minimum setback from 4.5m to 0.2m to permit the siting of the existing “covered area” structure attached to the “studio”, as shown on the plans attached as Schedule ‘A’;

**C. Covered Gate**

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- To reduce the minimum setback from 4.5m to 2.7m to permit the siting of the existing “covered area” structure attached to the “2 storey home”, as shown on the plans in Schedule ‘A’; and

**E. Retaining Walls**

# PROPOSED

- To reduce the minimum setback from 4.5 m to 0.0 m to permit the siting of the existing retaining walls as shown in Schedule 'A' attached to this permit.
3. PART 3 ZONE REGULATIONS, Section 3.3 RESIDENTIAL ZONING TABLES, Table 5 – Setbacks, Line 1, the “Minimum setback of buildings or structures, except for a fence, pump/utility house or pit privy from the rear or side lot line”, is varied for the western side lot line as follows:
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  - To reduce the minimum setback to permit the siting of the existing “heat pumps” as shown in Schedule 'A' attached to this permit.
3. The proposed development shall be consistent with **Schedule “A” – Site Plan** attached to and forming part of this permit. This permit is not a Building Permit or a Siting and Use Permit, and does not remove any obligation on the part of the permittee to comply with all other requirements of the Denman Island Land Use Bylaw, 2008 including use and density, and to obtain other appropriate approvals necessary for completion of the proposed development.

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Deputy Secretary, Islands Trust

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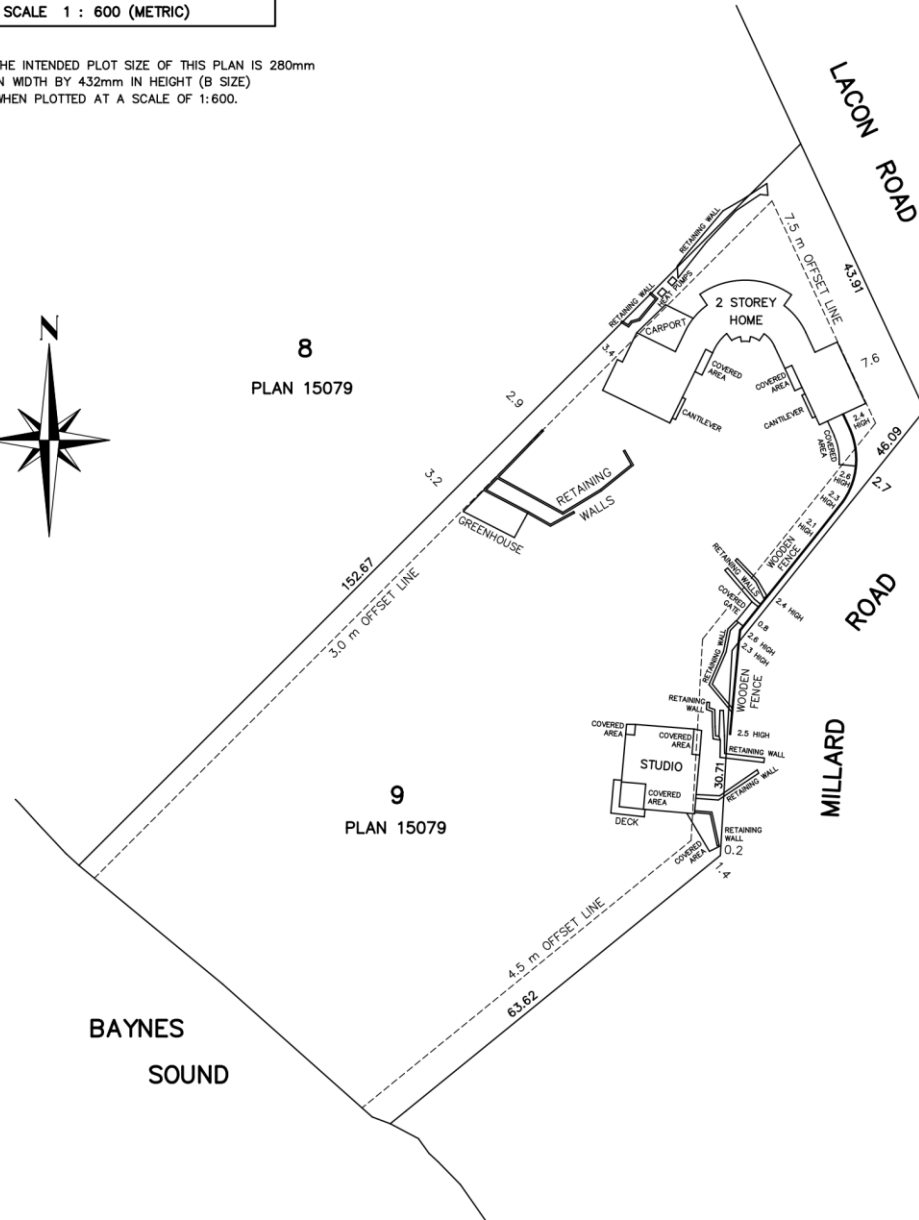
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Eric  
Hoerburger  
8YPFDR

Digitally signed by Eric  
Hoerburger 8YPFDR  
Date: 2024.09.23  
10:45:20 -0700

*Eric Hoerburger*  
THIS DOCUMENT IS NOT VALID UNLESS  
ORIGINALLY SIGNED AND SEALED

THE FIELD SURVEY REPRESENTED BY THIS PLAN WAS  
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ERIC A. HOERBURGER, BCLS #704.

**NOTES:**

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THIS PLAN LIES WITHIN THE COMOX VALLEY REGIONAL DISTRICT.

HOERBURGER LAND SURVEYORS  
280-A ANDERTON ROAD, COMOX, B.C.  
PH. (250) 890 - 0100 © 2024  
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