



File No.: GB-DVP-2023.3 (Miller)

(xref GB-BE-2023.15 (Miller))

DATE OF MEETING: November 30, 2023

TO: Gabriola Island Local Trust Committee

FROM: Margot Thomaidis, Planner 2  
Northern Team

SUBJECT: **Request for Waiver of Survey Requirement for  
Development Variance Permit application GB-DVP-2023.3 (Miller)**  
Applicant: Sandra Miller  
Location: 880 Horseshoe Rd., Gabriola Island

## RECOMMENDATION

1. That the Gabriola Island Local Trust Committee requests that the applicant of GB-DVP-2023.3 (Miller) provide a plan signed by a B.C. Land Surveyor showing the location on the lot of all existing and proposed buildings, structures and sewage absorption fields in relation to lot and zone boundaries, watercourses, wells and the sea, and in relation to other buildings on the lot, as required by Section A.3.5.1 of the Gabriola Island Land Use Bylaw No. 177.
2. That the Gabriola Island Local Trust Committee request staff to advise the applicant of GB-DVP-2023.3 (Miller) that the DVP application will be held in abeyance for three months to allow the receipt of a current survey plan signed by a B.C. Land Surveyor, which satisfies the requirement of Section A.3.5.1 of the Gabriola Island Land Use Bylaw No. 177, 2014.

## REPORT SUMMARY

The purpose of this staff report is for the Gabriola Island Local Trust Committee (LTC) to consider the applicant's request to waive the requirement for a current plan signed by a B.C. Land Surveyor (BCLS) as outlined in Section A.3.5 "Enforcement of Siting Regulations" of the Gabriola Island Land Use Bylaw No. 177, 2014 for a Development Variance Permit. The application was submitted in June 2023 and to date, no site survey has been submitted, and so the application remains incomplete. The LTC is not asked to consider issuance of GB-DVP-2023.3 at this time.

The applicant is requesting that the LTC waive the requirement for a current plan signed by a BCLS for a pre-existing workshop/shed building that was built over 30 years ago. The building is located less than a metre from the interior side lot line and within the 10-metre setback area, according to a hand-drawn site plan provided by the owner.

Staff consider that a survey signed by a BCLS is reasonably necessary in this instance for the following reasons:

- the existing building does not comply with lot line setback requirements and is potentially straddling the northern interior lot line;
- the extent of the variance permit is dependent on the location of the property line in relation to the building; and

- a survey will provide certainty as to whether or not the building is sited partially on the adjacent property.

Therefore staff are recommending the LTC does not waive the requirements of LUB Section A.3.5.1.

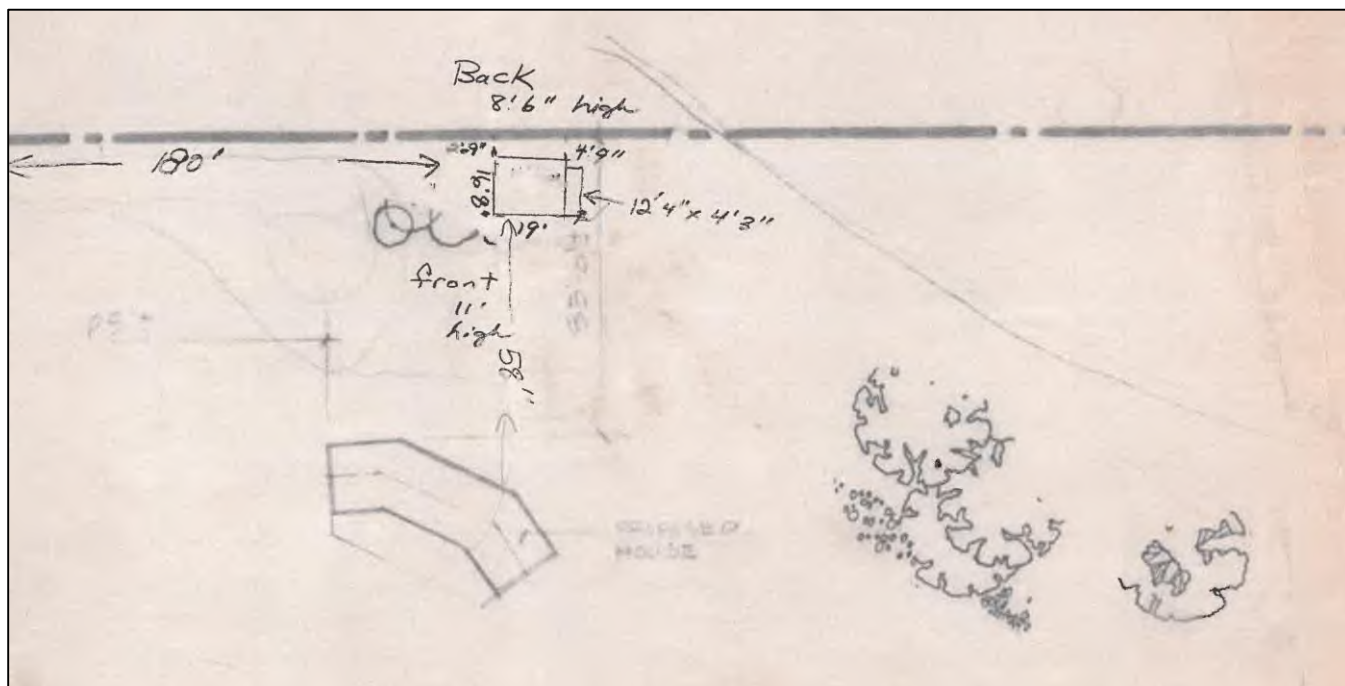
## BACKGROUND

The subject property is 2.05 hectares (5.07 acres) in area and located at 880 Horseshoe Rd, Gabriola Island (see Figure 1). The DVP application is to vary an approximately 30m<sup>2</sup> accessory workshop/shed building with an attached 5m<sup>2</sup> woodshed, built over 30 years ago within less than a metre of the interior side lot line. According to a hand drawn site plan provided by the owner, the shed is between 0.8 and 1.4 metres from the northern interior lot line (see Figure 2). The required setback is at least 10 metres from the interior lot line. As a result of Bylaw Enforcement action (GB-BE-2023.15 – Miller) the owner has decided to apply for a development variance permit for the completed works.

**Figure 1: Subject property outlined in yellow**



Figure 2: Site plan excerpt



## ANALYSIS

### Land Use Bylaw:

Section A.3.5.1 of the LUB:

*Every applicant for a development permit or a development variance permit must provide a plan signed by a B.C. Land Surveyor showing the location on the lot of all existing and proposed buildings, structures and sewage absorption fields in relation to lot and zone boundaries, watercourses, wells and the sea, and in relation to other buildings on the lot, unless the Local Trust Committee determines that the provision of such a plan is not reasonably necessary to establish whether the proposed buildings, structures and sewage absorption fields comply with the siting requirements of this or any other Bylaw.*

This provision provides discretion to the LTC when considering the nature of the DVP application, so that the LTC may determine whether the provision of a plan signed by a BCLS is required or not.

### Issues and Opportunities

The existing building does not comply with lot line setback requirements and is potentially straddling the northern interior lot line. For Development Variance Permits, staff rely on the accuracy of a B.C. Land Surveyors' measurements to determine the boundaries of the property and the location of all buildings and structures in order to confirm compliance with local bylaws. These measurements are used to produce permits which are then registered on title.

If the proposed variance is considered and issued as-is, the permit is a legal document, and inaccuracies about the location of the shed in relation to the adjacent lot could potentially render the variance ineffective. For example, if the shed is located partially on the adjacent property, the permit may no longer apply, and a new variance application or removal may be required. Therefore, a survey prepared by a BCLS is necessary to establish exact setbacks and confirm whether the shed is straddling the two properties.

If the LTC determines that the provision of a survey plan prepared by a BCLS is not reasonably necessary, the following alternatives could be considered:

- Staff could accept the plan already provided by the applicant and continue with the DVP review process. If the permit is issued and it is later discovered that the building is partially on the adjacent lot, the permit may no longer apply.
- Staff could attend a site visit with the owner to confirm the approximate location of the shed in relation to the property boundary and request that the owner update the site plan if necessary. Although staff have an understanding of the land surveying process, staff are not qualified land surveyors and therefore the variance authorized by the permit will not be accurate.

### **Applicant's Rationale**

The applicant has provided the following rationale for the request to waive the survey plan, which is attached in full as a letter in Attachment 2 to this report:

- A professional survey was completed in 1989 when the owner was preparing to purchase the land, but it was never registered on title; and
- The adjacent lot owners (860 Horseshoe Rd.) would have had a survey of their lot completed in the past six to eight years, and the owner never received notice that the workshop/shed was over the property line.

### **Rationale for Recommendation**

Staff consider that a survey signed by a B.C. Land Surveyor is reasonably necessary for the following reasons:

- the existing building does not comply with lot line setback requirements and potentially straddling the northern interior lot line;
- the extent of the variance permit is dependent on the location of the property line in relation to the building and structure; and
- a survey will provide certainty as to whether or not the building is sited partly on the adjacent property.

### **ALTERNATIVES**

The LTC may consider alternatives to the staff recommendation:

#### **1. Waive the requirement for a current plan signed by a B.C. Land Surveyor**

The LTC may deem it unnecessary for the applicant to submit a plan signed by a B.C. Land Surveyor, pursuant to Section A.3.5.1 of the LUB. Staff advise that if this alternative is selected, there is not adequate information to determine the location of development relative to the interior lot line. Staff could work with the applicant to determine the approximate location of the shed and update the existing site plan, but this site plan will not be accurate as staff are not qualified land surveyors.

Recommended wording for the resolution is as follows:

*That the Gabriola Island Local Trust Committee waive the requirement for a survey plan signed by a B.C. Land Surveyor and direct staff to proceed with Development Variance Permit application GB-DVP-2023.3 (Miller).*

### **NEXT STEPS**

Subject to the LTC’s concurrence with staff’s recommendation on page 1 of this report, staff will advise the applicant that their application will remain incomplete and “in abeyance” until a site survey signed by a B.C. Land Surveyor is received and that they have until **March 1<sup>st</sup>, 2024 (three months)** to provide the plan. Upon receipt of the site survey plan, staff will review and process the DVP request and return to the LTC for consideration at a future LTC meeting.

Should the applicant not provide the plan by the specified date, then the application will be closed and 75 percent of the application fee will be refunded. The applicant will be required to submit a new application with the requested information at a later date, or remove the building to address non-compliance.

Submitted By:	Margot Thomaidis, Planner 2	November 9, 2023
Concurrence:	Renée Jamurat, RPP MCIP, Regional Planning Manager	November 23, 2023

**ATTACHMENTS**

1. Site Context
2. Written Request from Applicant

**LOCATION**

Legal Description	LOT 9, SECTION 19, GABRIOLA ISLAND, NANAIMO DISTRICT, PLAN 26155
PID	002-347-733
Civic Address	880 Horseshoe Rd, Gabriola Island
Lot size	2.05 hectares/5.07 acres


**LAND USE**

Current Land Use	Residential
Surrounding Land Use	Residential to North, South, East and West, Subject property and all surrounding properties Agriculture (ALR)

**HISTORICAL ACTIVITY**

File No.	Purpose
None	N/a

**POLICY/REGULATORY**

Official Community Plan Designations	<p>Agriculture (AG) Riparian Development Permit Area (DPA 3) on property – McClay Creek:</p>  <p>Existing wood shed and workshop appear to be located in the Riparian DPA, but were constructed prior to DPA regulation adoption and therefore do not require an approved DP. Any disturbance of soils, removal, alteration, or destruction of vegetation, construction of, addition to, or alteration of a building or other structure in the future will require an approved Development Permit.</p>
Land Use Bylaw	Agriculture (AG)
Other Regulations	<b>Part D - ZONES</b> <b>D.2 RESOURCE ZONES</b>

	<p><b>D.2.1 Agriculture (AG)</b></p> <p><b>D.2.1.3 Regulations</b></p> <p><b>a. Buildings and Structures Siting Requirements</b></p> <p>ii On lots 1.0 hectare (2.47 acres) or larger, except for a sign, fence, or pump/utility house:</p> <ul style="list-style-type: none"> <li>the minimum setback for a single family dwelling, a manufactured home for immediate family or farm worker housing, a secondary suite and buildings and structures accessory to them is <b>10.0 metres (32.8 feet)</b> from any lot line.</li> </ul> <p><b>B.2 GENERAL SITING AND HEIGHT PROVISIONS</b></p> <p><b>B.2.1 Special Setbacks and Elevations</b></p> <p><b>B.2.1.1 Setbacks and Elevations from Watercourses and the Sea</b></p> <p>a. Despite all other siting references in this Bylaw excepting B.2.1.4c, third party signs, fences, pump/utility houses, retaining walls, ground level decks, structures and buildings, excepting boathouses, must be sited a minimum of 7.5 metres (24.6 feet) from and 1.5 metres (4.9 feet) above the natural boundary of the sea and a minimum of 15 metres (49.2 feet) from and 1.5 metres (4.9 feet) above the natural boundary of any lake, stream, or wetland.</p>
Covenants	No Covenants on Title
Bylaw Enforcement	GB-BE-2023.15 - large shed along the lot line that contains an area for wood storage and a workshop. Constructed in the 1990's and at that time was required to be 10 metres from any lot line. DVP seeks varying the lot line setback for works completed.

## 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-LOW. 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	None Mapped
Archaeological Sites	None Mapped Notwithstanding the foregoing, and by copy of this report, the owners and applicant should be aware that there is 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 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.

Climate Change Adaptation and Mitigation	This DVP application seeks to lawfully site an existing accessory structure 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.
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July 4<sup>th</sup>, 2023

To the Local Trust Committee  
Gabriola Island, BC\

Regarding file # GB-DVP-2023.3

This note is to request that my application for Development Variance Permit be accepted and processed with out a new professional survey being done.

My land 880 Horseshoe rd Gabriola Island was surveyed in 1989 when we, my X partner and I were preparing to purchase the land and build our home, unbenounced to me and due to my ignorance of process the survey was not registered. I have included the last registered survey of this land. Also considering the neighbours who made the complaint about the wood shed being to close to the property line would have had their land surveyed when they purchased their land and or built their home with in the past 6-8 years. In them doing so I have never received notice that the shed was over the property line. Which I know it not to be. Because of the nature of this bylaw report and resulting need for a Development Variance Permit I am requesting the requirement of a professional survey be waived.

Sincerely and thank you from Sandra Miller  
880 Horseshoe Road Gabriola Island

