



File No.: GB-DVP-2023.3 (Miller)
(GB-BE-2023.15)

DATE OF MEETING: April 18, 2024
TO: Gabriola Island Local Trust Committee
FROM: Margot Thomaidis, Planner 2
Northern Team
COPY: Warren Dingman, Bylaw Compliance and Enforcement Officer
SUBJECT: Development Variance Permit Application
Applicant: Sandra Miller
Location: 880 Horseshoe Road, Gabriola Island

RECOMMENDATION

- 1. That the Gabriola Island Local Trust Committee hold the application GB-DVP-2023.3 in abeyance until the LTC receives comment from Snuneymuxw First Nation, and request that the applicant submit a referral application to the Snuneymuxw First Nation.**

REPORT SUMMARY

The purpose of this application is for the Gabriola Island Local Trust Committee (LTC) to consider development variance permit application GB-DVP-2023.3 which seeks to vary the 10 metre setback minimum to permit works completed (a 30m² wood shed) within 0.0 metres of the interior lot line. The existing shed was originally built in the early 1990s and has since been maintained for the storage of tools and wood.

The application is supported as the variance sought is minor; there is no land/ground disturbance proposed; and it does not obstruct or impact neighbouring views and property.

However, the Snuneymuxw First Nation (SFN) has identified the application for review and comment, and requested submission of a referral application to their Lands Clerk. Therefore, staff are recommending that the LTC request that the applicant submit a referral application before proceeding, to allow the SFN the opportunity to comment on the application before the LTC considers issuance.

BACKGROUND

The subject property is zoned Agriculture (AG) and is 2.05 ha (5.07 ac) in area. The wood shed under consideration, originally built in the early 1990s, is within 0.84 metre (2.75 feet) of the northern property line shared with 860 Horseshoe Rd. (Figures 1 and 2). Additional property information can be found as Attachments 2 and 3. The application is proceeding following bylaw compliance and enforcement file GB-BE-2023.15 for works completed within a 10 metre setback area. Following staff recommendations to either remove the shed or seek a variance, the applicant submitted a development variance permit application.

Figure 1. Subject Property Map - 880 Horseshoe Rd.

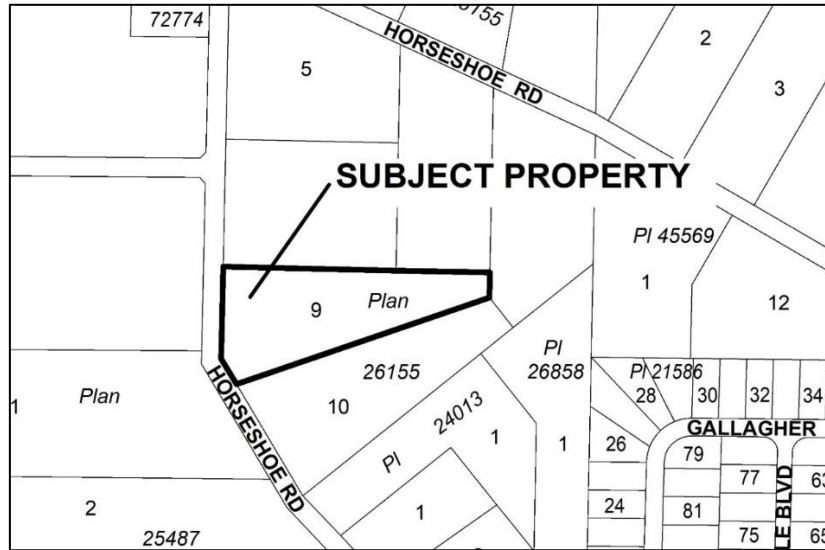
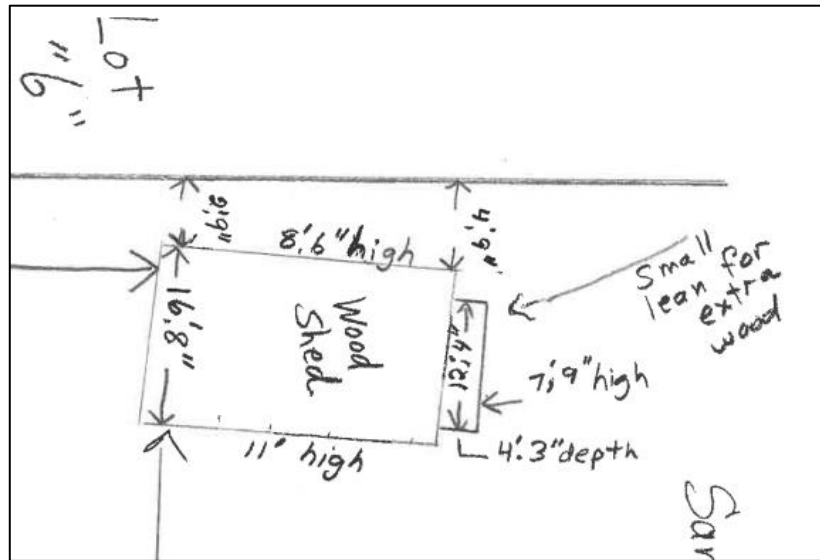


Figure 2. Site Plan Excerpt of Wood Shed – Prepared by Applicant



According to Article A.3.5.1 of the Gabriola Island Land Use Bylaw No. 177, 2014 (LUB), every applicant for a development variance permit must provide a plan signed by a B.C. Land Surveyor, unless the LTC determines that the provision of such a plan is not reasonably necessary to establish whether the proposed works comply with the siting requirements of the bylaws. Upon the applicant’s request, the LTC granted a waiver of the requirement for a plan signed by a B.C. Land Surveyor at the LTC meeting on November 30, 2023, as follows:

GB-2023-088

Moved and Seconded

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).

CARRIED

The applicant has provided rationale letters in support of their application and their survey waiver request from July and November 2023 (Attachment 1). Copies of two hand-drawn site plans prepared by the applicant are provided in Attachment 2. Attachment 3 contains a Site Context, Attachment 4 contains the Notice that was sent to property owners in advance of this report, and Attachment 5 contains the proposed Permit.

Figure 3. Site Visit Photographs – March 26, 2024



ANALYSIS

Policy/Regulatory

Section 498 of the Local Government Act enables the LTC to issue (approve) a development variance permit (DVP) in order to vary siting, size, and dimensions of buildings and structures. A DVP may not be used to vary density or land use. In this case, a variance to a siting regulation is being sought.

Official Community Plan:

The property is designated Agriculture (AG) in the Gabriola Island Official Community Plan No 166, 2014 (OCP). The property is also part of the Agricultural Land Reserve and is subject to the *Agricultural Land Commission Act* and Agricultural Land Reserve regulations.

Development Permit Area 3 – Riparian Areas (DP-3) is on part of the property including the location of the shed. A 30-metre buffer area on either side of McClay Creek is identified as DP-3 – Riparian Areas in the OCP and subject to Section F.3 of the LUB. A development permit application is not required at this time, since no disturbance of soils is proposed and the owners originally built the shed prior to the adoption of RAPR.

There are no specific OCP policies in conflict with this variance request.

Land Use Bylaw:

The property is zoned Agriculture (AG) on the Gabriola Island Land Use Bylaw No. 177, 2014 (LUB). The existing shed structure does not conform to the LUB siting regulations, hence a variance application is being sought. **Item D.2.1.3.a.ii** of the LUB states that 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 10.0 metres (32.8 feet) from any lot line.

Intent of regulations being varied

Property line setbacks are established for various reasons such as ensuring access for emergency and utilities services and to contribute towards consistent neighbourhood form and character.

Potential impacts of granting to variance

Granting a variance can potentially create an expectation in the community with regard to future applications. As variances consider the unique circumstances pertaining to a particular situation that may warrant the relaxation of a specific zoning regulation, each application should be evaluated on its own merits. In this case, the variance as requested is considered minor and to have minimal impact on surrounding properties.

Issues and Opportunities

The complaint to bylaw compliance and enforcement staff regarding the non-compliant shed appears to be vexatious or retaliatory in nature. A vexatious complaint is a complaint that is made for retaliatory or bad faith purposes, or otherwise forms part of a pattern of conduct by a complainant that amounts to an abuse of the process. The Gabriola Island Trust Committee Bylaw Infractions Investigations Bylaw No. 77, 1990 does not address these types of complaints, therefore bylaw staff proceeded to open a file, which triggered the application for a variance.

Consultation

DVP notices were circulated to surrounding property owners and residents on April 3, 2024. The notification period ends on April 17, 2024. At the time of writing the report, no submissions have been received from neighbours

regarding the application. Any submissions received after the agenda is published will be sent to the LTC prior to the April 18th meeting and will be raised by the planner at that meeting. The notice and draft permit can be found as Attachments 4 and 5, respectively.

First Nations

Remote Access to Archaeological Data (RAAD) mapping shows no registered archaeological sites on or within 100 metres of the shed. As this application is for an as-built structure (works completed), staff provided the applicant with the Islands Trust Chance Find Protocol and the provincial Archaeological Branch guidelines on the *Heritage Act* for future reference.

The Islands Trust reviews all applications to ensure the preservation and protection of cultural heritage, archaeological sites, and ancestral places. As reviewed, the application is consistent with respect to LTC Standing Resolutions on reconciliation.

However, the Snuneymuxw First Nation (SFN) identified this application for further review and comment in December 2023, and requested submission of a referral application form and fee to allow the SFN the opportunity to comment on the application before the LTC considers issuance. Consideration of issuance can include comments from other appropriate ministries, agencies, and First Nations, in addition to public comment.

Since the decision of whether to issue or deny a variance permit is at the LTC's discretion, the LTC may consider holding the application in abeyance until comments are received from SFN.

Staff note that the variance application is otherwise considered complete and issuance of the permit is recommended since the variance sought is minor; there is no land/ground disturbance proposed; and it does not obstruct or impact neighbouring views and property.

Rationale for Recommendation

The recommendation on page one (1) is supported as:

- The Snuneymuxw First Nation has identified that they would like to receive a referral application for review and comment about the DVP application prior to the LTC's consideration of issuance.
- A DVP may be issued by the LTC through the *Local Government Act* and consideration of issuance can include comments from other appropriate ministries, agencies, and First Nations, in addition to public comment.

ALTERNATIVES

The LTC may consider the following alternatives to the staff recommendation:

1. Approve the application

The LTC may approve issuance of the application at this time, since the variance sought is minor; there is no land/ground disturbance proposed; and it does not obstruct or impact neighbouring views and property. Staff advise that the implications of this alternative are that the Snuneymuxw First Nation would not be given the opportunity to comment prior to issuance. Approval would resolve the bylaw enforcement action. Recommended wording for the resolution is as follows:

That the Gabriola Island Local Trust Committee approve issuance of Development Variance Permit GB-DVP-2023.3.

2. Request further information

The LTC may request further information prior to making a decision. Staff advise that the implication of this alternative is additional staff time. 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 Gabriola Island Local Trust Committee request that the applicant submit to the Islands Trust [insert required information]...

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 for the shed will continue and the applicant will be asked to move the structure outside of the lot line setback area, causing ground disturbance in a riparian area on the property. The applicant will not receive a refund of the DVP application fee, since a staff report has already been brought forward. A Development Permit application will be required before relocating the shed, including hiring a Qualified Environmental Professional to prepare a Riparian Area Protection Regulation report. If this alternative is selected, the LTC should state the reasons for denial. Recommended wording for the resolution is as follows:

That the Gabriola Island Local Trust Committee deny application GB-DVP-2023.3 for the following reasons [insert reasons]...

4. Receive for information

The LTC may receive the report for information.

NEXT STEPS

If the LTC follows the staff recommendation, the applicant will be requested to submit an application to SFN. Issuance of the variance permit will then be considered at a future LTC meeting once comments have been received from the Nation.

Submitted By:	Margot Thomaidis, Planner 2	April 5, 2024
Concurrence:	Renee Jamurat, RPP MCIP, Regional Planning Manager	April 8, 2024

ATTACHMENTS

1. Applicant Letters, dated July 4th and November 29th, 2023
2. Site Plans
3. Site Context
4. Notice
5. Draft Permit

July 4th, 2023

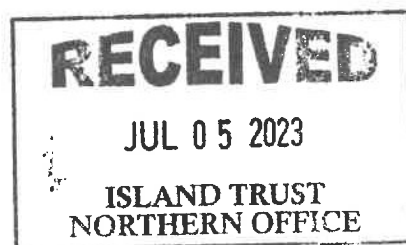
To the Local Trust Committee
Gabriola Island, BC\

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 [REDACTED] 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



REC. Gab. LTC
Nov. 30, 2023.

November 29th, 2023

To the Island Trust Review Panel

I am requesting a waiver of a survey for my property line.

This matter is in regards to my request for a development variance permit accepted by Island Trust June 22nd, 2023 for a woodshed which was built 31 years ago. I have paid the variance development permit request of \$1938 five months ago. File number GB-DVP-2023.3

The reason for the request for a variance is due to my neighbours retaliation of a complaint that I had made of their illegal industrial activity on zoned agricultural land.

My neighbours bought the [REDACTED] property, [REDACTED] [REDACTED] Then in [REDACTED] they had the property line in question surveyed. That survey does not indicate my shed as being problematic. Furthermore, the [REDACTED] had never mentioned nor indicated that the shed was a problem or that it affected them in any way. My shed is barely visible to the neighbours as it is well away from their home and set behind heavy brush and trees. Included for your reference, is the survey that was distributed to neighbours by the Island Trust when the [REDACTED] had applied for a variance permit for a shed that they had built too close to their property line.

For many years my surrounding neighbours and I endured the noise and pollution of the [REDACTED] industrial activity carried out on the [REDACTED] property. The activity included running dump trucks and excavators, dumping sewage waste from the septic truck to a holding tank and stockpiling defunct septic fields. By 2021 I felt no longer able to enjoy the peace of my property and put in a formal complaint to the Island Trust Bylaw department and ALC. The excavating activity was stopped. At that point I got a call from the owner [REDACTED] who aggressively said if I complain again [REDACTED] will retaliate with a complaint that my shed is too close to the property line. Not until the activity resumed and accelerated again did I make another complaint to the By Law office about their industrial activity. Then my neighbour did in fact complain about my shed which had never been a problem up until this point. Other neighbours did not join in with the second complaint. One person said they feared what the land owner might do to them in retaliation.

I have paid the required permit fees and any more expenditures would be a financial hardship including resurveying the property line and/or tearing down and rebuilding my woodshed. My income is limited to a partial work pension. I am a single woman homeowner. As you are aware the cost of living has gone up exponentially and I find I have no money to spare.

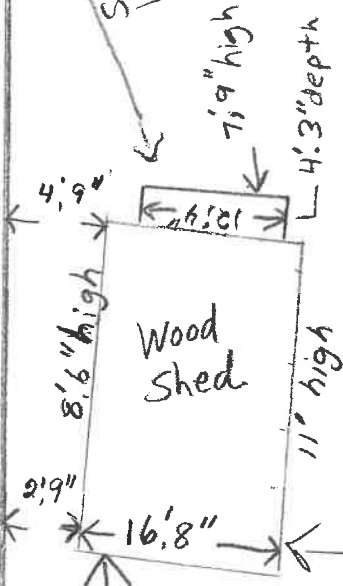
Sincerely,

[REDACTED]

Sandra Miller

Lot "9"
Sandra Miller's lot

Small for
Sandra Miller's
leaves
leaves



House

58'

180'

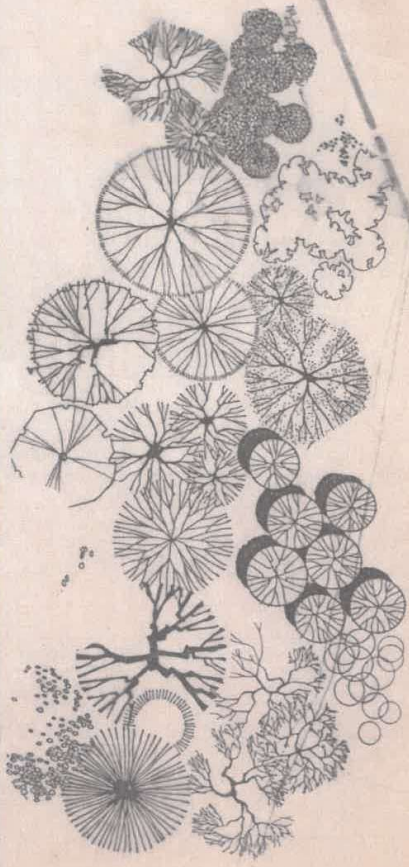
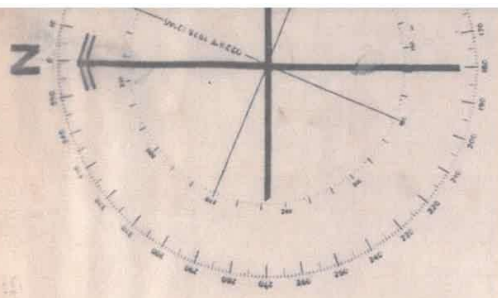
Drive way

Lot "6"
The
3ye's
lot

Drawing & measurement
By
Sandra Miller

Horseshoe Rd

9



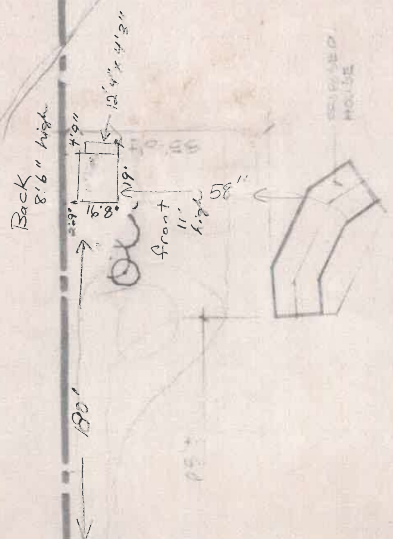
898.42

400.51



SITE PLAN

1" = 50'-0"



SHED HOUSE

WELL

PLAN 23, 154

ATTACHMENT 3 – SITE CONTEXT

GB-DVP-2023.3 (MILLER)

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 immediate surrounding properties in ALR

HISTORICAL ACTIVITY

File No.	Purpose
None	N/a

POLICY/REGULATORY

Official Community Plan Designations	<p>Land Use Designation: Agriculture (AG) ALR? Yes, property is located in the Agricultural Land Reserve DPA? Yes, 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	Zoning: Agriculture (AG)

	<p>Part D - ZONES</p> <p>D.2 RESOURCE ZONES</p> <p>D.2.1 Agriculture (AG)</p> <p>D.2.1.3 Regulations</p> <p>a. Buildings and Structures Siting Requirements</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"> 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 10.0 metres (32.8 feet) from any lot line.
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

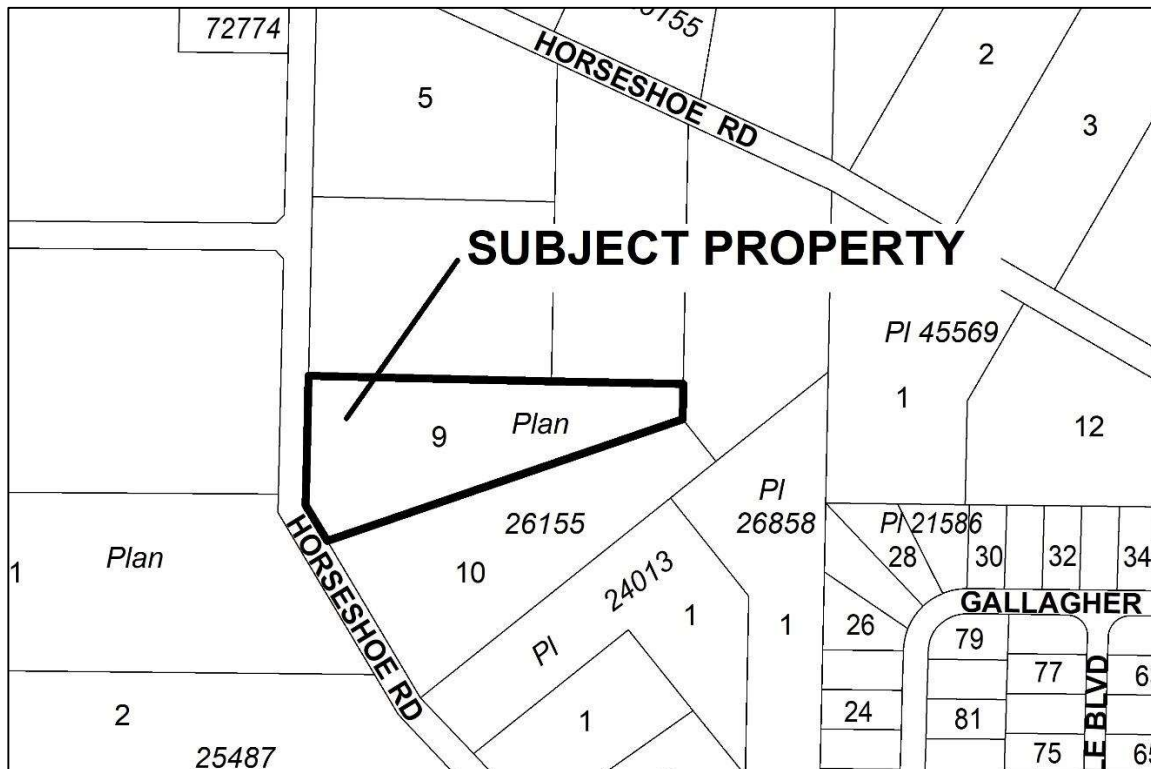
Islands Trust Conservancy	n/a – This application does not directly affect an ITC-owned property or conservation covenant; nor does it directly affect a property adjacent to an ITC-owned property or conservation covenant. It also does not pertain to terrestrial or intertidal Crown Land located within 100m of an ITC-owned property or conservation covenant. Therefore referral to ITC for comment is not required.
Regional Conservation Strategy	The Regional Conservation Plan 2018-2027 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.

NOTICE is hereby given pursuant to Section 499 of the *Local Government Act* that the Gabriola Island Local Trust Committee will be considering a resolution allowing for the issuance of a Development Variance Permit, the proposed permit would vary the Gabriola Island Land Use Bylaw No. 177 by:

- Decreasing the minimum permitted lot line setback from 10.0 metres to 0.0 metres, to permit an existing shed.

The property is located at **880 Horseshoe Rd, Gabriola Island** and is legally described as LOT 9, SECTION 19, GABRIOLA ISLAND, NANAIMO DISTRICT, PLAN 26155 (PID: 002-347-733).

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, and on the Islands Trust website <https://islandstrust.bc.ca/island-planning/gabriola/current-applications/> commencing **April 4, 2024** and continuing up to and including **April 17, 2024**.

Enquiries or comments should be directed to Margot Thomaidis, Planner 2 at (250) 247-2204, for Toll Free Access, request a transfer via Enquiry BC: In Vancouver 660-2421 and elsewhere in BC 1-800-663-7867; or by fax (250) 405-5155; or by email to: northinfo@islandstrust.bc.ca before 4:00 pm, **April 17, 2024**.

The Gabriola Island Local Trust Committee may consider a resolution allowing for the issuance of the permit during the business meeting starting at **10:30 AM, April 18, 2024 at the Gabriola Arts & Heritage Centre, 476 South Road, Gabriola, 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

ATTACHMENT 5



GABRIOLA ISLAND LOCAL TRUST COMMITTEE DEVELOPMENT VARIANCE PERMIT NO. GB-DVP-2023.3

TO: Sandra Miller,

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

PID: 002-347-733

LOT 9, SECTION 19, GABRIOLA ISLAND, NANAIMO DISTRICT, PLAN 26155

2. Pursuant to Section 498 of the *Local Government Act*, the *Gabriola Island Land Use Bylaw, 1999* is varied as follows:

a) **Part D – Zones, Section D.2 Resource Zones, Subsection D.2.1 Agriculture (AG), Article D.2.1.3 Regulations, Clause a. Buildings and Structures Siting Requirements, Item ii. 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 10.0 metres (32.8 feet) from any lot line, is varied:**

- **To allow a minimum interior lot line setback of 0.0 metres.**

3. The development shall be consistent with Schedule 'A', which is attached to and form part of this permit. This permit is not a building permit and does not remove any obligation on the part of the permittee to comply with all other requirements of Gabriola Island Land Use Bylaw, 1999 and to obtain other approvals necessary for completion of the proposed development.

AUTHORIZING RESOLUTION PASSED BY THE GABRIOLA ISLAND LOCAL TRUST COMMITTEE THIS ___TH DAY OF ___, 2024.

Deputy Secretary, Islands Trust

Date of Issuance

IF THE DEVELOPMENT DESCRIBED HEREIN IS NOT COMMENCED BY THE XXTH DAY OF ____, 2026, THIS PERMIT AUTOMATICALLY LAPSES.

PROPOSED

GABRIOLA ISLAND LOCAL TRUST COMMITTEE
DEVELOPMENT VARIANCE PERMIT
GB-DVP-2023.3
Schedule "A" - Site Plan

