

Report

Date March 4, 2026

File: 3080-20 24.06

Subject Development Variance Permit Application No. DVP00108 for 9909 Willow Street

PURPOSE

To consider an application for a development variance permit to vary Section 58(6)(b) of Zoning Bylaw, 1997, No. 2950 for an accessory building that was constructed in contravention of a previously approved Development Variance Permit and Building Permit at 9909 Willow Street.

BACKGROUND

The subject property (PID: 000-835-846) is located at 9909 Willow Street within the Old Town neighbourhood of Chemainus. It is designated Neighbourhood Residential under [Official Community Plan \(OCP\) Bylaw No. 3900](#). The property currently contains a two-storey single-family dwelling, a recently constructed accessory building, and three small accessory (shed) buildings.

In March 2021, Council approved a Development Variance Permit (DVP00069) to allow the replacement of a historically sited accessory (garage) building by reducing the required front yard setback from 5.0 m to 1.0 m (Attachment 1). The intent of the proposal was to replace a deteriorated garage with a new accessory building that maintains the historic form and character, and maintains a similar siting to the original. Following approval, a building permit was issued, and construction of the new accessory building proceeded.

During construction, a bylaw compliance file was opened for the subject property regarding the illegal use of the accessory building. Through further investigation of the situation, staff learned that the new accessory building may have been sited using an incorrect survey pin, resulting in the structure being located closer to the front and side property lines than permitted under DVP00069.

A B.C. Surveyor's Building Location Certificate, dated June 21, 2024 (Attachment 2), confirmed the new accessory building encroached further into the front and side yard setbacks than what was otherwise approved. This issue resulted in the associated building permit being put on hold until the siting contraventions are addressed through a new variance application.

It is important to note that the siting of the new accessory building is very similar to that of the original garage structure; both buildings are slightly askew from the property lines, with the new accessory building 16 cm further away from the road and 6 cm closer to the adjacent (northern) property line.

Proposal

To legalize the siting of an accessory building at 9909 Willow Street, a Development Variance Permit application has been submitted to vary section 58(6)(b) of Zoning Bylaw No. 2950. The request is for a reduction to the front yard setback from 5.0 m to 0.59 m (4.41 m relaxation), and the side yard setback from 1.0 m to 0.61 m (0.39 m relaxation). A letter of rationale explaining the situation from the applicant/property owners' perspective was provided in support of the proposal (Attachment 3).

Staff consider the proposal a continuation of the previous permit, as the original purpose of the proposal (the replacement of a 90-plus-year-old garage building) remains unchanged.

DISCUSSION

Development History and Siting Considerations

Through the review of DVP00069, Council recognized the historic location of the garage building and the subject property's siting constraints, in support of the requested reductions to the front yard setback for the new accessory building. One letter of support was received for the proposal, and during the corresponding Council meeting, it was noted that the adjacent neighbour was also supportive.

The siting error was not identified until construction was nearing completion, by which time significant financial investment had already been made. Notwithstanding the circumstances described by the applicant in their letter of rationale (Attachment 3), the resulting structure represents development outside the scope of the approved variance and in contravention of zoning provisions.

The previous (90+ year-old) garage building had a gross floor area of 21.2 m², with front and side yard setbacks of 0.43 m and 0.67 m, respectively. The new accessory building has a gross floor area of 20.7 m². It is a few feet taller than the original garage, so it is reasonable to suggest that it has caused a marginal increase in shadows and reduced driveway sight lines for the adjacent property.

In addition to the siting contravention, the new accessory building's roof overhang and soffits must be modified to meet BC Building Code and minimum principal building separation requirements (Attachment 4). It is staff's understanding that the required modifications have been completed, with confirmation to occur after Council has considered the variance proposal.

OCP Policy Context

Section 498 of the *Local Government Act* establishes a process for property owners to request a variance to land regulations, such as section 58(6)(b) of Zoning Bylaw, 1997, No. 2950. The OCP provides goals and objectives to guide Council, staff, and the public when considering variance applications.

- Growth Centres

Chapter 3.1.4 The Municipality will strive to:

- b. Require development within the UCB to have high standards of site-adaptive and urban design.
- i. Implement guidelines related to form and character of new buildings.

Chapter 3.1.5 Where appropriate the Municipality will ask developer and landowners to:

- a. Develop land in a low-impact, site-adapted manner, integrating natural features and ecological systems.
- b. Make the most effective use of land and provide a variety of housing unit sizes and types within development proposals.

- Neighbourhood Residential LUD

Defining Success | objectives:

This designation is where a range of lower-density residential types create housing options for people with different needs, with sensitive infill development taking place alongside the preservation of single family homes. There are opportunities for "gentle densification" where the impacts would not be significant in terms of parking, noise/disturbance and character, but ample space for trees and landscaping is retained, beneficial to urban wildlife such as birds and pollinators.

Chapter 3.2.7 The Municipality will strive to:

- d. Recognize that vehicle ownership will generally be high in these areas, and design streets that will utilize approaches that reduce speed and prioritize other modes of transport to make walking/ rolling to school easy and safe.

Development proposals of this nature are generally not subject to form-and-character requirements. Because the building already exists, it is challenging to apply site planning or design policies retroactively. That said, the new accessory building makes efficient use of the property and is generally compatible with the established form and character of the Old Town neighbourhood. An unintended but positive outcome of its siting near the road is the resulting reduction in sightlines, which contributes to traffic calming along Willow Street.

As noted previously, the placement of the new accessory building closely reflects the location of the original garage. However, the minor differences in dimension and siting of the new structure may be interpreted as having a modest impact on the adjacent property, including increased shadowing, a greater visual presence, and reduced sightlines from their driveway.

Public Notice

Pursuant to section 499 of the *Local Government Act* and [section 5\(3\)\(d\) of the Delegation of Authority Bylaw No. 3814](#), notification letters have been sent to all owners and occupants within a 60 m radius of the subject property. Any responses will be presented to Council at the March 4, 2026, Council Meeting.

Summary and Conclusion

While the existing accessory building generally aligns with the form and character of the Old Town neighbourhood, the current siting exceeds the previously approved variance and represents a clear departure from established setback requirements. OCP policy emphasizes compatibility, impact mitigation, and respect for neighbourhood form; all of which rely in part on adherence to setback standards. That said, because the existing accessory building is sited in a manner very similar to the original garage, the noted impacts on the adjacent parcel are likely limited and may not, on their own, warrant refusing the proposal.

Approval of additional variances in this instance may be perceived as weakening setback standards intended to protect neighbourhood livability. It may establish an undesirable precedent where construction errors result in further relaxation of regulations.

Council must balance the practical challenges faced by the applicant with the importance of maintaining a consistent application of land-use regulations and minimizing incremental impacts on neighbouring properties. Council decision should consider the proposal's similarities to the siting of the historic garage building, whether further relaxation of setbacks is appropriate in the context of OCP objectives, and the circumstances under which the non-compliance occurred.

Staff recommend supporting the proposal, as the size and siting of the new building are substantially similar to those of the original garage structure, and any impacts on the adjacent property appear minimal or have effectively existed for more than 90 years.

OPTIONS

1. **(Recommended Option)** THAT Council:
 - (1) Vary Section 58(6)(b) of Zoning Bylaw 1997, No. 2950 by reducing the minimum front and side yard setbacks for the existing accessory building as per the June 21, 2024, B.C. Land Surveyor's Building Location Certificate (Attachment 2) hereto attached to this report; and,
 - (2) Issue Development Variance Permit DVP00108 for 9909 Willow Street.
2. THAT Council deny Development Variance Permit Application DVP00108 to reduce the required front and side yard setbacks for the existing accessory building on 9909 Willow Street.

IMPLICATIONS

Should Council support the proposal, the existing accessory building will be permitted to remain in place, and occupancy issuance may occur in compliance with municipal bylaws and BC Building Code requirements.

Should the proposal be denied, bylaw enforcement measures may be pursued until the existing accessory building is relocated in compliance with the previously approved Development Variance Permit (DVP00069). Failure to relocate the existing accessory building in a timely manner could result in a notice on title pursued as per section 57 of the *Community Charter*.

RECOMMENDATION

THAT Council:

- (1) Vary Section 58(6)(b) of Zoning Bylaw 1997, No. 2950 by reducing the minimum front and side yard setbacks for the existing accessory building as per the June 21, 2024, B.C. Land Surveyor's Building Location Certificate (Attachment 2) hereto attached to this report; and,
- (2) Issue Development Variance Permit DVP00108 for 9909 Willow Street.

Report prepared by:



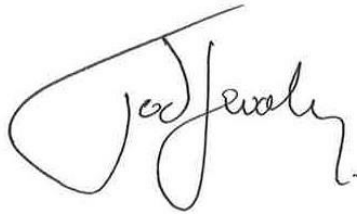
Anthony Price
Development Planner

Report reviewed by:



Amanda J. Young, MCIP, RPP
Director, Planning and Building

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) DVP00069 Report to Council - 9909 Willow Street, December 15, 2021
- (2) B.C. Land Surveyor's Building Location Certificate, June 21, 2024
- (3) Letter of Rationale
- (4) Building Memo
- (5) Draft Development Variance Permit