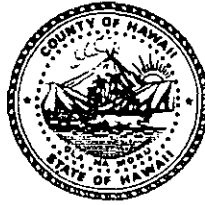


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
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**County of Hawai'i**  
PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
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May 31, 2013

Roger Brasel, AIA  
Hawaii Island Architects, LLC  
P. O. Box 39068  
Keauhou, HI 96739

Dear Mr. Brasel:

**SUBJECT: VARIANCE APPLICATION – VAR-13-000130**  
**Applicant: ROGER BRASEL, AIA/  
HAWAII ISLAND ARCHITECTS, LLC**  
**Owners: LANCE ALLYN**  
**Request: Variance from Chapter 25, Zoning, Article 5,  
Division 1, Section 25-5-7, Minimum Yards, and Article 4,  
Division 4 Section 25-4-44(a), Permitted Projections into  
Yards and Open Space Requirements (Encroachment into  
Northeast Front and Northwest Side Yard Setback)**  
**TMK: 7-8-014:051, Lot 4-B**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 13-000130 (VAR-13-000130), subject to variance conditions. The variance allows for the enclosure of the existing two-car carport with a 14.48 foot to 12.4 foot front yard setback and an 8 foot to 3 foot northwest side yard setback. This allowance is in lieu of the required 15-foot front yard and 8-foot side yard setback and associated 10-foot front yard and 4-foot side yard open space requirement. The variance is from the subject property's minimum front and side yard setback requirement pursuant to the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements (a).

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 9,583 square feet of land, is located in the North Kahu'u Beach Subdivision situated at Kahu'u, North Kona, Hawai'i. The subject property's street address is 78-6610 Ali'i Drive.
2. **Zoning.** Single-Family Residence–7,500 sq. ft. (RS-7.5).

2. **Zoning.** Single-Family Residence–7,500 sq. ft. (RS-7.5).
3. **State Land Use.** Urban (U).
4. **Required Setback.** 15 feet for front and rear; 8 feet for sides.
5. **Special Management Area.** The subject property is located within the Special Management Area (SMA). According to the acknowledgement letter dated April 12, 2013 Special Management Area Use Permit Assessment No. 13-000961 (SAA-13-000961) were issued to allow for the enclosure of the existing carport.
6. **Variance application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 2, 2013, and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by Wes Thomas Associates, Inc. (Chrystal T. Thomas, LPLS) denotes the position of the open carport to be enclosed.
7. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (005071) was issued on January 6, 2000, for the construction of a 3-bedroom and 4 bath single-family residence and detached two-car carport.
8. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated March 21, 2013. (Refer to attached DOH memorandum.)
  - b. No comments were received from the Department of Public Works–Building Division.
9. **Notice to Surrounding Property Owners.** A copy of first notice and second notice sent by the applicant via USPS to surrounding property owners and mailing certificates was submitted to the Planning Department. According to these submittals, the first and second notices were mailed via the USPS on March 28, 2013 and April 24, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 30, 2013.
10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

### GROUNDS FOR APPROVING VARIANCE

#### Special and Unusual Circumstances

- (a) *There are special or unusual circumstances applying to the subject real property*

*which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.*

**The variance application meets criteria (a) for the following reasons:**

The owner submitted the variance application to allow for the enclosure of the existing two-car carport with a northeastern front yard setback of 14.2 feet to 12.4 feet and a northwestern side yard setback of 3 feet in lieu of the minimum 15-foot front yard setback, 8-foot side yard setback and associated 4-foot side yard open space requirement.

The applicant has stated in its background report that the owner is a part-time resident and would like to secure his vehicles in an enclosed locked garage. Also, the enclosure of the existing carport would provide protection for their vehicles from the harsh salt water spray.

The subject property consisting 9,583 square feet is an ocean front property with a shoreline setback area of 4,017 square feet, leaving a net buildable area of 5,566 square feet. Requiring the owner to position the garage to meet setback requirements will diminish the owner's capabilities for ingress and egress purposes and therefore, deprive the owner of the best use of buildable area on his property.

**Alternatives**

*(b) There are no other reasonable alternatives that would resolve the difficulty.*

**The variance application meets criterion (b) for the following reasons:**

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front and side yard and open space of the subject property include the following actions:

A no-action alternative will not provide the owners security of their vehicles while the owners are away and would not provide protection of the vehicles from the harsh effects of the salt water spray.

Because the encroachment is within the front yard setback, to consolidate the subject property, with the roadway and to re-subdivide the property to modify property lines and adjust minimum front yard setbacks is not a viable option. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

**Intent and Purpose**

*(c) The variance is consistent with the general purpose of the district, the intent and*

*purpose of this chapter, and the general plan, and will not be materially detrimental to the public's welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

**The variance application meets criteria (c) for the following reasons:**

The intent and purpose of requiring building setbacks on a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

Granting of the request would be consistent with the general purpose of the zoning district and the intent and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties. No objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request is **approved** subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
4. Portion of the single family dwelling built upon the subject property ("LOT 4-B") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), in accordance to the revised site map dated July 28, 1995.
5. Should the enclosed carport (footprint) on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County

Mr. Roger Brasel, AIA  
Hawaii Island Architects, LLC  
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May 31, 2013

6. All new building improvements and existing structures shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-13-000130 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci  
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xc: Planning Department (Kona)  
Real Property Tax Division (Kona)

Mr. Roger Brasel, AIA  
Hawaii Island Architects, LLC  
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NEIL ABERCROMBIE  
GOVERNOR  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

2013 APR 12 AM 8:59



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
Director of Health

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 916  
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: April 11, 2013

TO: Bobby Jean Leithead Todd  
Planning Director, County of Hawaii

FROM: Newton Inouye *NI*  
District Environmental Health Program Chief

SUBJECT: Variance- VAR 13-000130  
Applicant: ROGER BRASEL, AIA/  
HAWAII ISLAND ARCHITECTS, LLC  
Owner: DR. LANCE ALLYN  
Request: Variance from Chapter 25, Zoning, Section 25-5-7  
Minimum Yards and Section 25-4-44(a), Permitted  
Projections into Yards and Open Space Requirements  
(Encroachment into the Northeast and Northwest Side  
Yard Setback)  
TMK: 7-8-014:051, Lot 4-B

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

WORD: VAR 13-000130 eh.

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