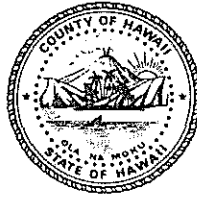


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

**CERTIFIED MAIL**

**7099 3220 0000 4869 6810**

May 2, 2000

Mr. Taeyong Kim  
ENVIRONMENTAL COMMUNICATION, INC.  
P. O. Box 536  
Honolulu, HI 96809

Dear Mr. Kim:

**VARIANCE PERMIT NO. 1112 (VAR 00-006)**  
**Applicant: ENVIRONMENTAL COMMUNICATIONS, INC.**  
**Owner: TOSCO CORPORATION**  
**Request: Variance From Minimum Yards and Other Regulations**  
**Pursuant to Chapter 25, Zoning, Ratified April 6, 1999**  
**Tax Map Key: 2-1-007:047 & 049 (Consolidated)**

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 1112 allows the reconstruction and replacement of an existing fuel loading rack without landscaping within the required 20 feet front yard and 14 clearspace requirements, as required by the Zoning Code, Chapter 25, Article 5, Division 15, Section 25-5-156, Minimum yards, (a) Section 25-5-157, Other regulations, and Article 4, Section 25-4-44, Permitted projections into yards and open spaces.

Please accept our sincere apology for this tardy confirmation of the approval to allow the requested variance. Additional time to study older subdivision maps and records, building permit history, and county ordinances was necessary. Your patience is appreciated.

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### FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance to allow the proposed reconstruction and replacement of an existing fuel loading rack without landscaping within the affected areas of the existing industrial property should be approved based on the following findings:

### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject TMK property containing 68,455 square feet is Lot 3-A, Being Lot 3, Portion of Grant 7102 and Grant 12486 (Abandoned Road Reserve), Situated at Waiakea, South Hilo, Hawaii. The subject property fronts on two existing rights-of-way and is near Hilo harbor and the State wharf.
2. The existing fuel storage facility was established on the TMK property prior to the adoption of the Zoning Code in 1967. The property was zoned General Industrial (MG-1a) in 1967 and is designated Urban "U" by the State Land Use Commission (SLUC). The property is within the Special Management Area (SMA).
3. The existing site improvements/uses and proposed building improvements are permitted uses on the subject property and are subject to other requirements of the Zoning Code. Tesoro Hawaii Corporation (TOSCO) is proposing to renovate the existing fuel renovating rack located near Kalaniana'ole Avenue. There are other similar type fuel storage and delivery system operating on adjacent property and other similar fuel type concessions in the immediate neighborhood. Nearly all of the existing fueling concessions were developed and established within the immediate neighborhood before 1967.
4. The site plan drawing and other detailed building drawings, drawn to scale, and submitted with the variance identifies the proposed the "Tesoro Terminal Upgrade".
5. The written description "REQUEST FOR VARIANCE" submitted by the applicant/agent with the variance application on January 7, 2000 states in part:

#### "PURPOSE AND NEED:

The proposed project variance is requested for the construction of a steel canopy roof and loading rack within the 20-foot setback area. This project is required to replace the aged and existing structure and equipment that has been in the same sit

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location since the 1950's. This structure and equipment is in need of replacement and was subject of a Special Management Area Use Permit (SMA 99-001) that was approved by the Planning Commission.

All proposed improvements will be constructed in the same location as the existing facilities. No expansion of facilities and service is proposed. The load rack equipment is located in the only accessible area within the site. The remainder of the site is in use with structures, equipment or the fuel tank impound area. The site is fenced and accessible only to tanker trucks and operations staff. If the existing equipment is not replaced continued safe operations for fuel loading service cannot be assured.

SPECIAL AND UNUSUAL CIRCUMSTANCES:

There are special and unusual circumstances applying to the subject property and its current and proposed use. The existing loading rack was constructed in the 1950's (Permit #14582) and has been operation (sic) since its completion. Other improvements and additions were made to the property in the following years in conformance with the prevailing zoning and building regulations. The proposed improvement will continue the current operations in the same location and manner with a significantly improved level of safety. Due to the limitations of the site, alternative locations for fuel loading are impossible. Similar conditions are also found on surrounding sites.

Landscaping is also problematic for the site. With the location of the load rack and canopy limited to the placement along the front property line, no open space is available for landscaping. The entire property is also hardscaped in asphalt to maintain an impervious surface to ensure that any fuel products don not enter the ground. The only exception is found immediately outside of the property where hibiscus shrubs are located. Openings within the surface will create potential leachate entrance points which eliminate the possibility of planting within the ground."

NO OTHER REASONABLE ALTERNATIVES:

No other reasonable alternatives that would resolve the difficulty are available. The proposed improvements are simple upgrades to existing structures and equipment. No adverse impacts will result from the proposed action. Environmental controls will, in fact, be greater with the new improved equipment and canopy. Relocation of the loading rack is not an option due to setbacks required from the warehouse as well as the location of the existing

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sump tank. In addition, if it were possible to move the load racks outside of the setback area, vehicular access and turning movements for fuel trucks using the loading rack would be unacceptable.”

6. The Department of Finance-Real Property Tax Office memorandum dated February 9, 2000 states in part:

“There are no comments at this time”

“Current”

“Remarks: Real Property taxes are paid through 6/30/00 for both parcels.”

7. The State Department of Health (DOH) memorandum dated February 10, 2000, in the subject variance file states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

8. The Department of Public Works (DPW) memorandum dated February 29, 2000, in the subject variance file states in part:

“We have reviewed the subject application forwarded by your memo dated February 2, 2000 and have the following comments.

We oppose approval of the application for the reasons noted below.

1. All new building construction shall conform to current code requirements.
  2. Building permits 812162 and 821320 for the subject structure were never finalized.”
9. Proof of serving first and second mailing of notice to the owners and lessees of record of all lots within three hundred feet was submitted by the applicant. No objections to the variance application were received from the surrounding property owners or lessees of record.

The applicant submitted a site plan and preliminary detailed building plans, which identifies the location of existing and proposed building improvements. The site plan submitted identifies existing and the proposed building improvements within the subject property.

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Therefore, considering the foregoing facts, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant and owners 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 subject property.

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum yard and landscaping requirements, which do not generally apply to improvements in this same zoned district. The proposed building upgrade is necessary to accommodate existing uses and maintain safety procedures. The existing location fuel tanks and existing fuel delivery system were built and developed on the property prior to adoption of the original Zoning Code in 1967. It appears the existing tank locations, fueling infrastructure above and below grade within the site, and fueling procedures or "modus operandi" were established and fully developed on the property prior to 1967.

#### ALTERNATIVES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum allowable height limits which do not generally apply to improvements in the this same zoned district. The proposed fuel delivery system will be an integral part of the exiting fuel storage and fuel distribution system, which was established on the property nearly 50 years ago. The existing use of the property and location of original tanks and other site improvements predate the adoption of the original 1967 Hawaii County Zoning Code. As a result of this long-term commitment to the industrial use and proximity to the existing state wharf, it is clear that the physical and site design requirements for existing property are dramatically different from other similarly zoned property located elsewhere on Hawaii Island. In order to fulfill the long-term commitment to improved fuel storage and safe fuel transfer and delivery procedures, periodic building and modern fueling system upgrades must be considered and utilized. In this particular circumstance, the affected area allocated to the existing fuel delivery system and proposed building canopy upgrades is restrictive and limits alternative building location. The requirement to introduce and maintain landscaping materials and other similar landscape improvements within the affected portion of the property would interfere with the design of the existing fuel delivery design and operation of the fuel delivery system.

#### INTENT AND PURPOSE

The general intent and purpose of requiring minimum building yards and landscaping within this zoned district is to ensure that building improvements are orderly and that other design elements are introduced to protect the health and welfare of the community. The periodic and timely replacement of aged fuel delivery systems to maintain safe fuel delivery is necessary to protect the

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health of the employees and well being of the community. However, the location of existing fuel tanks and the fuel delivery system and other site improvements which were established on the property before the adoption of the original 1967 Hawaii County Zoning Code limit building retrofits and other site improvement options.

The circumstances that permitted the existing fuel depot on the subject property and other similar industrial uses on adjacent property and within the surrounding areas are unique. The proposed building upgrade will replace the existing "aged" delivery system with a modern fuel delivery system to maintain existing operations and assure safe fuel delivery. The proposed improvements will not change the existing property uses or detract from the character of the immediate neighborhood, public uses, and the existing and surrounding industrial land patterns. Therefore, it is felt the proposed additional building improvements will not detract from the character of the immediate neighborhood or the surrounding uses.

The subject variance application was acknowledged by certified letter dated February 2, 2000. Additional time to review past records and understand past building permit history was required.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents 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.

This variance request is approved subject to the following conditions:

1. The applicant/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance is only from the Zoning Code. The applicant/owner, 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. The approval of this variance allows the proposed building improvements to be constructed on the subject property. The applicant shall contact the DPW in Hilo to address and finalize outstanding building permits nos. 812162 and 821320.

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4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

WRY:gp  
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c: Real Property Tax Office