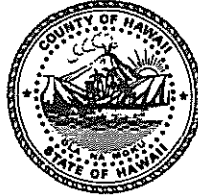


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL
Z 095 323 935

AUG 20 1997

Steven S. C. Lim, Esq.
Carlsmith Ball Wichman Case & Ichiki
121 Waianuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

Special Permit Application (SPP 96-16)
Applicant: R. Sanderson Sims, Susanne J. Sims and Sims, Inc.
Request: Allow a Culturally Significant Home to be Used
for Seminars, Retreats and Guest Stays
Tax Map Key: 6-2-9:Portion of 2

The Planning Commission at its duly held public hearing on August 8, 1997, voted to approve the above-referenced application and adopt the Report of Contested Case Hearing Officers, Findings of Fact and Conclusions of Law, Decision and Order, with conditions as proposed by the Planning Director and the Applicant. Special Permit No. 983 is hereby issued to allow educational seminars, retreats and guest stays within an existing culturally significant and unique home situated on approximately 2.97 acres of land within the State Land Use Agricultural District. The property is located in the Kanehoa Subdivision approximately 1.5 miles on the south (Kona) side of Kawaihae Road at Ouli, South Kohala, Hawaii.

Approval of this request is based on the following:

On October 30, 1996, March 20, 1997, May 1 and 28, 1997 and August 8, 1997 in the County of Hawaii, the County of Hawaii Planning Commission held public hearings and contested case hearings on the application of R. Sanderson Sims, Susanne J. Sims and Sims, Inc. for Special Permit Application SPP 96-16, a request to allow a culturally significant home to be used for seminars, retreats, and guest stays on land which is designated as Agricultural by the State of Hawaii Land Use Commission (LUC). The May 28, 1997 portion of the contested case hearing was held before a panel of hearing officers consisting of Commission Chair Kevin M. Balog, presiding officer, Commissioners Leonard Tanaka and Melvin Martinson, and Commissioner James Souza as alternate hearing officer. County of Hawaii Deputy Corporation Counsel Frederick Giannini was present as legal adviser to the hearing officers. Applicant R. Sanderson Sims, Susanne J. Sims and Sims, Inc. were represented by their counsel, Steven S. C. Lim, Esq., Intervenor William Jardine represented himself. The County of Hawaii Planning Department was represented by Deputy Corporation Counsel Patricia K. O'Toole.

C8843

AUG 20 1997

FINDINGS OF FACT

1. In July of 1996, R. Sanderson Sims and Susanne J. Sims filed an application for a special permit pursuant to HRS §205-6 to "open a culturally significant home on a selective basis to members of the public via seminars, retreats, and guest stays," which is located on TMK: 6-2-009:portion of 2, consisting of approximately 2.97 acres of land, zoned then as Unplanned, and currently zoned Agricultural-5 acres by the County of Hawaii and designated as Agricultural by the Land Use Commission. The application was subsequently supplemented by the addition of Sims, Inc., a Hawaii corporation, which is the fee owner of the subject property.

2. The home, which is located on Ouli Road in the Kanehoa Subdivision on the Kona side of the Waimea-Kawaihae Road, is considered significant by the applicants because it was built according to plans drafted by the late Frank Lloyd Wright.

3. Intervenor William Jardine resides on property which he owns and which abuts the applicant's property on its rear yard, although the two properties are in different subdivisions and use different roads for access.

4. The plans submitted pursuant to the permit application call for six seminars of 5-1/2 days in length per each one year period, accommodating no more than 20 people. The current proposal by the applicant contemplates a maximum of six (6) educational seminars/retreats per year, with each seminar/retreat limited to a maximum duration of 5 1/2 days/6 nights, with on-site overnight accommodations for a maximum of eight (8) persons, exclusive of the applicant or its representative, and the scholar(s) in residence.

5. During these seminars, no more than eight guests would reside in the home itself, along with R. Sanderson Sims, Susanne J. Sims or their designated representative, and a scholar in residence, with the remainder of the guests living at hotels and bed-and-breakfast establishments located in the area of South Kohala and vicinity.

6. Agricultural activity is not now being conducted, nor has it been conducted on the property in the recent past.

7. The property is classified as soil type E by the Land Study Bureau System, which is the least productive soil type.

8. The property presently is serviced by an adequate water supply and other utilities to accommodate the use proposed by the application.

9. Ouli Road is a private road with a fifty foot right-of-way and a twenty foot pavement which can handle the amount of expected increased traffic that the proposed use would generate.

10. Testimony by Mrs. Nancy Walden, the neighbor residing on Ouli Road who is nearby the applicant's property, indicates that approximately ten to fifteen cars go in and out of the subdivision along Ouli Road at various times during the day.

11. The applicants propose to minimize traffic congestion during the operation of the seminars by coordinating a carpooling system.
12. The proposed use would not require any physical change in the structure which would cause an adverse visual or other impact to the surrounding area.
13. The property is part of an area which has long been developed for agricultural and residential use and thus has no significant archaeological or historical sites.
14. The County of Hawaii Fire Department had no objection to the proposed use.
15. According to the U.S. Army Corps of Engineers map, the property is located in an area of minimal flood hazard. The subject property is not located within the Special Management Area of the County of Hawaii.
16. Any effect by the proposed use upon property values or real property taxes of the surrounding area is not clearly discernable.
17. The economic impact of the proposed use would be beneficial, since the applicants would probably hire persons for catering and cleaning, as well as contributing to the use of various visitor related industries since the majority of the seminar participants would be staying at nearby hotels and bed-and-breakfast establishments.

CONCLUSIONS OF LAW

1. Pursuant to HRS §205-6, the Planning Commission may issue a special permit for a use which is not an agricultural use on property which the LUC has designated as Agricultural if that use is an unusual and reasonable use within the Agricultural District. The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District.
2. Pursuant to Rule 6-6 of the County of Hawaii Planning Commission Rules of Practice and Procedure, such a permit may be issued if the use is unusual and reasonable and the use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The proposed use complies with these criteria and the criteria in Rule 6.3(b)(5)(A) through (G) of the Hawaii County Planning Commission Rules of Practice and Procedure.
3. The proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations because it does not take any active agricultural land out of production, nor does it introduce a use which would be actively incompatible with agricultural use.
4. The proposed use does not adversely affect surrounding property owners because no physical changes need be made to the property which would cause visual impacts, there is no substantial evidence that real property taxes will be increased or

that the surrounding property values will be depressed, and the applicants have agreed to take steps to minimize effects on traffic by carpooling.

5. The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements and police and fire protection for the following reasons:

- a. The proposed use is located on a private road and applicants will take steps to reduce traffic.
- b. All wastewater will be handled on the site, since there is no County wastewater system to which the property is connected.
- c. The proposed use will not lead to an increase of residents who would require school services.
- d. Police, fire, and water services are already adequate to handle the proposed use.

6. Unusual conditions, trends, and needs have arisen since the district boundaries have been established because more residences have been placed in the area over the years.

7. The land on which the proposed use is sought is classified as soil type E (very poor) and therefore is unsuited to agricultural uses which are legal within the district.

8. The proposed use will not substantially alter or change the essential character of the land and the present use because the proposed use will be compatible with the residential use of the property at the present time and with the basically residential and light agricultural use of the neighborhood.

9. The proposed use is not contrary to the General Plan and other documents, since the General Plan designation is "Extensive Agriculture" which allows for pasturage and range land rather than intensive cultivation of crops.

DECISION AND ORDER

After review of all of the testimony and evidence, the Report of Contested Case Hearing Officers, Findings of Fact and Conclusions of Law, Decision and Order and the parties' comments and objections thereto filed herein, and the arguments of the parties at the August 8, 1997 hearing, the County of Hawaii Planning Commission hereby grants Special Permit Application 96-16 to R. Sanderson Sims, Susanne J. Sims and Sims, Inc. to use the residence located on 2.97 acres of land on Ouli Road, Kanehoa Subdivision in South Kohala, TMK 6-2-009:portion of 2, to allow retreat seminars and guest stays within an existing home in land designated by the LUC as Agricultural, subject to the following conditions.

1. The applicants, successors or assigns shall be responsible for complying with all stated conditions of approval.

2. The use shall consist of no more than six (6) seminars/retreats per year, each with a duration of no more than 5½ days and 6 nights, with on-site overnight accommodations for a maximum of eight (8) persons, exclusive of the applicants or its representatives, and the scholars(s) in residence, with all classes and any informal discussion groups after the classes terminating by 9:00 p.m.

3. With the exception of the applicants or their representatives and staff, and the scholar(s) in residence, each of the seminars/retreats shall contain no more than twenty (20) participants.

4. Whenever possible, applicants must use vans and/or car pools to take seminar/retreat participants to and from the site in order to minimize traffic in the neighborhood.

5. Applicants shall install a landscape buffer on the horizontal plane on the eastern boundary of their property, between the applicants' property and the property of Intervenor William Jardine, for purposes of minimizing visual impact.

6. Applicants shall install a fence along the eastern boundary of the property, on the boundary of their property and the property of Intervenor William Jardine, to connect with the already existing fence, for the purpose of preventing trespass, either intentional or accidental, by any of applicants' guests on Intervenor William Jardine's property.

7. In order to reduce dust problems, applicants shall maintain their driveway with "Stabilizer", asphaltic concrete pavement or other material which will minimize dust, erosion, mud and standing water on the driveway accessing the house from Ouli Road, including the turnaround and any parking area provided.

8. The applicants shall submit plans and obtain Plan Approval from the Planning Director for the improvements required herein in Conditions 5, 6 and 7 within six (6) months of the effective date of this special permit. Completion of construction of these improvements shall be within twelve (12) months of the effective date of this special permit.

9. Comply with all applicable laws, rules, regulations and requirements of the affected government agencies.

10. A final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.

11. If the applicants fail to comply with the conditions of approval, the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the applicants have failed to comply with the conditions of approval or have caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

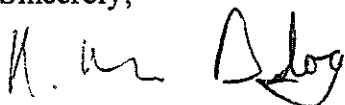
12. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

- a. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence.
- b. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- c. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- d. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

LSande01.PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Kazu Hayashida, Director/DOT-Highways, Honolulu
R. Sanderson and Suzanne Sims
Planning Director
Patricia O'Toole, Esq.
Fred Giannini, Esq.

EFFECTIVE DATE: AUG 20 1997