

APPEAL TO THE BOARD OF SUPERVISORS  
COUNTY OF SANTA BARBARA

Submit to: Clerk of the Board  
County Administration Building  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101

**07APL-00000-00041**  
FIREFOX SANDSTONE CARVING: APPEAL  
5381 EKWILL

RE: Project Title Firefox Sandstone Appeal GOLETA 071-140-071  
Case Number 07 APL-00000-00028  
Tract/ APN Number 071-140-071  
Date of action taken by Planning Commission, Zoning Administrator, or Surveyor December 5, 2007

I hereby appeal the denial of the Planning Commission  
(approval/ approval with conditions/ or denial) (Planning Commission/ Zoning Administrator/ or County Surveyor)

Please state specifically wherein the decision of the Planning Commission, Zoning Administrator, or Surveyor is not in accord with the purposes of the appropriate zoning ordinance (one of either Articles I, II, III, or IV), or wherein it is claimed that there was an error or an abuse of discretion by the Planning Commission, Zoning Administrator, or Surveyor. {References: Article I, 21-71.4; Article II 35-182.3, 2; Article III 25-327.2, 2; Article IV 35-475.3, 2}

Attach additional documentation, or state below the reason(s) for this appeal.

See attached

Specific conditions being appealed are:

Name of Appellant (please print): Eddie Langhorne  
Address: 5381 Ekwill Road  
(Street, Apt #)  
Santa Barbara Ca 93111  
(City/ State/ Zip Code) 683-9194  
(Telephone)

2007 DEC 17 PM 1:46  
COUNTY OF SANTA BARBARA  
CLERK OF THE BOARD OF SUPERVISORS

Appellant is (check one):  Applicant  Agent for Applicant  Third Party  Agent for Third Party

Fee \$ 443<sup>00</sup> {Fees are set annually by the Board of Supervisors. For current fees or breakdown, contact Planning & Development or Clerk of the Board. Check should be made payable "County of Santa Barbara".}

Signature: [Signature] Date: 12/14/07

FOR OFFICE USE ONLY

Hearing set for: \_\_\_\_\_ Date Received: \_\_\_\_\_ By: \_\_\_\_\_ File No. \_\_\_\_\_

**PLANNING COMMISSION DECISION  
 APPEALED TO THE BOARD OF SUPERVISORS  
 December 18, 2007**

<b>07APL-00000-00028</b> <b>APN: 071-140-071</b>  <b>Area: Goleta</b>  <b>District: Second</b>	<b>Applicant Appeal of Denial of Firefox Sandstone Carving Project</b>		
	<b>Applicant:</b>	<b>Eddie Langhorne</b>	
	<b>Appealed by:</b>	<b>Eddie Langhorne</b>	
	<b>Date appealed:</b>	<b>December 17, 2007; 1:46 p.m.</b>	
	<b>Planner:</b>	<b>Michelle Gibbs, ext. 3508</b>	
	<b>Supervising Planner:</b>	<b>Anne Almy, ext. 2053</b>	
	<b>Planning Commission</b>	<b>Board of Supervisors</b>	
<b>Hearing Date:</b>	December 5, 2007	Denied the Appeal, 07APL-00000-00028, And upheld P&D's denial of Land Use Permit, 07LUP-00000-00301	
<b>Fee Paid:</b>			\$ 443
<b>APPELLANTS REASON FOR APPEAL:</b>			
See Attached			
<b>FACILITATION:</b> Not applicable. The facilitation process pertains to third party appeals.			
<b>OUTCOME OF BOS HEARING:</b> TBA			

- cc: John Baker, Director  
 Dianne M. Black, Director, Development Services  
 Anne Almy, Supervising Planner  
 Michelle Gibbs, Planner  
 Records Management  
 Linda Bishop, Accounting  
 Petra Leyva, Development Review ✓  
 David Villalobos, Hearing Support

KATHLEEN M. WEINHEIMER

ATTORNEY AT LAW

420 ALAMEDA PADRE SERRA

SANTA BARBARA, CALIFORNIA 93103

TELEPHONE (805) 965-2777

FAX (805) 965-6388

EMAIL: kathleenweinheimer@cox.net

December 17, 2007

Chairman Brooks Firestone and Members  
of the Board of Supervisors  
County of Santa Barbara  
105 East Anapamu Street  
Santa Barbara, California 93101

Re: Firefox Sandstone Carving Project: 07API-00000-00028

Dear Chairman Firestone and Members of the Board:

I represent Eddie Langhorne, owner of the property at 5381 Ekwill Road in Santa Barbara. Mr. Langhorne operates a nursery at his site, where he specializes in the relocation of large trees. Mr. Langhorne "rescues" mature trees from development sites throughout central and southern California, brings them to Santa Barbara, acclimates them to our climate, and places them in residential and commercial settings throughout the County. Since many of the trees are from relatively arid climates, he prepares the trees for relocation by mounding the trees in rock surrounds, which aid drainage and form part of the eventual landscape design at the trees' permanent location. As part of this recycling process, Mr. Langhorne reuses rocks from construction sites and Flood Control projects which would otherwise be slated for the landfill. Mr. Langhorne has operated at this site since 2000 and has obtained all the necessary permits required for his existing nursery operations, including a land use permit for an 800 ton rock stockpile.

History of the Project

In July of 2002, Mr. Langhorne sought permission to expand his operation to permit some onsite stone carving. The purpose of this stone carving is two-fold: (i) to allow Mr. Langhorne to take larger rocks and cut them to fit his needs in the tree well operation described above (approximately 80% of the carving would be for this purpose) and (ii) to permit some rocks to be rough cut and rough finished for future use as landscape features (natural stone benches, steps, and the like). No more than 20 % of the rocks brought to the site would be part of this rough cutting operation, and no fine carving or fine finishing work would be done on the site, as Mr. Langhorne has since purchased and developed a

Chairman Brooks Firestone and Members  
of the Board of Supervisors  
December 17, 2007  
Page two

site in the City of Santa Barbara for that purpose. All onsite carving would be conducted in two modest, new agricultural buildings totaling approximately 4250 square feet in size. In so doing, any potential noise or dust impacts would be contained, and would not interfere with the existing, or neighboring agricultural operations.

Mr. Langhorne then spent the next *five years* attempting to get a hearing on his application. Originally he was directed to file for a CUP under the quarrying and mining provisions of the Zoning Ordinance, as rock quarrying and mining is permitted in the agricultural zone with a CUP. A year or two later, a new planner was assigned, and Mr. Langhorne was informed that an agricultural viability study needed to be prepared before any application could proceed. Another year or two passed, with no study prepared, and the case was reassigned again. By the time he got to his fifth planner, and his fifth year in process, he was directed to withdraw the CUP application and file a development plan, which was then converted to a land use permit. The accompanying letters describe in greater detail the history of this project. Throughout, staff has remained opposed to the application, finding it inconsistent with the agricultural zoning designation, yet it took until October of 2007 to get a hearing before the Planning Commission on the matter.

#### The Proposed Use is "Accessory" to the Nursery Operation

When the Planning Commission finally considered the application, on appeal from the staff's denial of the land use permit, the Commission was split. Two members felt that the proposed use fell squarely in the definition of "accessory use" contained in the Zoning Ordinance. The County Zoning Code defines "accessory use" as follows:

"A use that is customarily incidental, appropriate and subordinate to the use of the principal structure, or to the principal land use of the site and that does not alter the principal use of the lot or adversely affect other properties in the vicinity."

Given the clearly subordinate nature of this application, as well as the fact that the end products are integral to the landscape settings in which the trees are placed, we felt that the proposed carving operation met the definition of an accessory use. We believe our position is bolstered by the definition of "agriculture," which allows the sale of products which are accessory and customarily incidental to the marketing of products in their natural form grown on the premises. In this case, 80% of the rocks used on site are integral to the sale of the trees, which are clearly living products growing on site. To argue that, when the remaining rocks are rough cut and rough finished to a size for use in other landscaping applications that the character of the end product is no longer incidental to the nursery operation is unfounded. Staff offers no data supporting the conclusion that the sale of rocks, in whatever form, is any different from the sale of bark,

Chairman Brooks Firestone and Members  
of the Board of Supervisors  
December 17, 2007  
Page three

wood chips, mulch, or other natural materials sold by other nursery operators. We recognize that this is an unusual use, and that limitations to assure that it remains secondary (i.e. accessory) to the primarily allowed use are appropriate. However, the fact that a small percentage of the permitted rocks will be cut or shaped before sale does not alter that accessory use. It is important to remember that Mr. Langhorne already has a land use permit to stockpile 800 tons of rock on this site. The fact that he wishes to rough cut and rough finish a small percentage of them for other landscaping applications in connection with the trees, and would do so inside two small agricultural buildings that together cover only 1% of the nearly 10 acre property clearly demonstrates the "accessory" nature of this application.

#### The Application Does Not Propose Agricultural Processing

In their report to the Planning Commission, the staff concluded that Mr. Langhorne's proposed sandstone carving operation does not meet the definition of "agricultural processing" and therefore cannot be approved. Staff reaches this conclusion by finding that rock carving is not included in the list of agricultural processing activities permitted in the AG-1-10 zone (a list which by its own terms is intended as a list of examples only). More to the point, however, is the fact that Mr. Langhorne is not proposing to "process" any agricultural product. He sells trees. In order to assure that the trees flourish, he places them in rock surrounds. He creates the rock surrounds from rocks recovered from construction and Flood Control project sites; rocks which would otherwise unnecessarily end up in landfills. As a small part of his operation, he wants to use some of these rocks in other landscape applications with his trees: for benches, stairs, and decorative walls. He is not changing the nature of the rock or the trees, he is not "packaging" a product, nor is he operating an unrelated business or manufacturing an unrelated product. Mr. Langhorne is asking permission to split rocks he's already permitted to have on site and permitted to use in his nursery application. It seems irrelevant if the permitted rock remains whole or is split, just as it is irrelevant whether it is part of a tree surround or an adjacent walkway. It is all part of his nursery business and should be allowed as a component of his agricultural operation, just as garden accessories are part of any nursery operation.

#### Some Manufacturing is Inherent in Agriculture

Finally, the three commissioners who voted against the project apparently felt that it was too industrial in nature. This conclusion would appear to conflict with the previously granted land use permit for the rock storage onsite, as well as the use of the rocks in the tree surrounds. Every element of agriculture has some industrial component, whether it is equipment for the fields, packaging for the product, or maintenance of the facility. The

Chairman Brooks Firestone and Members  
of the Board of Supervisors  
December 17, 2007  
Page four

important point is that the industrial aspect must be "accessory" to the primary use. In this instance, the rock carving component of the nursery operation will occupy no more than 1% of the overall site, include no more than 20% of the rocks already permitted onsite, and will directly support the ongoing nursery operation by producing a product which will be installed with the trees as part of the client's landscape plan. Moreover, we would argue that the Zoning Ordinance clearly recognizes the "industrial" nature of certain aspects of agriculture, conditionally permitting greenhouses, packing plants, bottling facilities, and other "non-growing" agricultural support components in agricultural zones. These kinds of support facilities and infrastructure are not only vital to the continuation of agriculture, but are appropriate as onsite facilities, as their onsite location results in fewer truck trips, emissions, and the like.

Conclusion

We recognize the unique nature of Mr. Langhorne's operation, and would hope that the Board would encourage these types of nontraditional approaches, ones that reuse and recycle, make productive use of marginal infill agricultural sites, and provide a valuable addition to the landscape of Santa Barbara. This is not the conversion of prime agricultural land to manufacturing that some have described. Rather, it is an innovative approach to reusing existing natural materials in new landscape settings. It's a pair of buildings totaling no more than 4250 square feet on a nearly 10 acre site, where 800 tons of rocks are already permitted. We urge you to overturn the Planning Commission's denial of our appeal and grant the requested land use permit. Thank you very much.

Sincerely,



Kathleen M. Weinheimer

Enclosures