

TOWN OF CHESTER DEVELOPMENT REVIEW BOARD

IN RE: JULIAN MATERIALS, LLC (ALLSTONE)
CONDITIONAL USE APPLICATION #594

DECISION AND ORDER

I. Background

On May 31, 2023, Applicant Julian Materials, LLC (hereinafter “Julian”) filed its Application for Hearing before the Chester Development Review Board (“DRB”) seeking “modifications to three dimensional stone quarries including the relocation/consolidation of processing operations, implementation of stormwater improvements at the Chandler Road quarry, the construction of new building for processing at the South Quarry, and a new construction yard at the North Quarry.” DRB Application for Hearing at p. 1 (admitted as Exhibit A).

The DRB held an initial hearing on the Application on September 11, 2023 at which Applicant Julian presented the testimony of Mr. Matosky, its contract engineer, who provided an overview of the project, along with a Power Point presentation which referred to various existing and proposed conditions and uses at three integrated quarry locations used in Julian’s operations known as the South Quarry, the North Quarry and Chandler Road Quarry. Numerous interested parties also appeared and presented information and testimony to the DRB for its consideration. The DRB has scheduled a continuation of the hearing on the Julian Conditional Use Application, which is scheduled to reconvene on October 11, 2023 at 6:00pm at the Chester Town Hall.

Interested parties, Scott Kilgus and Leslie Thorsen, by and through James Dumont, Esq., have filed a Motion for Issuance of Orders or Subpoenas (9/21/2023) (“Motion”) asking “the Development Review Board (DRB) [to] utilize the authority granted to it by 24 V.S.A. § 4461(a) to compel the production of persons and documents.” *Id.* at p. 1. Specifically, the Motion seeks

to compel the attendance of Jason and Andrew Julian to “answer the Board’s questions about the past activities at the quarries” and also seeks the production of documents in request #s 1 through 12 as attached hereto. In support of the Motion, interested parties, Kilgus and Thorsen argue that “Julian’s past actions on these sites are highly relevant as to whether they qualify for conditional use permit, and if so on what terms.” *Id.* Accompanying the Motion are two unsigned Civil Subpoenas demanding the appearances of Andrew Julian and Jason Julian to attend and give testimony at the continued hearing on October 11, 2023. Also submitted with the Motion is a Civil Subpoena *Duces Tecum* along with a “List of Documents to be Produced by Julian Materials, LLC” which are numbered 1-12. *See* attached.

On or about October 4, 2023, Julian submitted its “Response to Request for Subpoena”, by and through its attorney, Mark Hall, Esq. In its response, Julian questioned the DRB’s authority under 24 V.S.A. § 4461(a) to issue subpoenas specifically compelling the attendance of witnesses and the production of documents at hearings before the DRB. Both parties, however, appear to concede that the DRB is enabled by 24 V.S.A. § 4461(a) to “administer oaths and compel the attendance of witnesses and the production of materials germane to any issue under review.” *Id.* *See* Response to Request for Subpoenas at p. 1 (10/4/2023).

II. Discussion

In the exercise of its authority under 24 V.S.A. §4461(a) as above stated, the DRB notes that its review of the pending Julian application requires that Julian demonstrate its ability to meet the General and Specific Standards and Special Criteria of Section 4.8(C) as stated in the Chester Unified Development Bylaws (“CUDB”), as well as the specific requirements and standards set forth in CUDB §3.9 (Extraction Operations) and §4.9 (Performance Standards). These standards and criteria involve consideration of a broad array of information and evidence

that are germane, relevant and material to determining whether Julian has met its burden for conditional use approval, as well as information germane to setting any “conditions” or “safeguards” that may be imposed should a permit be approved. *See* CUDB at §§ 3.9(D), 4.8(B), 4.7, 7.5, 7.19, and 24 V.S.A. § 4464(b)(2). These include whether the proposed use will result in an undue adverse effect to [t]he character of the area affected as defined by the purpose or purposes of the zoning district within which the project is located, traffic on roads and highways within the vicinity, distance from adjacent or nearby uses, landscaping and fencing, design and location of structures and service area, strip mining, setback distances, screening, slopage, affects on surface drainage on and offsite, stockpiling, hours of operation, blasting, trucking, processing operations, and the noise and vibration affects on neighboring properties due to blasting, excavation or crushing activities, whether the activities will involve a nuisance or safety hazards to abutters, affects on traffic or road conditions, rates of extraction, temporary or permanent erosion control, surface water quality, the affect on natural cultural historic or scenic resources in the vicinity of the project and site reclamation. *See* CUDB at §§ 3.9, 4.8 and 4.9.

All of the above will require a thorough understanding of conditions at the quarries past, present and future, to assess compliance with current standards and the appropriate conditions necessary to reasonably assure compliance in the future. The DRB believes that all of the above criteria will require it to assess not only proposed revisions and changes to existing conditions at the quarry sites, but also a clear understanding and evaluation of current conditions and operations at each quarry site, including their current impacts on surrounding properties and minimizing those impacts as proposed by the Applicant in the Conditional Use Application.

In addition, (and to the extent that Julian will be asserting the existence of pre-existing uses at any of the three quarries), past, present and future conditions are germane to determining

the Applicant's burden of establishing that the pre-existing uses claimed by Julian are not being expanded, changed or altered in any material way. Finally, it also appears that Julian's proposal will involve a phase-in period based on the testimony heard thus far. Whether Julian's use during that phase-in period is compliant with the CUDB will be relevant to any request that the use continue pending implementation.

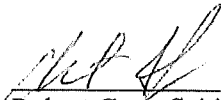
Accordingly, the DRB hereby determines that the information and materials sought in the Subpoenas *Duces Tecum* #s 1-12 are highly likely to be germane to the DRB's review of Julian's Conditional Use Application pending submission and admission of the requested documentation. It will, however, reserve making any ruling or issuing any order in connection with ordering that Andrew and Jason Julian appear and testify at the continued hearing in this matter scheduled for October 11, 2023 beginning at 6:00pm at the Chester Town Offices pending consideration of any documents submitted for admission into evidence. This does not limit the parties from seeking to call witnesses by stipulation or otherwise with the understanding that each parties' best interests are usually served by making persons and witnesses available in the DRB's search for the best factual information upon which to reach a decision.

For the above-stated reasons, the DRB hereby orders, to the extent of its authority as set forth in 24 V.S.A. § 4461(a), that the Applicant Julian produce those documents which are within its possession or control, as are attached to this Order #s 1-12 to be made available to Interested Parties Kilgus and Thorsen and the Chester Zoning Administrator for marking and posting on or before October 11, 2023. The DRB hereby reserves making any ruling or issuing any order to compel the attendance of Jason and Andrew Julian pending receipt, review and admission of the requested documentation.

The DRB hereby reserves the right to rule on the materiality of any questions, evidence or other submitted material until such time as a question or evidence is proffered. The DRB also cautions that this hearing is being conducted in connection with the review of a Conditional Use Permit Application, and not in the context of an enforcement proceeding. All parties are requested and cautioned to limit their questions and submissions to the applicable conditional use criteria and standards under the CUDB and/or any reasonable conditions that may apply.

DRB Members:

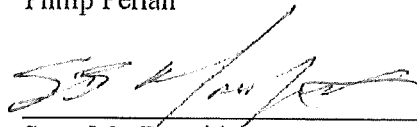
Gary Coger Date



Robert Greenfield Date 10/10/23

Harry Goodell Date

Philip Perlah Date



Scott MacDonald Date 10/14/23

LIST OF DOCUMENTS TO BE PRODUCED BY JULIAN MATERIALS, LLC

1. All photographs taken during the sound pressure measurements conducted by RSG, whether in Jullan's custody now or in RSG's custody now.
2. All documents Mr. Matosky relied on in concluding that any of the quarry operations are "grandfathered," as he said.
3. All existing documents in Julian's possession or control which describe or show the types of extraction equipment used (such as a hydraulic hammer) and/or the type, frequency and duration of noise created, at each of the three quarries in 2014 when the following noise standard was adopted: "Noise levels or frequencies which are not customary in the district or neighborhood or which represent a repeated disturbance to others shall not be permitted." (That is, the documents that show the noise loudness, duration and/or frequency of noise that is "grandfathered" under the current noise standards).
4. All existing photographs, test results and other documents in Julian's possession or control which depict, describe or explain the discharges into the brook immediately west of or adjoining the Chandler Road Quarry which have occurred in 2022 and/or 2023, including the nature of the materials being discharged into any stream or river and the quantity, frequency and location of each discharge.
5. All existing documents in Julian's possession or control which depict, describe or explain how each of those discharges will be eliminated going forward, including: a) the date on which the discharges are expected to cease, b) the means or methods that will be used to eliminate the discharges; and c) all permits applied for to authorize any discharge.
6. All existing documents in Julian's possession or control which describe or show how digging down to excavate rock, rather than quarrying rock from the side of a face, will be accomplished at any quarry where Julian seeks permission to dig down to excavate rock rather than to quarry rock from the side of a rock face.
7. All existing documents in Julian's possession or control that describe or show the locations where Julian will be excavating by digging down rather than quarrying rock from the side of a rock face.
8. All existing documents in Julian's possession or control that show the quantity of rock that will be removed by digging down rather than quarrying from the side of a rock face.
9. All existing documents in Julian's possession or control that describe or show the time period during which Julian will be digging down rather than quarrying from the side of a rock face.

10. All existing photographs or engineering plans or other plans in Julian's possession or control for the cutting devices in the storage shed at the Chandler Road Quarry when they were installed, and at present if they have changed.
11. All existing records in Julian's possession or control showing the dust, noise, traffic, water pollution, and other impacts of past use of the cutting devices in the building in the Chandler Road Quarry, and showing the dust, noise, traffic, water pollution and other impacts of proposed future use.
12. All records in Julian's possession or control of all inspections of the each of the quarries, including the buildings, by state, federal or local officials, including but not limited to MSHA (which Mr. Matosky referred to), including but not limited to notices of violations found during inspections.