

TOWN OF CHESTER DEVELOPMENT REVIEW BOARD

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

ORDER RE: WITHDRAWAL OF JULIAN MATERIALS, LLC
CONDITIONAL USE APPLICATION #594

On May 31, 2023, Applicant Julian Materials, LLC (hereinafter “Julian” or “Applicant”)¹ filed its Application for Hearing before the Chester Development Review Board (“DRB”) seeking a conditional use permit summarized as follows:

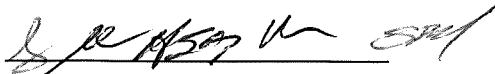
Modifications to three dimensional stone quarries including the relocation/consolidation of processing operations, implementation of stormwater improvements at the Chandler Road quarry, the construction of new building for processing at the South Quarry, and a new contractor yard at the North Quarry.”

See DRB Application for Hearing at p. 1 (admitted as Exhibit A).

On or about December 7, 2023, the Applicant filed a “revised” Application for Conditional Use Approval (“Revised Application”) summarized as follows:

Modifications to three dimensional stone quarries including the removal of processing at Chandler Road, implementation of stormwater improvements at the Chandler Road, North and South quarries, reclamation of the North quarry and conversion to a new contractor yard with improved access. Limited use of a portable crusher at South Quarry consistent with Act 250 approval 2S0775-1 (altered), and limited hammering activities (at all 3 locations with sound mitigation) to break down extracted rocks for transport to a new offsite location for processing.

See DRB Application for Hearing (Revised) at p. 1 (marked as Exhibit PP). The Revised Application was submitted for review under the objections of certain Interested Parties and its approval for consideration as part of the pending hearing by the DRB remains, to date, under advisement.



¹ Joining in the Application as landowner was 3643 VT Route 103 N, LLC and 137 Chandler Road, LLC. The term “Applicant” as hereinafter used shall include these two entities.

By letter dated January 17, 2024, Julian has now filed with the DRB a withdrawal of the Application, which states as follows:

On behalf of Julian Brothers, LLC/Allstone, I have been asked to withdraw the pending application for conditional use approval of its stone quarries in Chester, Vermont. Much of what was originally proposed is no longer part of the plans, and, during this proceeding, it has heard and considered the comments of neighbors, which has caused it to re-think how it wishes to operate. It does not feel its plans have solidified sufficiently to continue pursuit of the pending application, so the application is being withdrawn.

Julian's withdrawal of the Application is attached hereto as Attachment A.

Between May 1, 2023 and Julian's withdrawal of its Application, significant time, effort and expense has been invested by Chester, Interested Parties, the DRB and the Applicant in the DRB's review of the Application, including the conduct of 5 combined recessed hearings and site visits, and the submission and review of numerous exhibits, documents of record and various pleadings, memos and motions submitted by all parties as referenced in the attached Allstone-Julian Exhibit List for Chester DRB Conditional Use Application #594 (Attachment B).

The DRB hereby notes its appreciation of those who have participated in these lengthy proceedings and the significant time invested in an outcome which has not, to date, been reached. The DRB's jurisdiction in the pending matter, however, as set forth in 24 V.S.A. § 4460(e)(4) and CUDB §7.9E2, was invoked by, and is limited to, Julian/Allstone's request for conditional use approval. In speaking of its own jurisdictional limits to review permit applications on appeal, the Vermont Superior Court - Environmental Division (E. Court) has noted that "[w]hen an applicant withdraws the application at issue in our de novo review, the Environmental Division's subject matter jurisdiction ends. Additionally, the Environmental Division is without power to force an applicant to continue to pursue its application." *See In re Burns Two-Unit Residential Bldg.*, No. 120-8-14 Vtec, slip op. 2, 2017 Vt. Super. LEXIS 42, *4, (Vt. Super. Ct.



Envtl. Div. May 11, 2017) (Walsh, J.). *See also, Burns 12 Westin St.*, NOV, 2021 Vt. Super. LEXIS 137, *2 (Vt. Super. Ct. Env'tl. Div. May 14, 2021) (“The withdrawal of the application effectively revoked the Court’s subject matter jurisdiction.”).

In reviewing the DRB’s applicable statutory authority as referenced in Title 24, Chapter 117 (Municipal and Regional Planning & Development Act), the DRB finds no statutory or other enabling authority that would permit an “appropriate municipal panel” such as the DRB to consider a pending application for conditional use approval that has been formally withdrawn by an applicant prior to the issuance of a decision in a quasi-judicial proceeding.

Accordingly, the Chester DRB hereby notes the following for the record and issues the following Order in connection with Chester Conditional Use Permit Application #594 filed by the Applicant.

1. The Application dated May 31, 2023 has been formally withdrawn of record by the Applicant pursuant to correspondence submitted by Mark Hall, their attorney of record, dated January 17, 2024, a copy of which is attached hereto and made a part of the official record of the pending Application.

2. The Revised Application for Conditional Use approval dated and submitted on December 7, 2023, is also deemed to be formally withdrawn by the Applicant and is further considered by the DRB to be moot given the Applicant’s formal withdrawal dated January 17, 2024 of the pending Application.

3. The DRB hereby directs that the entire record in the form of all documents as referenced on the attached Allstone/Julian Exhibit List for Chester DRB Conditional Use Application #594 (Attachment B) be kept, maintained and preserved, along with all recorded proceedings of all initial and recessed hearings conducted before the DRB, for future

