

TOWN OF CHESTER  
DEVELOPMENT REVIEW BOARD

In re: Julian Material, LLC (Allstone) Conditional Use Application

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF  
MOTION TO EXCLUDE EVIDENCE AND REJECT AMENDED APPLICATION

Scott Kilgus and Leslie Thorsen submit this supplemental memorandum in support of their motion to exclude evidence and reject the amended application. The sole purpose of the memorandum is to respond to two statements made by Mr. Matosky.

**1. Evidence of traffic routes is essential**

Mr. Kilgus and Ms. Thorsen have asked that the new version of the project, unveiled at the eleventh hour, be excluded for several reasons. One reason is that the new version changes where the trucks loaded with quarried rock will bring their loads for processing, but the traffic routes have not been disclosed, so the traffic impacts of the change are unknown. Mr. Matosky testified, in response, that evidence of truck routes is not necessary because the traffic at the site will be no different than the traffic at a lumberyard. This assumes that the traffic routes of delivery vehicles for and customers of a proposed lumberyard would not need to be disclosed.

Mr. Matosky is incorrect. The traffic impacts, including the likely route of the traffic, of any significant wholesale or retail sales business are routinely studied in zoning and Act 250 cases. A recent, well-known example is the proposed enlargement of the already bustling Costco store in Colchester. The traffic that would be added *on particular streets at particular times of the day* was modeled, studied, debated and appealed. *In re Costco*, 2016 VT 86 ¶¶ 6-17. The Court noted that, in some cases, just a 5% increase in traffic volumes on a particular street could trigger the need for mitigation conditions.

Here, Mr. Matosky and his client have chosen not to disclose, or do not know, the likely location where quarried rock will be processed into a finished product as part of their change of plans. Whether they have made a choice not to disclose this information, or they simply do not know, is irrelevant—this Board and the parties to this proceeding need to know. A 5% or 10% increase in traffic on particular streets at particular times could severely impact public safety and convenience.

The missing information from the changed plans affects not only the Board's deliberations and the due process rights of the parties—it also means that persons who may not have qualified for interested person status under the earlier proposal may qualify for interested person status under the new version. However, it is impossible to know this because the routes are not identified.

**2. Trucks carrying quarried rock have different impacts than trucks carrying rocks on pallets**

Mr. Matosky also argued that there won't be any additional impacts because the same quantity of stone is already being trucked through Chester on pallets. This is incorrect in two respects. It is incorrect because the noise, dust, traffic safety and traffic inconvenience impacts of trucking quarried stone in dump trucks differ from the impacts of trucking processed stone resting on pallets on a tractor-trailer. Dump trucks loaded with quarried stone can leave rocks on the public roads; the rocks are a traffic safety hazard for which specific mitigation conditions may be imposed. *In re Rivers Development, LLC.*, Dkt Nos. 71-1-05 Vtec and 68-3-07 Vtec, Decision on the Merits (Vt. Super. Ct., March 25, 2010) (Durkin, J.), slip op. at 34 (imposing mitigation conditions to address rock escaping from loaded haul trucks onto highway). Dump trucks carrying unprocessed rock also generate dust, unlike a tractor trailer truck carrying rocks within pallets. The weight, stopping distance and noise of loaded dump trucks also may differ from tractor-trailer trucks. Because this was a last-minute change, there is no evidence on any of these issues, nor any opportunity for the parties to respond to these changes with their own evidence.

Mr. Matosky is also incorrect because the quantity of rock that is transported to be processed is likely to be a larger quantity than the finished-product rock that is transported on pallets loaded onto flatbed trucks. Not all of the raw material ends up in the finished product. Accordingly, the number of truck trips needed to transport quarried rock may be larger than the number of truck trips that have been needed to transport the finished product. Again, because this was a last-minute change, there is no evidence on any of these issues, nor any opportunity for the parties to respond to these changes with their own evidence.

Mr. Kilgus and Ms. Thorsen also note that the only valid comparisons are between the trucking impacts of *legally permitted* quarrying and the impacts of the proposed quarrying—rather than comparing the presently *unpermitted* levels and routes of truck traffic to what is being proposed. It is improper to argue that the proposal reduces truck traffic to and from the Chandler Road quarry, for example, because all of the truck traffic bringing rock to that quarry for processing is unlawful under zoning and Act 250.

Dated at Bristol, Vermont, this 27th day of December, 2023.

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