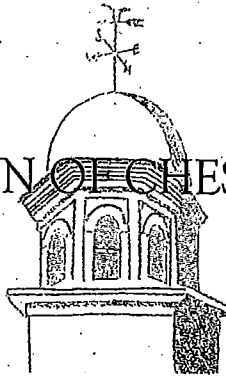


TOWN OF CHESTER



PLANNING & ZONING
556 Elm Street
P.O. Box 370
Chester, VT 05143

(802) 875-2173 office
(802) 875-2237 fax
zoning@chestervt.gov
www.chestervt.gov

TOWN OF CHESTER
NOTICE OF HEARING FOR APPEAL OF NOTICE OF VIOLATION

A Notice of Violation was issued to Andrew Julian, Jason Julian, Allstone Vermont, Julian Materials, LLC, 3643 VT Route 103 N, LLC, and 137 Chandler Road, LLC, dated January 25, 2024. The Notice of Violation was appealed on February 9, 2024. The notice and appeal refer to property locations which are commonly referred to as the North Quarry, the South Quarry, the Chandler Road Quarry, and the so-called "Bushey Lot" located at 4333 VT RT 103 N, 3645 VT RT 103 N, 137 Chandler Road, and 3681 VT Route 103 N, respectively.

The Town of Chester Development Review Board will hold a hearing on this appeal at 6:00 PM on Monday, April 1, 2024, at the Chester Town Hall at 556 Elm Street in Chester. The appeal and related information may be viewed on the Town of Chester website home page at www.chestervt.gov.

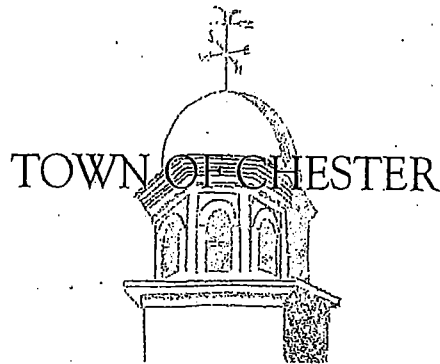
Participation in this hearing in person, via Zoom videoconference, or in writing is a prerequisite to the right to take any subsequent appeal.

A link to participate in this hearing via Zoom videoconference may be found on the Town of Chester website home page at www.chestervt.gov.

Dated at Chester, Vermont this 23rd day of February 2024.

Preston Bristow
Zoning Administrator
(802) 875-2173
zoning@chestervt.gov

APPEAL EXHIBIT 2



PLANNING & ZONING
556 Elm Street
P.O. Box 370
Chester, VT 05143

(802) 875-2173 office
(802) 875-2237 fax
zoning@chestervt.gov
www.chestervt.gov

January 25, 2024

Via Certified Mail, Return Receipt Requested and U.S. Mail

Andrew Julian
Jason Julian
Allstone Vermont
Julian Materials, LLC
3643 VT Route 103 N, LLC
137 Chandler Road, LLC
418 Meadow Street
Fairfield, CT 06824

TOWN CLERK'S OFFICE, CHESTER, VT
RECEIVED JAN 26, 2024 08:00 AM
RECORDED IN VOL: 246 on PGS: 66 - 70
Deborah Aldrich, Town Clerk

TOWN OF CHESTER – NOTICE OF VIOLATION

Re: Notice of Violation: (1) change and expansion of a use without a permit, (2) generation of noise at levels or frequencies which represent a repeated disturbance to others, (3) surface water pollution, (4) construction or enlargement of a building or structure without a permit, and (5) placing fill and constructing buildings in regulatory Special Flood Hazard Areas without a permit.

Dear Andrew Julian and Jason Julian:

You are hereby notified that you are in violation of the Town of Chester Unified Development Bylaws ("Chester UDB"). The violations consist of (1) change and expansion of a use without a permit, (2) generation of noise at levels or frequencies which represent a repeated disturbance to others, (3) surface water pollution, (4) construction or enlargement of a building or structure without a permit, and (5) placing fill and constructing buildings in regulatory Special Flood Hazard Areas without a permit.

This Notice of Violation regards the uses and activities at the following property locations, collectively referred to as "the Properties":

- North Quarry at 4333 VT RT 103 N, owned under 3643 VT Route 103 N, LLC, town parcel #06-01-10.
- South Quarry at 3645 VT RT 103 N, owned under 3643 VT Route 103 N, LLC, town parcel #06-01-10.
- Chandler Road Quarry at 137 Chandler Road, owned under 137 Chandler Road, LLC, town parcel #22-20-21.200.

Allstone Julian Notice of Violation
Page 2

- The so-called “Bushee Lot” at 3681 VT Route 103 N, owned under 3643 VT Route 103 N, town parcel #50-50-14.

The activities and uses at the above property locations appear to be operated jointly under the assumed business name of Allstone and the registered entity of Julian Materials, LLC. The Vermont Secretary of State’s Office lists Andrew Julian as principal of Julian Materials, LLC, and Andrew and Jason Julian as principals of 3643 VT Route 103 N, LLC, and 137 Chandler Road, LLC. The Vermont Secretary of State’s Office further lists Allstone as the assumed business name of M Julian LLC, and the principals of M Julian LLC are Andrew Julian, Jason Julian, and Maureen Julian (hereinafter collectively referred to as “Julian/Allstone”).

Prior to 2019, the North Quarry and South Quarry were owned and operated separately from the Chandler Road Quarry. After 2019, the North Quarry and South Quarry came under the same operational control as the Chandler Road Quarry, and the Chandler Road Quarry became integrated into and operated jointly with the North Quarry and South Quarry as a single unified quarry operation. Processing operations including the use of hydraulic guillotines and wet saws were established at the Chandler Road Quarry with stone extracted from the North Quarry and Allstone Quarry delivered to the Chandler Road Quarry tract for processing into dimensional stone products and returned to the Stone Store tract on Route 103 for storage and sale.

It appears that limited use of the North Quarry and the Chandler Road Quarry as separate quarries predate the adoption of Chester’s development bylaws. The South Quarry was approved, subject to conditions, by the Town of Chester’s then Zoning Board of Adjustment (Application #395) on September 29, 2003, under the representation that this new quarry would replace the less efficient and more visually intrusive North Quarry.

Zoning Permit #21-065 was issued to 137 Chandler Road, LLC for the construction of a 70-foot by 25-foot storage building on September 29, 2021. The Comments/Conditions of that permit are, “The current quarry operation is an allowed nonconforming use because it existed prior to the adoption of bylaws. Applicant represents that the purpose of the storage building is to protect equipment and not to expand or enlarge the nonconforming use.”

The Residential 120,000 (R120) District [Section 2.10] and the Conservation-Residential (C-R) District [Section 2.11] in which the North Quarry, South Quarry and Chandler Road Quarry are located require conditional use review for Extraction Operations which are defined as, “A use involving the on-site removal of surface and subsurface materials, including soil, sand, gravel, stone, rock or organic substances other than vegetation, from land or water. Customary extraction operations include sand and gravel pits, rock quarries, and accessory operations such as the crushing, screening and temporary storage of materials excavated on-site.”

Violation #1: change and expansion of a use without a permit.

Any land development requires a permit under Section 7.2 of the Chester UDB, and land development as defined in both statute [24 V.S.A. §4303(10)] and the bylaws includes “any mining, excavation or landfill, and any *change in the use* of any building or other structure, or land, or *extensions in use of land* [emphasis added].” “Extraction Operations” and “Retail Store” specifically require conditional use review by the Development Review Board and a zoning permit issued by the Zoning

Allstone Julian Notice of Violation
Page 3

Administrator. Installing hydraulic guillotines and wet saws at the Chandler Road Quarry and consolidating the control, management, and use of the Properties for the quarrying, processing and sales of products constitutes a “change of use” and an “extension in use of land” without conditional use review by the Development Review Board and a zoning permit issued by the Zoning Administrator and is a violation of the Chester UDB Section 7.2. It also constitutes a violation of, and an unpermitted extension of, Zoning Permit #21-065. Further, the unpermitted introduction and use of rock hammers for quarrying operations at the Properties and the coordinated use of the Properties by Julian/Allstone as currently operated, constitute an unpermitted change in use on the Properties.

Violation #2: generation of noise at levels or frequencies which represent a repeated disturbance to others.

Section 4.9 of the Chester UDB states that Performance Standards must be met and maintained by all uses in all districts that are subject to a permit, and those Performance Standards include (A) Noise. Specifically, noise volume shall be limited to 70 dB during the day between 7:00 AM and 8:00 PM measured at the property line, and 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. The introduction and use of hydraulic hammering at the Properties creates a level and frequency of noise that is not customary in the neighborhood, is a repeated disturbance to others, exceeds the permitted noise levels and is a violation of the Chester UDB and the approved Application #395 at the South Quarry.

Violation #3: surface water pollution

Section 4.9 of the Chester UDB states that Performance Standards must be met and maintained by all uses in all districts that are subject to a permit, and those Performance Standards include (F) Underground Storage Tanks, Ground/Surface Water Pollution. Specifically, “no use shall result in burying or seepage into the ground of material which endangers the health, comfort, safety or welfare of any person, or which has a tendency to cause injury or damage to property, plants or animals.” Discharge into Great Brook (also known as Dean Brook) from the stone splitting, wet cutting, and related processing operations at the Chandler Road Quarry tract is a violation of the Chester UDB, Section 4.9.

Violation #4: construction or enlargement of a building or structure without a permit.

Any land development requires a permit under Section 7.2 of the Chester UDB, and land development as defined in both statute [24 V.S.A. §4303(10)] and the bylaws includes “the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure.” Additions have been made to a shed building at the Chandler Road quarry without a permit and a mobile home at the so-called Bushee lot at 3681 VT Route 103 North has been replaced with a larger modular home and an accessory structure constructed without a permit. Construction of these structures without a permit is a violation of the Chester UDB Section 7.2.

Violation #5: placing fill and constructing buildings in regulatory Special Flood Hazard Areas without a permit.

Allstone Julian Notice of Violation
Page 4

A permit is required for all proposed construction or other development within Special Flood Hazard Areas under Section 2.14 of the Chester UDB, and land development as defined in both statute [24 V.S.A. §4303(10)] and the Chester UDB includes “any mining, excavating or landfill” and “the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure.” Fill has been placed within the mapped Special Flood Hazard Area on the Chandler Road quarry property and structures on the Chandler Road quarry property and the so-called Bushee lot at 3681 VT Route 103 North encroach upon mapped Special Flood Hazard Areas. Placing fill and constructing buildings within regulatory Special Flood Hazard Areas without a permit is a violation of the Chester UDB Section 2.14.

* * * * *

In conformance with 24 V.S.A. §4451, you have seven (7) days from the date of this notice to correct these violations by: (1) removing the hydraulic guillotines and wet saws from the Chandler Road Quarry; (2) discontinuing the consolidated and integrated control, management, and use of the Properties for the quarrying, processing and sales of products; (3) discontinuing the unpermitted use of hydraulic hammers at the Properties; (4) discontinuing other activities that generate noise at levels or frequencies which represent a repeated disturbance to others or exceed 70db at the boundaries of the Properties; (5) ceasing any discharge of pollutants or manufacturing runoff into Great Brook (also known as Dean Brook); (6) removing the additions to a shed building at the Chandler Road Quarry and removing the mobile home and accessory structure at the so-called Bushee lot at 3681 VT Route 103 North; (7) removing any structures that have been placed within the Special Flood Hazard Areas and any fill material that has been placed within the Special Flood Hazard Areas based on the recommendations and direction of the Vermont Agency of Natural Resources; (8) discontinuing any use of the South Quarry for quarrying operations that exceed those permitted in Approved Application #395; and (9) discontinuing quarrying operations at the North Quarry.

If you fail to correct these violations within seven days, a fine of \$200.00 for each violation may be assessed each day the violations continue. Each day the violations continue constitutes a separate offense. In default of payment of the fine, you shall be required to pay double the amount of the fine until the violation ceases. It may also be necessary to turn the matter over to the Town Attorney to institute in the name of the Town of Chester any enforcement action deemed appropriate, including seeking injunctive or other relief to prevent, restrain, correct, or abate that construction or use, or to prevent, in or about the Properties, any act, conduct, business, or use constituting a violation.

You should be aware that further action may be taken without the seven-day notice and opportunity to correct the violation if the violation of the bylaw is repeated after the seven-day notice period and within the next succeeding 12 months.

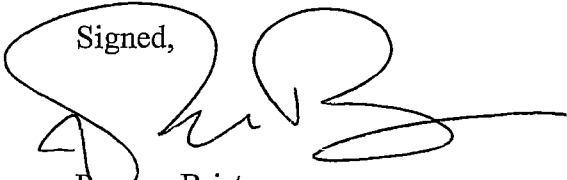
IN ACCORDANCE WITH 24 V.S.A. §4465, SHOULD YOU DISAGREE WITH THIS NOTICE OF VIOLATION, YOU MAY APPEAL TO THE CHESTER DEVELOPMENT REVIEW BOARD BY FILING YOUR NOTICE OF APPEAL WITH THE CHESTER ZONING ADMINISTRATOR OR CLERK OF THE CHESTER DRB WHICH MUST BE RECEIVED WITHIN 15 DAYS OF THE DATE OF THIS LETTER. THE APPEAL MUST INCLUDE THE APPELLANT'S NAME AND ADDRESS, A BRIEF DESCRIPTION OF THE PROPERTY

WITH RESPECT TO WHICH APPEAL IS TAKEN, A REFERENCE TO THE REGULATORY PROVISIONS APPLICABLE TO THAT APPEAL, THE RELIEF REQUESTED, AND THE ALLEGED GROUNDS FOR THE REQUESTED RELIEF. THE APPEAL, SENT TO THE ADDRESS ABOVE, MUST ALSO BE ACCOMPANIED BY AN APPEAL FEE OF \$200 PAYABLE TO THE TOWN OF CHESTER.

THE FAILURE TO FILE AN APPEAL TO THE DEVELOPMENT REVIEW BOARD WITHIN 15 DAYS OF THIS NOTICE OF VIOLATION WILL RENDER THIS NOTICE OF VIOLATION THE FINAL DECISION ON THE VIOLATIONS ADDRESSED IN THIS NOTICE PURSUANT TO 24 V.S.A. §4451.

Please feel free to contact me should you have any questions.

Signed,

A handwritten signature in black ink, appearing to be 'Preston Bristow', written over a circular stamp area.

Preston Bristow
Town Planner & Zoning Administrator

cc: Julie Hance, Town Manager
James Carroll, Esq. (via e-mail)
Mark Hall, Esq. (via e-mail)



WAYSVILLE ENGINEERING

222 Barlow Road
Springfield, VT 05156
Waysvilleengineering@gmail.com

January 31st 2024

Town of Chester Zoning Department
Attn: Preston Bristow
556 Elm Street
Chester, VT 05143

Allstone Julian Project, Response to Notice of Violation

Dear Mr. Bristow,

This letter is in response to the NOV that was issued to Allstone, Julian Materials dated January 25th 2024 by the Town of Chester VT. I am a local civil engineer and new to the project but trying to get up to speed to resolve the issues you have listed. Below are the responses to the items listed in the NOV in the order they were issued.

1) Violation #1 Change and expansion of a use without a permit:

In speaking with the team from Julian Materials we will be submitting a new permit application for just the location that is in question identified as the "Chandler Road" location . This application will include all of the items listed in the NOV under item #1. It is currently being worked on and expedited to have it in your office as soon as possible.

2) Violation #2 Generation of noise levels or frequencies which represent repeated disturbance to others

This is part of the items that will be addressed in the new application for "Chandler Road" location. In addition to working on these items in the application Julian Materials is currently looking for a new facility to move this operation to which will eliminate this violation.

3) Volation #3 Surface water pollution

This item has been dealt with and is currently controlled via a plan that was submitted to the State of Vermont, via the Multi Sector General Permit (MSGP) by TCE the previous consultant. This permit required discharge monitoring reports (DMR's) ; these will be done at time intervals required in the permit to ensure this does not happen again in the future. TCE will be continuing to work on this item with the State until the final permit is issued at which time it will be provided to your office..



WAYSVILLE ENGINEERING

222 Barlow Road
Springfield, VT 05156
Waysvilleengineering@gmail.com

4) Violation #4 Construction or enlargement of a structure without a permit.

There are two locations that you have directly noted in the NOV where this has occurred. The first location is the "Chandler Road" location. This will be addressed with when the permit application for item #1 listed above is submitted to your office . The second location that you list in the NOV is for the 3681 VT Route 103 location. This was done unintentionally when the existing "mobile home" was in disrepair and replaced with a manufactured home. Understanding now that this required a permit there will be a zoning application will be applied for with the town to resolve this issue.

5) Placing fill and constructing buildings in a regulatory Special Flood Hazard Areas without a permit.

This item is also addressed within the application that TCE has submitted to the State of Vermont for the MSGP submission. However we will also reach out to John Broker-Campbell, the State of Vermont Floodplain Coordinator and discuss these items with him directly and obtain either a permit, if required, or possibly obtain an administrative decision. Once we have this information from the State it will be provided to your office directly.

This should address all five items that were listed in the NOV. We are currently working on all the items in an expedited manner to address these issues and will continue to do so until each of the items are resolved. Please feel free to contact me with any questions regarding this letter or application.

Respectfully,

Jason Waysville P.E.
VT# 59613

MARK HALL
mhall@pfclaw.com

February 9, 2024

Sent by Email: zoning@chestervt.gov

Preston Bristow
Town Planner & Zoning Administrator
556 Elm Street
P.O. Box 370
Chester, VT. 05143

Re: Appeal of Notice of Violation to Allstone Vermont and Julian Materials, LLC, 3645 VT Route 103N, LLC, 137 Chandler Road, LLC., dated January 25, 2024

Dear Preston:

Please consider this an appeal of the above-referenced Notice of Violation pursuant to 24 V.S.A. § 4465. I have attached a copy of the Notice to ensure proper description of the alleged violation, the parties, and the properties involved, which are commonly referred to as the North and South Quarries and the Chandler Road Quarries. This response is to satisfy the notice requirements of § 7.13 of the Ordinance only, and parties request that they have the ability to present evidence and supplement the responses provided herein. *See* 24 V.S.A. § 4466.

Before addressing the individual alleged violation, I would like to mention that all three quarries will be out of operation beginning Monday, February 12, 2024 for internal reasons. The cessation will last 2-3 weeks, which I hope gives us time to get an application in. I also note extraction was halted at North Quarry prior to the issuance of the Notice of Violation. I will provide sworn statements to those points if required.

Alleged Violation 1 – Change of Use at Chandler. *See* UDB § 7.2.

137 Chandler, LLC believes it is a question of fact whether the activities are equivalent to a “change of use”. It acknowledges, of course, that it installed guillotines and wet saws at Chandler. However, it does not believe, as a matter of law and fact, processing stone at a quarry is inconsistent with activities that would traditionally occur at a quarry, so the activity arguably is not an expansion or change in use. *See* UDB § 7.2.

Irrespective of the dispute, 137 Chandler Road, LLC will seek conditional use approval possibly as legacy use for Chandler. As previously sought, a request will be made for a temporary allowance of the current processing activities until June 1, 2024, pursuant to § 3.19(C)(2) of the Ordinance. We anticipate an application being filed well before operations restart.

Alleged Violation 2 – Noise at South/North Quarry. Ordinance § 4.9

South Quarry is permitted already by Chester, and activities currently occurring do not violate the existing permit. Contrary to assertions by opponents of the quarry, it meets the applicable noise standards of the Ordinance. There are no restrictions in its zoning permit on the type of machinery used. RSG has provided testimony and evidence that the use of a hydraulic hammer meets the standards of the Ordinance and the existing permit. Allstone/3645 VT Route 103N therefore will present evidence it is not in violation of Permit #395.

Alleged Violation 3 - Surface Water Pollution. Ordinance § 4.9.

This alleged violation was cured by TCE prior to the notice of violation being issued, so this citation should be dismissed as moot. This evidence was presented to the DRB over the course of hearings on the withdrawn application that fully functioning mitigation has been installed. Chandler will resubmit that information for this proceeding.

Alleged Violation 4 – Construction or Enlargement of Buildings § 7.2.

137 Chandler, LLC admits to the enlargement and addition of a building consisting of a shed at Chandler and addition of a modular home at 3681 VT Route 103 on the Bushee lot. 3645 VT Route 103N, LLC does not believe replacing a trailer with a manufactured home of very similar size and impact is a change in use warranting a violation. While the dimensions are different, the overall size of both structures is nearly the same and in the same approximate location.

Alleged Violation 5 – Placing Fill and construction buildings in a Special Flood Hazard Area

Chandler has previously acknowledged its apparent accidental expansion into the Special Flood Hazard Area, which it has been trying to mitigate. Unfortunately, despite a monumental effort by TCE, the Agency of Natural Resources has not yet approved the Multi-Sector General Permit needed to undertake its planned mitigation, despite nearly a year of effort. TCE expects permit should be issued shortly, but ordinarily this permit would have issued in the Spring of 2024, so the circumstances are usual.

Relief Requested:

The parties to which these citations were directed request forbearance from enforcement at Chandler under alleged violations 1, 4, and 5, while they seek a conditional permit for Chandler and a permit for the manufactured home on the Bushey lot.

Chandler also requests temporary forbearance on alleged violation 5. It has been aggressively pursuing approval of a mitigation plan since early 2023, which has been subject to exceptional

Preston Bristow
Town Planner & Zoning Administrator
February 9, 2024
Page 3

delay by the Agency of Natural Resources regarding the multi-sector general permit. This circumstance is currently outside of Chandler's control.

Violations 2 and 3 should be dismissed. Operations at South Quarry meet the applicable noise standards of its permit, so Citation 2 should be dismissed. Citation 3, regarding surface water pollution, was cured prior the issuance of the Notice of Violations, so the issue is moot.

Conclusion:

Thank you for your time and efforts in this matter, Preston. Please confirm receipt of this appeal. I will process the \$200.00 fee through the town clerk's office as you directed.

Cordially yours,

PAUL FRANK + COLLINS P.C.

/s/ Mark G. Hall

Mark G. Hall

MGH:jph

10106111_1:15260-00001

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD

In re: Julian Material, LLC (Allstone) Appeal of Notices of Violation

**REQUEST TO PARTICIPATE AS INTERESTED PERSONS, ENTRY OF
APPEARANCE, AND REQUEST FOR SCHEDULING ORDER**

Scott Kilgus and Leslie Thorsen ask to participate as interested persons under CUDB §§ 7.11 and 7.12 in Julian Materials' appeals of the Notices of Violation issued to it.

James A. Dumont, Esq. hereby enters his appearance in this matter on behalf of Scott Kilgus and Leslie Thorsen.

Mr. Kilgus and Ms. Thorsen ask that the Board issue a scheduling order that requires Julian Materials, no later than 3 weeks prior to the hearing, to:

1) disclose the witnesses it will call, and to produce all documents it will use at the hearing;

2) file a memorandum of law explaining the grounds for the appeal of each Notice of Violation; and

3) either stipulate to admission into the record of the appeals the entire record of Julian Materials conditional use application or file a memorandum of law explaining why the record should not be admitted.

Dated at Bristol, Vermont, this 13th day of February, 2024.

SCOTT KILGUS and LESLIE THORSEN

BY:

James A. Dumont

James A. Dumont, Esq.

PO Box 229

15 Main St.

Bristol, VT 05443

Jim@Dumontlawvt.com

Dumont.vt.@gmail.com

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD

In re: Julian Material, LLC (Allstone) Appeal of Notices of Violation

**REQUEST TO PARTICIPATE AS INTERESTED PERSONS AND
ENTRY OF APPEARANCE**

Cheryl A. and Michael T. Leclair, Karen and Robert MacAllister, Barry, Patricia, Gregory and James Goodrich and Michael McCarthy, Rene and Priscilla Melanson, John V. Nowak, James and Kay Wells, Steve and Trudy Greene, Michael Kenworthy, and Dan Clerk ask to participate as interested persons under CUDB §§ 7.11 AND 7.12 in Julian Materials' appeals of the Notices of Violation issued to it.

Stephen S. Ankuda, Esquire hereby enters his appearance in this matter on behalf of Cheryl A. and Michael T. Leclair, Karen and Robert MacAllister, Barry, Patricia, Gregory and James Goodrich and Michael McCarthy, Rene and Priscilla Melanson, John V. Nowak, James and Kay Wells, Steve and Trudy Greene, Michael Kenworthy, and Dan Clerk.

Dated at Springfield, Vermont this 19th day of March, 2024.

Cheryl A. and Michael T. Leclair,
Karen and Robert MacAllister,
Barry, Patricia, Gregory and James Goodrich and Michael
McCarthy,
Rene and Priscilla Melanson,
John V. Nowak, James and Kay Wells,
Steve and Trudy Greene,
Michael Kenworthy, and Dan Clerk

By: 

Stephen S. Ankuda, Esquire
Parker & Ankuda, PC
52 Elm Street, PO Box 519
Springfield, VT 05156
802-885-2582

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD

In re: Appeal of Notice of Violations to Allstone Vermont and Julian Materials, LLC, dated January 25, 2024

MOTION FOR ISSUANCE OF PRETRIAL ORDERS

Scott Kilgus and Leslie Thorsen hereby request that the Development Review Board (DRB) utilize the authority granted to it by 24 V.S.A. §§ 1202(c) and 4461(a) to compel the production of persons and documents. Section 1202(c) states that the procedures set forth in the Municipal Administrative Procedure Act set the floor, and that a board “may grant additional rights to parties so long as the rights of other parties are not substantially prejudiced.” Section 4461(a) grants the DRB the power to “compel the attendance of witnesses and the production of material germane to any issue...”

1. **Order that Allstone/Julian Produce an Owner.**

The central issue in this appeal is whether, as of January 25, 2024, Allstone was committing any or all of the violations in the NOV. The persons with the most direct information about those land uses are the owners of Allstone. This Board has the power, under §§ 1202(c) and 4461(a) to obtain that information by compelling the attendance of an Allstone owner. Mr. Kilgus and Ms. Thorsen request that order.

Counsel notes that he requested that Allstone’s counsel agree to produce such a witness, and Allstone’s counsel has not agreed. See the attached email dated March 15, 2024.

2. **Order that Allstone/Julian Immediately Disclose All Fact Witnesses, Expert Witnesses and Documents**

On February 13, 2024, Counsel for Mr. Kilgus and Ms. Thorsen asked the Board to order pretrial disclosure of Allstone’s witnesses, expert witnesses and documents. Allstone’s counsel was served with a copy of the request, and has not objected. Again on March 15, 2024, counsel for Mr. Kilgus and Ms. Thorsen asked for this information from Allstone’s counsel. He still has not responded. See the attached March 15, 2024 email.

The upcoming hearing will be an on-the-record proceeding. There will be no de novo review in the Environmental Division of the Superior Court. It is critical that the facts be developed fully and fairly at the hearing. Pretrial disclosure of the witnesses and documents is essential. Therefore, Mr. Kilgus and Ms. Thorsen ask that the board **immediately** order that Allstone **immediately** disclose the witnesses, expert witnesses and documents that it will use at the hearing. The expert witness disclosure should include either the expert’s report (if she or he prepared one) or a summary of the expert’s opinions. Mr. Kilgus and Ms. Thorsen agree to disclose their own witnesses and documents within 3 business days of receipt of that information from Allstone.

If Allstone violates the order, the Board should prohibit Allstone from producing any witnesses, other than the owner, and should be barred from producing any documents.

3. **Order that Documents from the Conditional Use Proceedings Be Admitted**

In their February 13, 2024 submission to the Board, Mr. Kilgus and Ms. Thorsen asked that the Board issue an order that Allstone either stipulate that the record from the conditional use proceeding be admitted into the record of these NOV appeals or file a memorandum of law explaining why the record should not be admitted. Allstone has never responded to that request.

In their March 15, 2024 communication with Allstone's counsel, Mr. Kilgus and Ms. Thorsen reiterated this request, and asked that Allstone provide a reason, by March 18, why the record is not admissible. Allstone has not responded.

Therefore, counsel for Mr. Kilgus and Ms. Thorsen will submit to you, as part of the record of the NOV appeals, the following:

A. All documents filed by Allstone, its lawyer, or its witnesses in the conditional use proceeding, These are not hearsay under VRE 801(d).

B. All documents produced by Allstone in response to the Board's order in the conditional use proceeding, which documents later were filed by me. These too are not hearsay under VRE 801(d).

C. The recording of all statements made by Allstone, its lawyer, and its witnesses, in the conditional use proceeding, including Mr. Hall, Mr. Duncan and Mr. Matosky. These also are not hearsay under VRE 801(d).

D. The post-hearing memorandum of law submitted by Allstone in the conditional use proceeding. This also is not hearsay under VRE 801(d).

E. All affidavits submitted by interested persons in the conditional use proceeding. These affidavits are admissible because the authors will be present for cross-examination under VRE 801(d) and under Municipal Administrative Procedure Act § 1206. Section 1206 subsections (b) and (c) state:

(b) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the Superior Courts of this State shall be followed. **When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.**

(c) When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, **any part of the evidence may be received in written form, to expedite the presentation of direct testimony of a witness, provided the witness is available for direct testimony and cross-examination at the hearing on this evidence.**

These affidavits also will be useful to establish interested person status in the NOV proceedings. Please note that Mr. Kilgus and Ms. Thorsen have filed a formal request for interested person status.

F. The recording and Minutes of the expert testimony of Noise Engineer Herbert Singleton. His testimony was under oath, and was subject to cross-examination. He will also be available, by zoom, for further cross-examination on April 1. His recorded prior testimony falls within § 1206(b). The Minutes of his recorded prior testimony fall within § 1206(c).

Dated at Bristol, Vermont, this 19th day of March, 2024.

SCOTT KILGUS and LESLIE THORSEN

BY:

/s/James A. Dumont

James A. Dumont, Esq.

PO Box 229

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Attachment: March 15, 2024 email to all parties

Re: Julian Materials LLC NOV issued by Zoning Administrator -- Hearing Set for April 1 6 pm

From : James Dumont <dumont@gmavt.net>

Fri, Mar 15, 2024 10:26 AM

Subject : Re: Julian Materials LLC NOV issued by Zoning Administrator -- Hearing Set for April 1 6 pm

To : Mark G. Hall <MHall@pfclaw.com>

Cc : Zoning <zoning@chestervt.gov>, parkerankuda <parkerankuda@vermontel.net>, Jim@dumontlawvt.com <jim@dumontlawvt.com>, dumont vt <Dumont.vt@gmail.com>, Jim Carroll <jcarroll@64court.com>, ANR.Act250 <anr.act250@vermont.gov>, Jenny Ronis <jenny.ronis@vermont.gov>, nrb legal <NRB.Legal@vermont.gov>, Joann Geary <jgeary@pfclaw.com>, Herb Singleton <hsingleton@csacoustics.com>

Mark, on February 12, I filed and served a request to the DRB that it issue a pre-hearing order. We sought the following:

Mr. Kilgus and Ms. Thorsen ask that the Board issue a scheduling order that requires Julian Materials, no later than 3 weeks prior to the hearing, to:

- 1) disclose the witnesses it will call, and to produce all documents it will use at the hearing;
- 2) file a memorandum of law explaining the grounds for the appeal of each Notice of Violation; and
- 3) either stipulate to admission into the record of the appeals the entire record of Julian Materials conditional use application or file a memorandum of law explaining why the record should not be admitted.

You have not opposed our requests. The DRB has not responded. Therefore:

1. I ask that you disclose, by Monday, March 18, at noon, a list of the witnesses you will call, including whether you agree to call one of the owners of each of the properties who is knowledgeable about the operations on each property as of the date the NOV was issued and during the intervening weeks. If you do not agree by Monday at noon to provide testimony from an owner, I will file with the Board a request for a Board order compelling the attendance of an owner knowledgeable about the operations on each property as of the date the NOV was issued and during the intervening weeks. If you do not provide a list of other witnesses, I will file a motion to bar their testimony.

2. In particular, if you are calling an expert witness, disclose that by Monday at noon. The disclosure must include a summary of their testimony and copies of any reports or exhibits. If you do not, we will not have time to prepare our own expert, and I will file a motion on Monday afternoon for an order barring you from calling any experts.

3. I will submit all of the following into the record of the NOV proceeding before the hearing -- unless by Monday at noon you provide some reason not to, which we will then brief:

A. All documents filed by you and/or your client and/or your witnesses in the conditional use proceeding, These are not hearsay under VRE 801(d).

B. All documents produced by you and/or your client in response to the Board's order in the conditional use proceeding, which documents later were filed by me. These too are not hearsay under VRE 801(d).

C. The recording of all statements made by you, and of all testimony from the witnesses you offered, in the conditional use proceeding, including Mr. Duncan and Mr. Matosky. These also are not hearsay under VRE 801(d).

D. The post-hearing memorandum of law submitted by you in the conditional use proceeding. This also is not hearsay under VRE 801(d).

E. All affidavits submitted by interested persons in the conditional use proceeding. These affidavits are admissible both because the authors will be present for cross-examination under VRE 801(d) and under V.R.E.C.P. 2(e). These affidavits also will be useful to establish interested person status in the NOV proceedings; the alternative will be testimony by each person about their harm.

I look forward to hearing from you. Thanks.

Sincerely,

Jim

James A Dumont, Esq.

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APPEAL EXHIBIT 8



802.658.2311
802.658.0042

MARK HALL
mhall@pfclaw.com

March 25, 2024

VIA EMAIL – zoning@chestervt.gov
Chair, Chester Development Review Board
c/o Preston Bristow
Town Planner & Zoning Administrator
556 Elm Street
PO Box 370
Chester, VT 05143

Re: Response to Motion for a Trial Order

Dear Chair:

We are in receipt of Attorney Dumont's motion. I will say at the outset that there is no procedure or authorization in Title 24 that empowers the Chester Development Review Board to create and enforce pre-hearing discovery demands and issue pre-hearing orders, especially on behalf of third parties to this appeal. The statute sets up very simple hearing process in which parties may appear and be heard on the issues at hand, while being permitted to submit what evidence they feels is relevant. *See* 24 V.S.A. § 4465(a). The DRB does have authority to request that testimony be provided on certain topics if the DRB feels it is relevant and necessary, and it can request production of specific documents to be provided at the hearing. The appellant, however, has the discretion to pick what witnesses it chooses to provide testimony and what evidence it chooses to admit. The DRB also has no authority to sanction an appellant, either through dismissal or the refusal to permit the appellant to present its case. That would be clear, reversible error. The DRB does, however, have authority to rule that the appellant has not met its burden of proof. Accordingly, Julian opposes the motion.

That said, Julian is as interested as the other parties in avoiding an unnecessary repeat of the prior proceedings. The DRB has heard all the evidence and the exhibits are of record regarding the issues surrounding much of the appeal. Julian agrees with and stipulates to Attorney Dumont's request that all evidence and testimony submitted in the conditional use hearing be deemed admitted for purposes of this appeal. I believe such a process will greatly expedite the proceeding. As Preston has done a commendable job organizing the exhibits, I think it easiest that the parties simply use the same format. I believe this will serve all parties and hopefully keep the hearing to a single evening.

For Julian's part, either Andrew Julian and/or Jonathan Patrick may be asked to testify regarding issues related to the current status of items on the notice of violation, as well as past and future operations. However, the issues raised in the February 9, 2024 appeal will largely be argued by me, as counsel, based on the evidence submitted with the conditional use application.

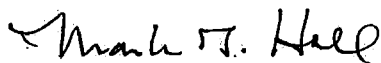
Chair, Chester Development Review Board
March 25, 2024
Page 2

I think it is important the DRB know, if it does not already, that Julian recently received a decision that it must obtain an Act 250 permit amendment for most of the items listed in the appeal, particularly related to the activities that appeared to be the most controversial in the conditional use proceeding. Accordingly, the items on appeal related to actions at the North Quarry, the use of a hammer, and processing at Chandler either have been or will be suspended until the permits can be obtained.

Julian does not anticipate a lengthy presentation, especially given the more controversial issues are largely moot going forward. Both state and possibly local permits will have to be obtained for the operations to go forward. Given the comments it has received, Julian is looking at a significant change in its operations to accommodate the Town and its neighbors to the extent possible.

Cordially yours,

PAUL FRANK + COLLINS P.C.



Mark Hall

cc via email:

Stephen S. Ankuda, Esq.

James A. Dumont, Esq.

James F. Carroll, Esq.

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