Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-113

AUGUST TERM, 2007

In re A. Johnson Company Conditional Use Permit	}	APPEALED FROM:
	}	
	}	Environmental Court
	}	
	}	DOCKET NO. 130-7-05 Vtec
		Trial Judge: Thomas S. Durkin

In the above-entitled cause, the Clerk will enter:

Landowner appeals the Environmental Court's decision approving a conditional-use permit that allows A. Johnson Company to include a rock crusher as part of its sand-and-gravel-extraction operation. We affirm.

On remand from the Environmental Court, the Town of Salisbury Developmental Review Board approved the proposed operation, including the use of a portable rock crusher. Two neighbors appealed the decision to the Environmental Court, contending that the Town's zoning regulations do not allow the rock crusher as a conditional use in the zoning district, and that, in any event, the rock crusher's permitted hours of use were unreasonable. Following an evidentiary hearing, the Environmental Court rejected both arguments. One of the neighboring landowners appeals, arguing that use of a rock crusher is manufacturing, which is not one of the conditional uses listed for the zoning district in which the gravel pit is located. The Town joins A. Johnson Company in opposing the appeal.

"We will uphold the environmental court's construction of a zoning bylaw 'if it is rationally derived from a correct interpretation of the law and not clearly erroneous, arbitrary, or capricious.' " In re Curtis, 2006 VT 9, ¶ 2, 179 Vt. 620 (mem.) (quoting In re Bennington Sch., 2004 VT 6, ¶ 11, 176 Vt. 584 (mem.)). The gravel pit is located in a zoning district that allows, as a conditional use, "[s]urface mining, gravel extraction, quarrying." The section in the regulations focusing on the extraction of soil, sand and gravel requires that proposed operations also satisfy specific conditions, including that "no excavation, blasting, or processing activities" be undertaken outside of reasonable operating hours. (Emphasis added.) Thus, the regulations contemplate that certain types of processing activities, such as crushing rocks into smaller pieces, are an inherent part of sand-and-gravel-extraction operations. This comports with the testimony at the evidentiary hearing. The owner of the rock crusher, who had also operated his own gravel pit for fifteen years,

testified that: (1) most gravel pits have rock crushers and would be worthless without them, and (2) he was unaware of an option in the industry of transporting rocks offsite to be crushed. Another witness, a consulting geologist, testified as to several gravel pits in the area that operated with rock crushers. Moreover, accessory uses, defined as uses "customarily incidental and subordinate to the principal use," are permitted in the district, and the testimony indicated that crushing stone is a customary and subordinate part of gravel extraction. Cf. Cooche's Bridge Civic Ass'n v. Pencader Corp., 254 A.2d 608, 609 (Del. 1969) (noting that both the zoning board and the superior court considered a rock crusher to be an accessory use with respect to the permitted quarry operation). Hence, the Environmental Court's interpretation of the Town's zoning regulations was reasonable.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice