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FRANCES WIHBEY *v.* ZONING BOARD OF APPEALS OF THE PINE ORCHARD ASSOCIATION (AC 45283)

Bright, C. J., and Elgo and Norcott, Js.

Syllabus

The defendant zoning board of appeals and intervening defendant property owners appealed to this court from the judgment of the trial court reversing the decision of the board that upheld the issuance of a zoning enforcement officer's order directing the plaintiff property owner to cease and desist from using his property for short-term rentals. The plaintiff purchased the property in 2005. In 2018, in response to complaints from several residents concerning alleged disruption to residential life and safety issues caused by short-term vacation rentals, the board adopted several amendments to its zoning regulations, including the prohibition of short-term rentals. Pursuant to the 2018 regulations, a zoning enforcement officer advised the plaintiff that the renting of his property to short-term overnight guests was in violation of the short-term rental ordinance and ordered him to cease and desist from that activity. The plaintiff appealed to the board, claiming that his use of the property for short-term rentals was a protected nonconforming use under the 1994 zoning regulations, which were the governing regulations when he bought the property and began using it for short-term rentals. After a hearing, the board voted to uphold the cease and desist order, and the plaintiff appealed to the trial court, which sustained the plaintiff's appeal and reversed the board's decision, finding that the board incorrectly upheld the cease and desist order and improperly denied the plaintiff's appeal because the plaintiff's use of the property for rental purposes is and was a lawful, permitted use under the 1994 regulations and became nonconforming only after adoption of the 2018 regulations. *Held*:

1. The defendants could not prevail on their claim that the trial court incorrectly concluded that the short-term rental of a single-family dwelling was permissible under the 1994 regulations: the plain language of the 1994 regulations excluded any use not authorized by the regulations and were therefore permissive, rather than prohibitive, in nature, and, although the 1994 regulations did not specifically identify the renting of property as a permitted use, they expressly permitted the placement of a sign in connection with the rental of a property, which demonstrated that the drafters of the 1994 regulations recognized the renting of property as a permissible use of residential property; moreover, the 1994 regulations did not clearly impose a minimum temporal occupancy requirement for use of a single-family dwelling and only required that a single-family dwelling be a building designed for and occupied exclusively as a home or residence for not more than one family, and, therefore, so long as a single family occupies a building as a home or residence at a given time, the structure is being used as permitted under the 1994 regulations; furthermore, interpreting the 1994 regulations to permit short-term rentals does not lead to absurd or unworkable results and, to the contrary, interpreting those regulations to have permitted long-term rentals but not short-term rentals would lead to the unworkable result that, prior to the 2018 regulations, landowners had to determine where the dividing line was between long-term and short-term, for which the 1994 regulations provided no guidance.
2. The trial court improperly found that the plaintiff had, in fact, established a preexisting nonconforming use of the property for short-term rentals to families: although the board was presented with evidence regarding the plaintiff's rental practices and the tenants to whom he rented, the board did not make a factual determination as to whether the plaintiff had established a lawful nonconforming use or any factual findings as to whether the plaintiff was renting his property to "families" as defined by the 1994 regulations or whether the plaintiff's current use was a permissible intensification or unlawful expansion of such alleged use,

and, accordingly, because the board neither made factual findings concerning the plaintiff's nonconforming use claim nor rendered a decision on that claim, it was improper for the trial court to do so in the first instance and the court should have remanded the case to the board for consideration of whether the plaintiff had, in fact, established a lawful nonconforming use.

Argued October 17, 2022—officially released March 28, 2023

Procedural History

Appeal from the decision of the defendant zoning board of appeals upholding a cease and desist order against the plaintiff, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Sizemore*, *J.*, granted the motion to intervene as party defendants filed by Michael B. Hopkins and Jacqueline C. Wolff; thereafter, the court, *Rosen*, *J.*, sustained the plaintiff's appeal and rendered judgment thereon, from which the defendants, on the granting of certification, appealed to this court. *Reversed in part*; *further proceedings*.

Peter A. Berdon, for the appellant (named defendant).

Damian K. Gunningsmith, with whom was *David S. Hardy*, for the appellants (intervening defendants).

Franklin G. Pilicy, with whom was *Daniel J. Mahaney*, for the appellee (plaintiff).

Opinion

BRIGHT, C. J. In the last few years, an increasing number of courts around the country have been required to address the extent to which local zoning regulations and restrictive covenants that have been in place for decades restrict the relatively recent practice of residential property owners renting their homes on a short-term basis through websites like VRBO[1] and Airbnb.[2] This case represents the first opportunity for an appellate court in Connecticut to address this question.[3] The defendants, the Pine Orchard Association Zoning Board of Appeals (board), Michael B. Hopkins, and Jacqueline C. Wolff,[4] appeal from the judgment of the trial court reversing the decision of the board upholding the issuance of a zoning enforcement officer's order directing the plaintiff, Frances Wihbey, to cease and desist from using his property located at 3 Crescent Bluff Avenue in the Pine Orchard section of Branford (property) for short-term rentals. The defendants claim that the court improperly determined, as a matter of law, that the plaintiff's use of the property was lawful under § IV of the 1994 Pine Orchard Association zoning regulations (1994 regulations) because it was consistent with the definition of a "single-family dwelling" and, therefore, was a protected nonconforming use. The defendants also claim, in the alternative, that the court should have remanded the case to the board for consideration of whether, even if short-term rentals were permitted under the 1994 regulations, the plaintiff's rental of the property met the other requirements of those regulations. We reject the defendants' claim that the use of any property in the Pine Orchard Association (Pine Orchard) for short-term rentals was impermissible under the 1994 regulations. We agree, however, that the court improperly determined that the plaintiff had established a lawful nonconforming use of the property when there is no indication in the record that the board decided that question in the first instance. Accordingly, we reverse in part the judgment of the court.

The record reveals the following relevant undisputed facts and procedural history. "[Pine Orchard] is an incorporated borough and municipal subdivision of the town of Branford, Connecticut, created by special act of the General Assembly in 1903. [Pine Orchard] has jurisdiction over, among other things, planning and zoning and zoning enforcement. [Pine Orchard's] zoning authority (its executive board) enforces the . . . regulations and employs a zoning enforcement officer . . . to assist in that function. The [board] hears and decides appeals of the zoning authority or [zoning enforcement officer]. . . .

"The plaintiff purchased the property in September, 2005, which consists of a single-family home in the Pine Orchard section of Branford. The property is in a residential zone to which [Pine Orchard's] zoning

regulations apply. Since its acquisition, the plaintiff has rented the property to individual families through an online rental platform known as [VRBO]. [See footnote 1 of this opinion.] On average, the property is rented over fifty days per year for rental periods of three days to one week. The property is typically rented around major holidays, Yale University graduation weekends, and during summer weeks, but is available for rental at any time during the year. . . . The property has not been rented for a period in excess of thirty [consecutive] days in the past ten years. . . .

"The plaintiff owns and rents several single-family homes for investment purposes, including the property, and the property is depreciated for income tax purposes. . . . The property is not his primary residence." (Citations omitted.)

Pine Orchard amended the Pine Orchard Association Zoning Ordinance[5] on September 19, 1994. The 1994 regulations provide for several permitted uses, including use as "[a] single-family dwelling." Pine Orchard Assn. Zoning Regs., § IV (4.1) (effective September 19, 1994). Section XIII of the 1994 regulations defines a "single family dwelling" as "[a] building designed for and occupied exclusively as a home or residence for not more than one family." Id., § XIII. The 1994 regulations define a "family" as "[o]ne or more persons related by blood, marriage or adoption, and in addition, any domestic servants or gratuitous guests. A roomer, boarder or lodger, shall not be considered a member of a family." Id. The terms "dwelling," "roomer," "boarder," and "lodger" are not defined in the 1994 regulations.

In 2018, in response to complaints from several residents concerning alleged disruption to residential life and safety issues caused by short-term vacation rentals, Pine Orchard created a short-term rental committee to investigate how community members used short-term rentals. Pine Orchard thereafter adopted several amendments to its zoning regulations, effective October 19, 2018 (2018 regulations). Section 4 of the 2018 regulations, "Permitted Uses," provides in relevant part: "A single-family dwelling may not be used or offered for use as a Short-Term Rental Property. . . ." Pine Orchard Assn. Zoning Regs., § 4.1. Section 16, "Definitions," was amended to add a definition for "Dwelling Unit," which provides: "One or more rooms connected, constituting a separate, independent housekeeping unit, which contains independent cooking, living and sleeping facilities." Id., § 16. A definition for "Short Term Rental Property" also was added: "A residential dwelling unit that is used and/or advertised for rent for occupancy by guests for consideration for a period of less than thirty (30) continuous days." Id. The definition of a single-family dwelling was not altered.

On August 16, 2019, a Pine Orchard zoning enforce-

ment officer issued a letter to the plaintiff (1) advising him that the renting of his property to "[s]hort term overnight guests" was in violation of the "short term rental ordinance" and (2) ordering him to cease and desist from that activity. The plaintiff appealed to the board pursuant to General Statutes § 8-7,[6] claiming that his use of the property for short-term rentals was a protected nonconforming use under the 1994 regulations, which were the governing regulations when he bought the property and began using it for short-term rentals.

"General Statutes [§ 8-2] provides in relevant part that zoning regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use. . . . A nonconformity has been defined as a use or structure [that is] prohibited by the zoning regulations but is permitted because of its existence at the time that the regulations [were] adopted. . . . For a use to be considered nonconforming . . . that use must possess two characteristics. First, it must be lawful and second, it must be in existence at the time that the zoning regulation making the use nonconforming was enacted. . . . The party claiming the benefit of a nonconforming use bears the burden of proving that the nonconforming use is valid." (Internal quotations marks omitted.) *Stamford* v. *Ten Rugby Street, LLC*, 164 Conn. App. 49, 71, 137 A.3d 781, cert. denied, 321 Conn. 923, 138 A.3d 284 (2016).

The board conducted a public hearing on the plaintiff's appeal on October 28 and November 25, 2019. At that hearing, the plaintiff maintained that short-term rentals of a single-family dwelling were permitted under the 1994 regulations, and, accordingly, because he began renting the property in 2005, prior to the adoption of the 2018 regulations that expressly prohibit the rental of single-family dwellings for fewer than thirty consecutive days, his use of the property was a preexisting nonconforming use. Contrastingly, the zoning enforcement officer testified that the 2018 regulations simply clarified the 1994 regulations and that short-term rentals of a single-family dwelling never were a permitted use. Similarly, Pine Orchard took the position that short-term rentals were not permitted under the 1994 regulations, and, therefore, the plaintiff could not establish a lawful preexisting use.

At the November 25 hearing, board members agreed that short-term rentals were not permitted under the 1994 regulations, and, for this reason, the plaintiff's use of the property was not a preexisting nonconforming use. The board thereafter voted to uphold the cease

and desist order. On November 25, 2019, the board formally issued its unanimous decision denying the plaintiff's appeal and affirming the issuance of the cease and desist order. The plaintiff appealed from the board's decision to the trial court pursuant to General Statutes § 8-8 (b).[7] The court, after reviewing the return of record of the proceedings before the board[8] and the parties' briefs, and hearing oral arguments, issued a memorandum of decision on October 4, 2021, sustaining the plaintiff's appeal. The court held that the board incorrectly upheld the cease and desist order and, therefore, improperly denied the plaintiff's appeal.

At the outset, the court noted that it had to determine whether the plaintiff's use of his property for short-term rentals was lawful under the 1994 regulations. Given the lack of Connecticut case law on the issue, the court began its analysis by reviewing *Lowden* v. *Bosley*, 395 Md. 58, 909 A.2d 261 (App. 2006), in which the Maryland Court of Appeals held that a restrictive covenant, contained in a subdivision declaration governing all homes in the subdivision, that required that a home be used for "single family residential purposes only" did not prohibit short-term rentals of a home to a single family. Specifically, the Maryland court interpreted the "residential use" restriction to mean use for "living purposes" and held that "[w]hen the owner of a permanent home rents the home to a family, and that family, as tenant, resides in the home, there obviously is no violation of the [d]eclaration." Id., 68. Notably, the court reasoned that "[t]he transitory or temporary nature of such use does not defeat the residential status." Id. Thus, "[t]he owners' receipt of rental income in no way detracts from the *use* of the properties as *residences* by the tenants." (Emphasis in original.) Id., 69. The court further noted that, if the covenant were interpreted to implicitly preclude short-term rentals while allowing long-term rentals of the property, the question becomes "at what point does the rental of a home move from short-term to long-term: a week? a month? a season? three months? six months? one year? or several years?" Id., 70.

In the present case, the court also referenced *Yogman* v. *Parrott*, 325 Or. 358, 937 P.2d 1019 (1997), in which the Oregon Supreme Court interpreted a similar restrictive covenant in a subdivision declaration, finding it ambiguous as to whether the requirement that the property be used solely as a "residence" referred to both permanent and short-term residencies. Id., 362. Given that restrictive covenants are construed strictly against enforcement of the covenant, and given the ambiguity in the covenant, the Oregon court construed it against proscribing short-term rentals. Id., 364–66.

Ultimately, the court in the present case determined: "Nothing in the plain language of the 1994 regulations precludes short-term rentals, and the plaintiff's use of

the property is consistent with the definition of single-family dwelling, which is a permitted use. The property was designed and used as a single-family dwelling, not as a multi-family dwelling or a commercial building, and is being used 'exclusively as a home or residence' because the renters occupy the home in a residential manner.

"The plaintiff testified [to the board] that he rents the property to families, who often invite other family or friends as guests. . . . When the property is rented to a family, the family cooks, eats food, parks their cars, sleeps, talks, watches television, and ultimately lives in the property for a period of time. See *Pinehaven Planning Board* v. *Brooks*, 138 Idaho 826, 830, 70 P.3d 664 (2003) (holding that short-term rental is residential use because tenants are using it for 'eating, sleeping, and other residential purposes'). Unlike the Pennsylvania ordinance in [*Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, 652 Pa. 224, 207 A.3d 886 (2019)], the 1994 regulations do not proscribe the transient use of the property. Furthermore, Black's Law Dictionary defines 'residence' as '[t]he act or fact of living in a given place for *some time*'; in contrast, 'domicile' means *both* 'bodily presence' and an '[intent] to make the place one's home.'[9] Black's Law Dictionary (11th Ed. 2019).[10]

"The case law and the surrounding circumstances show that the plaintiff's use of the property was a permitted use. Moreover, as the *Lowden* court noted, there is no way to distinguish between a short-term and long-term rental absent clearly defined terms in the regulations. An interpretation of the 1994 regulations that implicitly bans short-term rentals while permitting long-term rentals creates an absurd and unworkable result. See General Statutes § 1-2z." (Citation omitted; emphasis in original; footnotes in original.)

The court further rejected the defendants' argument that the use of the property was not lawful because it was being rented to roomers, boarders, or lodgers in contravention of the 1994 regulations. The court relied on Merriam-Webster's definitions of "roomers," "lodgers" and "boarders" in finding that "[t]he record does not support the [board's] conclusion that the plaintiff rented the property to 'roomers, lodgers or boarders.' "

The court thus concluded that "[t]he plaintiff's use of the property . . . for rental purposes is and was a lawful, permitted use . . . [and the] use only became nonconforming after adoption of the 2018 regulations . . . ." In so concluding, the court found that the 2018 amendments to the 1994 regulations effected a prospective substantive change in the law. Finally, the court held that the board's decision upholding the issuance of the cease and desist order was illegal, arbitrary, and an abuse of discretion insofar as it relied on the 2018 regulations as the basis for ordering the plaintiff to

cease making short-term rentals of his property. Accordingly, the court sustained the plaintiff's appeal and reversed the board's decision.

The defendants thereafter filed a joint petition for certification to appeal, which this court granted. This appeal followed.

I

The defendants first claim that the court incorrectly concluded that the plaintiff could continue to use the property for short-term rentals as a preexisting nonconforming use established under the 1994 regulations. In particular, the defendants argue that the court "erred as a matter of law in concluding that short-term rentals of the property constituted 'use as a single-family dwelling' under the 1994 . . . regulations." Rather, they argue that the "use of any property in [Pine Orchard] for short-term rentals has never been permitted and is inconsistent with use as a 'single-family dwelling,' defined as a property occupied exclusively as a 'home' or 'residence.' " We are not persuaded.

We begin with the applicable standard of review and legal principles that guide our analysis. "Under our well established standard of review, [w]e have recognized that [a]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . We have determined, therefore, that . . . deference . . . to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation . . . ." (Internal quotation marks omitted.) *Heim* v. *Zoning Board of Appeals*, 289 Conn. 709, 714–15, 960 A.2d 1018 (2008); id., 715 (applying agency interpretation deference principles to decision of zoning board of appeals).

In the present case, the meaning of "single-family dwelling" and the terms used to define it in the 1994 regulations have not previously been subjected to judicial scrutiny. Moreover, although certain board members stated that the 2018 regulations merely clarified the 1994 regulations, the board did not indicate that it had applied a time-tested interpretation of "single-family dwelling." Accordingly, there is no basis for us to defer to the board's construction, and, therefore, we exercise plenary review in accordance with our well established rules of statutory construction.

"We also recognize that the zoning regulations are local legislative enactments . . . and, therefore, their interpretation is governed by the same principles that

apply to the construction of statutes. . . . Whenever possible, the language of zoning regulations will be construed so that no clause is deemed superfluous, void or insignificant. . . . The regulations must be interpreted so as to reconcile their provisions and make them operative so far as possible. . . . When more than one construction is possible, we adopt the one that renders the enactment effective and workable and reject any that might lead to unreasonable or bizarre results." (Citation omitted; internal quotation marks omitted.) Id., 715–16.

"When construing a statute [or zoning regulation], [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case . . . . In seeking to determine that meaning . . . § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . In addition . . . [General Statutes] § 1-1 (a) provides in relevant part that words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly. . . . When definitions are not provided in the zoning regulations, courts look to the common understanding expressed in the law and in dictionaries. . . . Moreover, no one aspect of our rules of statutory construction is dispositive." (Citations omitted; internal quotation marks omitted.) *Kobyluck Bros., LLC* v. *Planning & Zoning Commission*, 167 Conn. App. 383, 390–91, 142 A.3d 1236, cert. denied, 323 Conn. 935, 151 A.3d 383 (2016).

"Because zoning regulations are in derogation of common law property rights . . . the regulation[s] cannot be construed beyond the fair import of [their] language to include or exclude by implication that which is not clearly within [their] express terms. . . . Critical to our resolution of this case, doubtful language will be construed against rather than in favor of a [restriction] . . . ." (Citations omitted; internal quotation marks omitted.) Id., 392; see also *Roraback* v. *Planning & Zoning Commission*, 32 Conn. App. 409, 413, 628 A.2d 1350 (zoning regulations "must be interpreted in light of our ordinary rule that [w]here the language of the statute is clear and unambiguous, the courts cannot, by construction, read into statutes provisions which are not clearly stated" (internal quotation marks omitted)), cert. denied, 227 Conn. 927, 632 A.2d 704 (1993). With these principles in mind, we now turn to the defendants' claim that short-term rentals were not

permitted under the 1994 regulations.

In accordance with § 1-2z, we begin our analysis with the plain language of the 1994 regulations. As a preliminary matter, we note that Pine Orchard governs a residential area within the town of Branford. Section IV of the 1994 regulations set forth the permitted uses within Pine Orchard and began with the prefatory statement that "no building shall be erected or altered which is arranged, intended or designed to be used respectively for other than one or more of the following uses." Pine Orchard Assn. Zoning Regs., § IV (effective September 19, 1994). Further, § 10.2 provided in part that "no building structure or land may be used except in accordance with the provision[s] of these regulations." Id., § X (10.2). Because the plain language of the 1994 regulations excluded any use not authorized by the regulations, we conclude that the regulations were permissive, rather than prohibitive, in nature. "Permissive zoning regulations require that [t]he uses which are permitted in each type of zone [be] spelled out. Any use that is not permitted is automatically excluded." (Internal quotation marks omitted.) *Heim* v. *Zoning Board of Appeals*, supra, 289 Conn. 716 n.8; see also *Graff* v. *Zoning Board of Appeals*, 277 Conn. 645, 653, 894 A.2d 285 (2006). Thus, the question before us is to what extent the 1994 regulations "spelled out" that rentals were a permissible use of residential property in Pine Orchard.

Section 4.1 of the 1994 regulations permitted property to be used as a "single-family dwelling." Pine Orchard Assn. Zoning Regs., § IV (4.1) (effective September 19, 1994). Section XIII of the 1994 regulations defined a "single family dwelling" as "[a] building designed for and occupied exclusively as a home or residence for not more than one family."[11] Id., § XIII. A "family" was defined as "[o]ne or more persons related by blood, marriage or adoption, and in addition, any domestic servants or gratuitous guests. A roomer, boarder or lodger, shall not be considered a member of a family." Id. There was no requirement in the 1994 regulations that a single-family dwelling be owner-occupied.

Although the 1994 regulations did not specifically identify the renting of property as a permitted use, § 4.4 permitted "[a] sign not more than five square feet in area when placed in connection with the sale, *rental*, construction or improvement of the premises and for no other purpose . . . ." (Emphasis added.) Id., § IV (4.4). That § 4.4 expressly permitted the placement of a sign in connection with the rental of a property demonstrates that the drafters of the 1994 regulations recognized the renting of property as a permissible use of residential property in Pine Orchard. The defendants do not argue otherwise. In fact, at oral argument before this court, counsel for the defendants agreed that the 1994 regulations permitted long-term rentals of residen-

tial properties. Further, as our Supreme Court has recognized, "it is undisputable that the right of property owners to rent their real estate is one of the bundle of rights that, taken together, constitute the essence of ownership of property. . . .

"Owners of a single-family residence can do one of three economically productive things with the residence: (1) live in it; (2) rent it; or (3) sell it. Thus, if the owners of a single-family residence do not choose, for reasons of family size or other valid reasons, to live in the house they own, their only viable options are to rent it or to divest themselves entirely of their ownership by selling it. Stripping the [owners] of essentially one third of their bundle of economically productive rights constituting ownership is a very significant restriction on their right of ownership." (Citations omitted; footnotes omitted.) *Gangemi* v. *Zoning Board of Appeals*, 255 Conn. 143, 151–52, 763 A.2d 1011 (2001).

Thus, in the absence of clear language within the 1994 regulations imposing some restriction on the rental of property as a permissible use, we may not impose such a restriction. See *Watson* v. *Zoning Board of Appeals*, 189 Conn. App. 367, 395, 207 A.3d 1067 (2019) ("the [zoning] regulation cannot be construed beyond the fair import of its language to include or exclude by implication that which is not clearly within its express terms" (internal quotation marks omitted)); *Graff* v. *Zoning Board of Appeals*, supra, 277 Conn. 653 ("[b]ecause zoning regulations are in derogation of common-law property rights, they must be strictly construed and not extended by implication").

On appeal, the defendants attempt to draw a distinction between short-term and long-term rentals under the 1994 regulations, arguing that short-term rentals would be incompatible with the requirement in the 1994 regulations that the property be used as a "single-family dwelling." In particular, they claim that "by renting his property on a day-to-day basis to different groups of . . . unrelated people for profit, the plaintiff was not using [his] property as a single-family dwelling, i.e., a building 'occupied exclusively as a home or residence for not more than one family.' " In support of this claim, the defendants argue that "the common and ordinary meaning of the regulations [and] the case law of this state interpreting the term 'residence' . . . confirm that the board's interpretation of the regulations" as not permitting short-term rentals of single-family dwellings "was correct as a matter of law." We are not persuaded.

As previously noted, the 1994 regulations contained no specific language imposing restrictions on the rental of property in general. Of particular relevance to the present case, the 1994 regulations did not clearly impose a minimum temporal occupancy requirement for use of a single-family dwelling. The 1994 regulations only required that a single-family dwelling be a "building

designed for and occupied exclusively as a home or residence for not more than one family." Pine Orchard Assn. Zoning Regs., §§ IV (4.1) and XIII (effective September 19, 1994). Thus, so long as a single "family" occupies a building as "a home or residence" at a given time, the structure is being used as permitted under the 1994 regulations.

The defendants argue that for a dwelling to be considered a home or residence there must be some degree of permanence to the family's occupancy. Because the 1994 regulations do not define "home" or "residence," it is appropriate to turn to their common and ordinary meanings. See *Heim* v. *Zoning Board of Appeals*, supra, 289 Conn. 717.[12] Merriam-Webster's Collegiate Dictionary defines "home" as "one's place of residence: domicile . . . [a] house" and, secondarily, as "the social unit formed by a family living together." Merriam-Webster's Collegiate Dictionary (11th Ed. 2003) p. 594. Black's Law Dictionary defines "home" as "[a] dwelling place." Black's Law Dictionary, supra, p. 880. The American Heritage Dictionary of the English Language defines "home" as "[a] place where one lives; a residence," secondarily as "[t]he physical structure within which one lives, such as a house or apartment," and, thirdly, as "[a] dwelling place together with the family or social unit that occupies it; a household." American Heritage Dictionary of the English Language (5th Ed. 2011) p. 840. Finally, Webster's Third New International Dictionary defines "home" as "the house and grounds with their appurtenances habitually occupied by a family; one's principal place of residence: domicile; a private dwelling: house." Webster's Third New International Dictionary (1993) p. 1082.

Those same sources ascribe a subtly different meaning to "residence." Merriam-Webster's Collegiate Dictionary defines "residence" as "the act or fact of dwelling in a place for some time . . . the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit," secondarily as "the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn," thirdly as "a building used as a home," and, fourthly, as "the period or duration of abode in a place." Merriam-Webster's Collegiate Dictionary, supra, p. 1060. Black's Law Dictionary defines "residence" as "[t]he act or fact of living in a given place for some time . . . . The place where one actually lives, as distinguished from a domicile . . . . *Residence* [usually] just means bodily presence as an inhabitant in a given place; *domicile* [usually] requires bodily presence plus an intention to make the place one's home." (Emphasis in original.) Black's Law Dictionary, supra, p. 1565. The American Heritage Dictionary of the English Language defines "residence" as "[t]he place in which one lives; a dwelling" and, secondarily, as "[t]he act or a period of residing in a place." American Heritage Dictionary of

the English Language, supra, p. 1493. Finally, Webster's Third New International Dictionary defines "residence" as "the act or fact of abiding or dwelling in a place for some time; an act of making one's home in a place. . . . [T]he act or fact of living or regularly staying at or in some place either in or as a qualification for the discharge of a duty or the enjoyment of a benefit," secondarily as "the place where one actually lives or has his home as distinguished from his technical domicile. . . . [A] temporary or permanent dwelling place, abode, or habituation to which one intends to return as distinguished from a place of temporary sojourn or transient visit. . . . [A] domiciliary place of abode," and, finally, as "a building used as a home: dwelling." Webster's Third New International Dictionary, supra, p. 1931.

Notably, the definition of a single-family dwelling in the 1994 regulations separates "home" and "residence" by the conjunction "or." This suggests that the drafters of the regulations intended to attach different meanings to those terms. See *Celentano* v. *Oaks Condominium Assn.*, 265 Conn. 579, 609, 830 A.2d 164 (2003) ("[i]t is a fundamental tenet of statutory construction that [t]he use of . . . different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different meanings" (internal quotation marks omitted)). Applying this principle, although the dictionary definitions of "home" and "residence" have significant overlap, there are meaningful differences that impact our analysis. In particular, the essence of the definitions of "home" indicate that a home is a "domicile," i.e., "a person's fixed, permanent, and principal home for legal purposes." Merriam-Webster's Collegiate Dictionary, supra, p. 371. By contrast, although "residence" can mean a home, it can also mean a place where someone lives for some period of time without the same sense of permanence associated with a home. Moreover, to interpret "residence," as that term is used in the 1994 regulations, as a place where one dwells with a sense of permanence, distinguished from a place of temporary sojourn, would render that term duplicative of "home" and essentially meaningless. Given that the drafters explicitly wrote the 1994 regulations to state that a single-family dwelling could be a "home" *or* "residence," we conclude that they also found the differences in the meanings attached to each to be significant and chose not to render the term "residence" superfluous.

We also are mindful that our fundamental objective in interpreting zoning regulations is to ascertain and give effect to the apparent intent of the drafters by reading the zoning regulations as a whole. See *Kobyluck Bros., LLC* v. *Planning & Zoning Commission*, supra, 167 Conn. App. 390–91. Consequently, as with any legislative enactment, the language at issue must be read in

the context of other parts of the regulations to which it relates. See id., 391 ("[a] court must interpret a statute as written . . . and it is to be considered as a whole, with a view toward reconciling its separate parts in order to render a reasonable overall interpretation" (internal quotation marks omitted)). The text of the 1994 regulations demonstrates that the drafters included detailed provisions outlining what residents of Pine Orchard could and could not do. The 1994 regulations spelled out, inter alia, the types of businesses that could operate on a property, the types of accessory buildings that could be constructed and the permissible uses of such buildings, the size of signs residents could display, various uses that required special permits from the zoning authority, the minimum distance houses had to be set back from the front lot line, the minimum size of lots, and the board's authority to bring enforcement actions. See Pine Orchard Assn. Zoning Regs., §§ IV–VII and XIII (effective September 19, 1994). Furthermore, the regulations went into painstaking detail regarding the granting of special use permits and additional conditions that could be imposed on the underlying special use. See id., § V. From this it is evident that, had the drafters wanted to permit rentals of only a particular duration, they could have done so.

The case of *Wilkinson* v. *Chiwawa Communities Assn.*, 180 Wn. 2d 241, 327 P.3d 614 (2014), is instructive. In that case, the Supreme Court of Washington found that a restrictive covenant that limited use of lots to "single family residential use" while prohibiting "industrial or commercial use" did not prohibit short-term vacation rentals of single-family homes. See id., 246, 251. Significantly, the court found that the covenant clearly contemplated rentals of single-family homes because it included a restriction on the number and appearance of signs "advertising the property for sale or rent." Id., 247, 251. The court determined that, because the covenant at issue specified the rights and duties of residents in great detail, but did not address short-term rentals, the drafters did not intend to prohibit rentals of a particular duration. Id., 251. Similarly, in the present case, the 1994 regulations permitted and regulated the signs placed on a property in connection with the rental of the premises but in no way limited the duration of rentals. See Pine Orchard Assn. Zoning Regs., § IV (4.4) (effective September 19, 1994).

The defendants, however, suggest that we need not engage in this interpretive exercise because our Supreme Court has already determined that a residence "is a place where a person lives with a degree of permanency as distinguished from temporariness." In particular, the defendants point to our Supreme Court's decision in *State* v. *Drupals*, 306 Conn. 149, 49 A.3d 962 (2012).

In *Drupals*, the court interpreted the term "resi-

dence" under General Statutes (Rev. to 2011) § 54-251 (a), which required convicted sex offenders to register their "residence address" with the Commissioner of Public Safety (commissioner).[13] Id., 161–66. In that case, the defendant was required to notify the commissioner, via the sex offender registry unit of the state police (unit), in writing of any change of his "residence address" without undue delay. Id., 160–61. During a period of unstable housing, the defendant failed to provide notice of his address and was thereafter charged with failure to comply with the sex offender registration requirements. Id., 153–56. At trial, the defendant contended that, "on the basis of his understanding of the statutes, he had five days in which to notify the unit of a change of residence address, and that he was not required to provide notice of temporary or transient overnight visits." Id., 156. The trial court disagreed and concluded that even temporary overnight visits constituted a change of residence address that triggered the notification requirements. Id., 157. The defendant appealed from the judgment of conviction and claimed that there was insufficient evidence that he failed to give notice of his change of residence without undue delay. Id., 157–58.

Our Supreme Court determined that, "[i]n order to evaluate the defendant's claim . . . it is necessary for us to determine the contours of what is required to establish where a sex offender registrant 'resides' . . . as used in § 54-251 . . . ." Id., 158–59. Noting that "residence" was not statutorily defined, the court looked to its dictionary definition to ascertain its commonly approved meaning in accordance with § 1-1 (a). Id., 161–62. As in the present case, the court in *Drupals* cited the Black's Law Dictionary definition of "residence" as "[t]he act or fact of living in a given place for some time" and further noted the definition of a "resident" as "[a] person who lives in a particular place." (Internal quotation marks omitted.) Id., 162. The court also referenced Webster's Third New International Dictionary (2002), which defines residence as "the act or fact of abiding or dwelling in a place for some time: an act of making one's home in a place . . . ." (Internal quotation marks omitted.) Id. The court then explained that "Connecticut courts have explored what constitutes residency in other probate related contexts, and have established that a person resides in a place where she is physically located for more than a temporary or transient period of time, and where the usual conditions of household life obtain. For example, in the context of establishing residency for the purpose of legally changing one's name, this court has stated that, [a] resident of a place is one who is an actual stated dweller in that place, as distinguished from a transient dweller there . . . ." (Internal quotation marks omitted.) Id. The court determined that "[t]he use of the wording 'for some time' in both the Black's

Law Dictionary and the Webster's Third New International Dictionary definitions of residence strongly supports such a result. Consistent with this precedent, we conclude that residence means the act or fact of living in a given place for some time, *and the term does not apply to temporary stays*." (Emphasis added.) Id., 163. In so concluding, the court expressly rejected the notion that "residence is wherever one dwells, no matter how temporarily" and reversed the judgment of conviction. Id. The defendants in the present case assert that the Supreme Court's interpretation of "residence" in *Drupals* requires us to conclude that short-term rentals were not permitted under the 1994 regulations. Because we conclude that *Drupals* is inapplicable to the present case, we are not persuaded.

Although in *Drupals* the court interpreted "residence" according to its common and ordinary meaning, before doing so, it noted that, because it was interpreting a criminal statute, "[the statute] must be construed strictly against the state and in favor of the accused." (Internal quotation marks omitted.) Id., 160. Similarly, with respect to zoning regulations, "[b]ecause zoning regulations are in derogation of common-law property rights, they must be strictly construed and not extended by implication." *Graff* v. *Zoning Board of Appeals*, supra, 277 Conn. 653. These similar rules of construction lead to different outcomes in *Drupals* and the present case. The rule of strict construction in *Drupals* led to a narrower definition of residence because the narrower definition benefited the accused. By contrast, in the present case, a broader definition of residence more strictly limits the restrictions on the landowner's use of his property and is therefore the preferred definition.

In addition, the court in *Drupals* interpreted the common and ordinary meaning of "residence" in the context of a "residence address" that must be registered with the commissioner so that authorities may contact and track individuals convicted of sexual offenses. As the court explained: "In view of the fact that the initial requirement indicates that the registrant must list his place of residence, it is evident from a reading of § 54-251 that the legislature intended 'residence address' and 'address' to be synonymous with 'place of residence,' or more precisely, to denote the physical description of where the registrant resides. Thus, the primary issue is what is required to establish where a person resides under § 54-251." *State* v. *Drupals*, supra, 306 Conn. 161 n.7. With this framework in mind, the court considered whether a registrant was required to provide notice to the commissioner each time his address changed, even temporarily. Id., 161–63. Put in the context of the present case, would a registrant be required to provide notice of a change of address if he went on vacation to another location for a few days? The court in *Drupals* "reject[ed] the proposed definitions offered by the state to the effect that a residence is where an individual is

at the time because this definition would lead to absurd results. For example, if a registrant were in the process of moving from Connecticut to California and was driving a car across the country, pursuant to the state's definition, he would be required to fax the registry every night when he stopped at a motel, even though the registry would be closed if he stopped late at night, and he would possibly have left his motel location before the registry opened in the morning. The absurdity of this scenario is exacerbated if the registrant were traveling on a weekend, when the registry is closed. He would be required to send two separate changes of address to an office where no one could record those addresses until he had already left the location. We must interpret the statute so that it does not lead to absurd or unworkable results." Id., 165.

In the present case, interpreting the 1994 regulations to permit short-term rentals does not lead to any such absurd or unworkable results. To the contrary, interpreting those regulations to have permitted long-term rentals but not short-term rentals would lead to the unworkable result that, prior to the 2018 regulations, landowners had to somehow figure out where the dividing line was between long-term and short-term. Although the 2018 regulations appear to set this dividing line at thirty days, the 1994 regulations contained no clear language regarding the permissible duration for rentals of single-family dwellings, much less any sort of prohibition on rentals for fewer than thirty days. We fail to see how a resident of Pine Orchard could read the 1994 regulations as permitting rentals for a period of thirty days while prohibiting rentals for twenty-nine days or fewer. In either case, the tenant is typically using the rented property for a vacation or other temporary stay and the sense of permanence the defendants would have us read into the 1994 regulations is lacking.[14] "A property owner should be able reasonably to ascertain from the regulations how to use the property in compliance with them." *Planning & Zoning Commission* v. *Gilbert*, 208 Conn. 696, 705, 546 A.2d 823 (1988). The defendants' interpretation of the 1994 regulations is unworkable in that it fails to provide such guidance. Consequently, *Drupals*, rather than assisting the defendants, undermines their argument in its contrast to the present case.

At most, the defendants have proffered a reasonable interpretation of residence under the 1994 regulations. But so, too, has the plaintiff. The law is clear that "[w]here more than one interpretation of language is permissible, restrictions upon the use of lands are not to be extended by implication . . . [and] doubtful language will be construed against rather than in favor of a restriction . . . ." (Internal quotation marks omitted.) *Smith Bros. Woodland Management, LLC* v. *Planning & Zoning Commission*, 88 Conn. App. 79, 86, 868 A.2d 749 (2005). The 1994 regulations expressly permit landowners to advertise their property for rent. Thus,

the defendants do not dispute that rental of residential property is a permitted use under the 1994 regulations. At the same time, the regulations do not explicitly impose a minimum temporal occupancy requirement. Under such circumstances, and given that the plaintiff's interpretation of residence as used in the 1994 regulations is at least as reasonable as the defendants', we will not extend the regulations to include by implication a limit on the duration of permitted rentals. Thus, we conclude that the definition of a residence does not clearly impose a minimum temporal occupancy requirement. Rather, we conclude that in the 1994 regulations, although a home was intended to convey a sense of permanence, a residence was not. A residence is simply a place where a family lives for some time.

Consequently, we agree with the trial court that, so long as one family dwells in the property, *any* amount of time may constitute "some time" sufficient to make the property the family's residence. Our conclusion is consistent with a majority of cases from other jurisdictions. See, e.g., *Wilson* v. *Maynard*, 961 N.W.2d 596, 602 (S.D. 2021) (because "residential" is commonly understood to pertain to dwelling in place for "some time," "residential purposes" includes the occupation of a home or dwelling for short, indefinite period of time); see also *Slaby* v. *Mountain River Estates Residential Assn., Inc.*, 100 So. 3d 569, 579 (Ala. Civ. App. 2012) ("the cabin would be used for 'residential purposes' anytime it is used as a place of abode, even if the persons occupying the cabin are residing there temporarily during a vacation"); *Lowden* v. *Bosley*, supra, 395 Md. 68 (transitory nature of "residential use" does not defeat residential status); *Tarr* v. *Timberwood Park Owners Assn., Inc.*, 556 S.W.3d 274, 291 and n.14 (Tex. 2018) (unless otherwise provided in covenant, duration of rental has no bearing on whether property is being used for "residential purpose" such as eating or sleeping); *Wilkinson* v. *Chiwawa Communities Assn.*, supra, 180 Wn. 2d 252 ("[i]f a vacation renter uses a home for the purposes of eating, sleeping, and other residential purposes, this use is residential, not commercial, no matter how short the rental duration" (internal quotation marks omitted)); *Heef Realty & Investments, LLP* v. *Cedarburg Board of Appeals*, 361 Wis. 2d 185, 194, 861 N.W.2d 797 (App.) ("There is nothing inherent in the concept of residence or dwelling that includes time. . . . If the [c]ity is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law."), review denied, 865 N.W.2d 503 (Wis. 2015).

Rather than follow this line of cases, the defendants urge us to adopt the reasoning of *Styller* v. *Zoning Board of Appeals*, 487 Mass. 588, 169 N.E.3d 160 (2021), and *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, supra, 652 Pa. 224, in which short-term

rentals were found to be impermissible uses of single-family dwellings in a residential zone. We conclude, however, that, contrary to the defendants' assertions, those cases do not involve zoning regulations analogous to the 1994 regulations. Specifically, the regulations at issue in both *Styller* and *Slice of Life, LLC*, include the language "single housekeeping unit" in defining what constitutes a "family." See *Styller* v. *Zoning Board of Appeals*, supra, 600; *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, supra, 227. Both courts interpreted "single housekeeping unit" to require the person or persons residing in a home to function as a family and to be "sufficiently stable and permanent" and "not . . . purely transient." *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, supra, 232, 252; see also *Styller* v. *Zoning Board of Appeals*, supra, 600 ("permanency and cohesiveness are inherent in the notion of a single housekeeping unit" (internal quotation marks omitted)). Accordingly, both courts held that such language indicated that use as a single-family dwelling connoted a measure of permanency inconsistent with transient uses such as short-term rentals. See *Styller* v. *Zoning Board of Appeals*, supra, 599–600; *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, supra, 252. Although Pine Orchard added a definition of "dwelling unit" in the 2018 regulations that describes it as "constituting a separate, independent housekeeping unit," that phrase is absent from the 1994 regulations. Pine Orchard Assn. Zoning Regs., § 16. Furthermore, the courts in both *Styller* and *Slice of Life, LLC*, acknowledged that they were required to accord deference to the board's reasonable interpretation of its own zoning regulations. *Styller* v. *Zoning Board of Appeals*, supra, 599–600; *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, supra, 250. We do not accord similar deference when, as in the present case, the regulation "has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation . . . ." (Internal quotation marks omitted.) *Heim* v. *Zoning Board of Appeals*, supra, 289 Conn. 715. Thus, that the courts in *Styller* and *Slice of Life, LLC*, found short-term rentals inconsistent with a property's use as a single-family dwelling is of little value to our resolution of the present case.[15]

We also are unpersuaded by the defendants' argument that "further context from the regulations" supports the board's construction of "single-family dwelling" as being incompatible with short-term rentals. They argue that, because the 1994 regulations limited the definition of "residence" to "not more than one family," they express a "clear preference for permanency of use by familial units, as opposed to transient serial occupation by different, unrelated groups. Indeed, serial occupation by different, unrelated groups, such as short-term rentals, involves 'more than one' group

and is therefore inconsistent with this express limitation." (Emphasis omitted.)

The defendants' argument conflates the family occupancy requirement of the 1994 regulations with the residence requirement. They are, in fact, separate issues. The residence requirement set forth *what* a family can do on the property. For example, in addition to living there, they could only operate a commercial enterprise under very specific parameters. See Pine Orchard Assn. Zoning Regs., § IV (4.2) (effective September 19, 1994). By contrast, the family requirement defined *who* can live on the property. Although we conclude that the 1994 regulations permitted short-term rentals, they did not permit rentals to *any* group of people. The 1994 regulations define a "single family dwelling" as "[a] building designed for and *occupied exclusively* as a home or residence for *not more than one family*." (Emphasis added.) Id., § XIII. Thus, to comply with the 1994 regulations, the occupants, whether owners, long-term renters, or short-term renters, must constitute not more than one family. This requirement is, accordingly, unrelated to the length of time the family resides on the property.

Courts in other jurisdictions have reached the same conclusion. For example, the Wisconsin Court of Appeals held that short-term rentals were permissible under a zoning ordinance that defined "single-family dwelling" as "a detached building designed for or occupied *exclusively by one family*," and "family" as "one or more persons related by blood or marriage occupying the premises and living together as a single housekeeping unit." (Emphasis added.) *State ex rel. Harding* v. *Door County Board of Adjustment*, 125 Wis. 2d 269, 271, 371 N.W.2d 403 (App.), review denied, 125 Wis. 2d 584, 375 N.W.2d 216 (1985). In that case, the court reasoned that, because the property at issue was designed for and would be occupied exclusively by one family at a time to the exclusion of other families, short-term rentals were consistent with use as a single-family dwelling. Id.; see also *Brown* v. *Sandy City Board of Adjustment*, 957 P.2d 207, 208, 211–12 (Utah App.) (ordinance defined family as single housekeeping unit but neither included any time limitation for property use nor prohibited short-term rentals), cert. denied, 982 P.2d 88 (Utah 1998); *In re Toor*, 192 Vt. 259, 267–68, 59 A.3d 722 (2012) (Where a zoning ordinance limited use in a residential zone to "occupancy by a family living as a household unit," short-term rentals were permissible because "appellants rent to tenants who use it for the same purpose as appellants. . . . [E]ach renter is a single family that maintains a household during the period of the rental." (Footnote omitted.)).[16]

The defendants suggest that a different conclusion is required in the present case based on how "family" is defined in the 1994 regulations. Those regulations

define "family" as "[o]ne or more persons related by blood, marriage or adoption, and in addition, any domestic servants or gratuitous guests. A roomer, boarder or lodger, shall not be considered a member of a family." Pine Orchard Assn. Zoning Regs., § XIII (effective September 19, 1994). The defendants argue that, because the definition of "family" specifically provides that "gratuitous guests" are consistent with the use of a home by a single family, "[t]he clear and necessary implication . . . is that *paying* guests are *inconsistent* with use of a property as a single-family dwelling." (Emphasis in original.) The defendants then contend that the "express exclusion of 'roomers, boarders and lodgers' from the definition of 'family' reinforces that 'family' and, in turn, a 'home' or 'residence' is not a place used by temporary paying occupants." Again, we are not persuaded.

First, the defendants conceded at oral argument before this court that the people to whom the plaintiff rents are not roomers, boarders or lodgers. We agree. The ordinary meaning of all three terms is someone who pays to live either in a singular room of another's property or *with* a family in that property and who may receive regular meals while staying with the family. See Merriam-Webster's Collegiate Dictionary, supra, p. 137 (defining "roomer" as "one who occupies a rented room in another's house"); id., p. 731 ("boarder" is "one that boards; esp[ecially]: one that is provided with regular meals or regular meals and lodging"); id., p. 1082 ("lodger" is defined as "roomer"); Black's Law Dictionary, supra, p. 214 (defining "boarder" as "[s]omeone who lives in another's house and receives food and lodging in return either for regular payments or for services provided"); Black's Law Dictionary, supra, p. 1028 ("lodger" is "someone who rents and occupies a room in another's house"). If a family rents the entire property from a landowner and is not living with the landowner, they are, by definition, not roomers, boarders or lodgers. In turn, the family renting the property may not take in roomers, boarders or lodgers, but they are permitted to have gratuitous guests. Put simply, a family who rents the property has the same rights and restrictions as does the landowner when he occupies the property.

Second, taken to its logical conclusion, the necessary implication of the defendants' interpretation of "family" as prohibiting temporary paying occupants is that all rentals of property would be prohibited within the Pine Orchard residential zone. Such an interpretation is in direct conflict with the express language in § 4.4 of the 1994 regulations permitting signage in connection with the rental of property within Pine Orchard. Furthermore, although the defendants contend that a durational requirement for rentals is implied by the terms used in the regulations, they have offered no way of gauging when exactly a rental would have the necessary

sense of permanence to constitute a permitted use. As observed by the trial court, "if the [regulations] were interpreted to implicitly preclude short-term rentals while allowing long-term rentals of the property, the question becomes 'at what point does the rental of a home move from short-term to long-term: a week? a month? a season? three months? six months? one year? or several years?' [*Lowden* v. *Bosley*, supra, 395 Md. 70]." We will not presume that Pine Orchard intended to "exclude from the definition of a single-family dwelling temporary paying occupants" as the defendants claim. See *Watson* v. *Zoning Board of Appeals*, supra, 189 Conn. App. 395 ("[c]ommon sense must be used in construing the regulation, and we assume that a rational and reasonable result was intended by the local legislative body" (internal quotation marks omitted)).

For the foregoing reasons, we conclude that short-term rentals of a single-family dwelling were a permissible use of property under the 1994 regulations. The 1994 regulations expressly contemplated the rental of property in Pine Orchard, as the defendants concede. Moreover, the classifying of property as a single-family dwelling does not impose a minimum temporal occupancy requirement. Thus, so long as the tenants of a single-family dwelling are a single "family," occupying the structure for living purposes to the exclusion of other families, the structure is being used as permitted.[17] The court, therefore, properly held that short-term rentals were a lawful, permitted use consistent with the definitions of "single-family dwelling" and "family" in the 1994 regulations.

II

The defendants also claim, in the alternative, that the court "exceeded its reviewing authority in finding that the plaintiff *in fact* had established a preexisting nonconforming use of the property for short-term rentals to 'families' notwithstanding that the [board] did not make any findings about the nature or scope of the plaintiff's alleged preexisting nonconforming use, nor did the [board] consider whether the plaintiff's current use may be a permissible intensification or an unlawful expansion." (Emphasis in original.) We agree.

In addressing this issue, the court determined that "[t]he [board] conceded, and the record reflects, that 'in rendering its decision the [board] found a violation of the ordinance in effect in 1994.' . . . The [board] made a finding that the plaintiff's rental of the property was not a permitted use under the 1994 regulations, so 'whether the plaintiff had in fact established a preexisting use' is in fact an issue on appeal here. Moreover, the plaintiff specifically raised the issue on appeal." (Citation omitted.) We do not read the board's decision so broadly.

"[T]he legality of an extension of a nonconforming

use is essentially a question of fact. . . . It is well settled that a court, in reviewing the actions of an administrative agency, is not permitted to substitute its judgment for that of the agency *or to make factual determinations on its own*. . . . Upon appeal the function of the court is [limited] to examin[ing] the record of the hearing before the board to determine whether the conclusions reached are supported by the evidence that was before [the board]." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Wood* v. *Zoning Board of Appeals*, 258 Conn. 691, 708–709, 784 A.2d 354 (2001).

In the present case, the defendants argued in their principal appellate brief that "[the board] did not make any findings about the precise nature or scope of the plaintiff's alleged preexisting nonconforming use, and it did not consider if the plaintiff's current use was a permissible intensification or unlawful expansion of such alleged use," "[it] did not reach consideration of [whether the plaintiff had established a lawful nonconforming use of his property] because it concluded that short-term rentals had not been a permitted use under the 1994 [regulations] . . . [and it] made no specific factual findings on the scope of the plaintiff's claimed preexisting nonconforming use in the first instance . . . ." Similarly, in their reply brief, the defendants stated: "All five members of the [board] voted to uphold the cease and desist order that was issued to the plaintiff. . . . The rationale for their decision was that the plaintiff could not establish a lawful preexisting nonconforming use of the property for short-term rentals because it was not lawful to use the property—zoned for use as a 'single-family dwelling'—for short-term rentals under the 1994 [regulations]. . . . Accordingly, the [board] did not make any factual findings regarding whether (1) the plaintiff had met his burden to establish a preexisting nonconforming use; (2) what the scope of the preexisting nonconforming use was; and (3) whether the plaintiff's current use was a permissible intensification or unlawful expansion of the nonconforming use. . . . [The board] concluded as a matter of law that the alleged nonconforming use is not lawful under the 1994 [regulations], and therefore it did not—because it needed not—go any further." (Citations omitted.)

Our review of the record confirms that, although the board was presented with evidence regarding the plaintiff's rental practices and the tenants to whom he rented, the board did not make a factual determination as to whether the plaintiff had established a lawful nonconforming use. Nowhere in the record before us are there any factual findings as to whether the plaintiff was renting his property to "families" as defined by the 1994 regulations; see footnote 17 of this opinion; or whether the plaintiff's current use was a permissible intensification or unlawful expansion of such alleged use. See

Pine Orchard Assn. Zoning Regs., § VII (7.1.1) (effective September 19, 1994) ("[a] non conforming use, structure or lot is one which existed lawfully, whether by variance or otherwise, on the date these Zoning Regulations or any amendment thereto became effective, and which fails to conform to one or more of the applicable zoning regulations or such amendment thereto"); id., § II ("[n]othing in these Regulations shall prohibit the continuance of existing nonconforming uses of any building or land as they exist on the effective date of these Regulations"); Pine Orchard Assn. Zoning Regs., § 10.2 ("[n]o nonconforming use of land shall be enlarged, extended or altered").[18] Accordingly, because the board neither made factual findings concerning the plaintiff's nonconforming use claim nor rendered a decision on that claim, it was improper for the court to do so in the first instance. Consequently, we agree with the defendants that the court should have remanded the case to the board for consideration of whether the plaintiff had, in fact, established a lawful nonconforming use. See *Wood* v. *Zoning Board of Appeals*, supra, 258 Conn. 709 ("[b]ecause the board, not the trial court, was required to render a decision with respect to the [plaintiff's] nonconforming use claim in the first instance, the trial court improperly decided that claim on the merits instead of remanding the case to the board for its consideration of that claim"); *Cummings* v. *Tripp*, 204 Conn. 67, 82–83, 527 A.2d 230 (1987) ("the party claiming the benefit of a nonconforming use . . . [bears] the burden of proving a valid nonconforming use in order to be entitled to use the property in a manner other than that permitted by the zoning regulations"); *Point O'Woods Assn., Inc.* v. *Zoning Board of Appeals*, 178 Conn. 364, 368–69, 423 A.2d 90 (1979) ("[i]n the first instance, it is the board, as the trier of fact, which must determine whether a nonconforming use is in existence").

The judgment is reversed in part and the case is remanded to the trial court with direction to remand the case to the board for a determination of whether the plaintiff established a lawful nonconforming use; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

[1] VRBO, formerly Vacation Rentals by Owner, "is a website on which owners can advertise their houses and other properties for rent." *Santa Monica Beach Property Owners Assn.* v. *Acord*, 219 So. 3d 111, 113 n.2 (Fla. App. 2017).

[2] "Airbnb provides an online marketplace for both short-term and long-term housing accommodations wherein 'hosts' lease or sublease their living space to 'guests.' " *La Park La Brea A LLC* v. *Airbnb, Inc.*, 285 F. Supp. 3d 1097, 1100 (C.D. Cal. 2017), appeal dismissed, United States Court of Appeals, Docket No. 18-55113, 2018 WL 7141208 (9th Cir. December 17, 2018).

[3] Although this may be the first appellate case concerning zoning regulation of short-term rental properties in this state, it undoubtedly will not be the last. See M. Nodiff, "Short-Term Rentals: Can Cities Get in Bed with Airbnb?" 51 Urb. Law. 225, 228 (2021) (noting that "Airbnb has grown so large that it is now bigger than all the major hotel chains combined—even though, unlike Hilton and Marriott, it doesn't own a single bed" (internal quotation marks omitted)); C. Scanlon, "Re-zoning the Sharing Economy: Municipal

Authority to Regulate Short-Term Rentals of Real Property," 70 SMU L. Rev. 563, 566 (2017) ("[n]ever before have property owners been able to connect so easily with potential short-term lodgers through internet platforms scholars call the 'sharing economy' "). Critical to all such appeals, including the present dispute, is the particular terminology employed in the applicable zoning regulations.

[4] Hopkins and Wolff are owners of real property located at 6 Halstead Lane in Branford, which abuts the plaintiff's property, and were granted permission to intervene by the trial court.

[5] The Pine Orchard Association Zoning Ordinance refers to its contents as "regulations." See Pine Orchard Assn. Zoning Regs., § I (effective September 19, 1994); Pine Orchard Assn. Zoning Regs., § 1. Accordingly, this opinion shall refer to the ordinance's contents as regulations.

[6] General Statutes § 8-7 provides in relevant part: "An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. . . ."

[7] General Statutes § 8-8 (b) provides in relevant part: "Except as provided in subsections (c), (d) and (r) of this section and sections 7-147 and 7-147i, any person aggrieved by any decision of a board, including a decision to approve or deny a site plan pursuant to subsection (g) of section 8-3 or a special permit or special exception pursuant to section 8-3c, may take an appeal to the superior court for the judicial district in which the municipality is located, notwithstanding any right to appeal to a municipal zoning board of appeals under section 8-6. . . ."

[8] In addition to transcripts of the hearing before the board, the return of record also contains the exhibits submitted at that hearing, including, inter alia, copies of the 1994 and 2018 regulations, the plaintiff's VRBO website advertisement, email complaints by residents of Pine Orchard, the plaintiff's tax returns, and a sample lease used by the plaintiff to rent the property.

[9] "The [board's] reliance on *Griffith* v. *Security Ins. Co.*, 167 Conn. 450, 356 A.2d 94 (1975), for the proposition that a residence implies permanence is misplaced. In *Griffith*, the issue was whether a son was covered under his father's automobile insurance policy, which required that they share the same residence. Id. The parents were divorced and lived separately, and the son lived with his mother. Although the father frequently visited the son's house and kept some belongings there, the court found they did not share a residence because the father clearly did not live there. Id., 455. Here, the plaintiff's guests reside in the property for a period of time."

[10] "The [board] and the intervening defendants claim that 'residence' is distinguished from a 'place of temporary sojourn,' citing [Merriam-Webster Online] Dictionary, available at https://www.merriam-webster.com/dictionary/residence. That is the second definition of 'residence' in Merriam-Webster's; the first definition mirrors the Black's Law Dictionary definition of 'the act or fact of dwelling in a *place for some time*.' (Emphasis added.) Id."

[11] The 1994 regulations also permitted use of property as the "[o]ffice of a physician, surgeon, lawyer, architect, insurance agent, accountant, engineer, land surveyor, or real estate broker, when located in the dwelling used by such person as his private residence; provided there is no display or advertising except for a professional name plate not exceeding 100 square inches in area and without individual illumination." Pine Orchard Assn. Zoning Regs., § IV (4.2) (effective September 19, 1994). The 1994 regulations, however, subjected those uses to additional restrictions, including that "[t]he office shall not impair the residential character of the premises through any external evidence of use other than the sign permitted by this paragraph." Id., § IV (4.2.3). Further, § 4.3 of the 1994 regulations permitted "[a]ccessory use incident to the . . . permitted uses" specified in § IV. Id., § IV (4.3).

[12] "When using a dictionary to understand a word, this court has explained that 'any word in the English language—except for words of specialized contexts, such as mathematics or science—will ordinarily have multiple meanings, depending on the context in which it has been used. . . . That is why we have dictionaries: not to determine *the* meaning of a given word, or even *the preferred* meaning of a given word, but simply to give us a lexicon of the various meanings that the word has carried depending on the various contexts of its use.' " (Emphasis in original.) *Kobyluck Bros., LLC* v. *Planning & Zoning Commission*, supra, 167 Conn. App. 396; see also *Northrop* v. *Allstate Ins. Co.*, 247 Conn. 242, 250, 720 A.2d 879 (1998)

("Although we have on occasion looked to dictionaries in order to give meaning to words used in a legal context . . . that does not mean . . . that a dictionary gives *the* definition of any word. A dictionary is nothing more than a compendium of the various meanings and senses in which words have been and are used in our language. A dictionary does not define the words listed in it in the sense of stating what the words mean universally. Rather, it sets out the range of meanings that may apply to those words as they are used in the English language, depending on the varying contexts of those uses." (Emphasis in original.)).

[13] General Statutes (Rev. to 2011) § 54-251 (a) provides in relevant part: "Any person who has been convicted . . . of a criminal offense against a victim who is a minor or a nonviolent sexual offense . . . shall . . . whether or not such person's place of residence is in this state, register such person's name, identifying factors, criminal history record, residence address and electronic mail address, instant message address or other similar Internet communication identifier, if any, with the Commissioner of Public Safety, on such forms and in such locations as the commissioner shall direct, and shall maintain such registration for ten years . . . . If any person who is subject to registration under this section changes such person's address, such person shall, without undue delay, notify the Commissioner of Public Safety in writing of the new address and, if the new address is in another state, such person shall also register with an appropriate agency in that state, provided that state has a registration requirement for such offenders. . . . During such period of registration, each registrant shall complete and return forms mailed to such registrant to verify such registrant's residence address . . . ."

All references herein to § 54-251 are to the 2011 revision of the statute.

[14] Ironically, under the defendants' interpretation of "residence," any landowner or renter not occupying a single-family dwelling with a sense of permanence would be in violation of the zoning regulation. Thus, an individual renting a single-family dwelling for a period of thirty days—a permissible use per the 2018 regulations—would run afoul of the defendants' own interpretation of the 1994 regulations, even though the definition of single-family dwelling is the same under both sets of regulations. Consequently, we agree with the trial court that the 2018 amendments to the regulations constituted a substantive change and not merely a clarification of the 1994 regulations, and we reject the defendants' claim to the contrary.

[15] We find it significant that almost all courts with similar rules of construction to our own—in which language in a regulation or covenant that is subject to more than one reasonable interpretation will be construed narrowly so as not to infringe upon landowner rights—have reached the same conclusion as we do today. See, e.g., *Slaby* v. *Mountain River Estates Residential Assn., Inc.*, supra, 100 So. 3d 569; *Kinzel* v. *Ebner*, 157 N.E.3d 898 (Ohio App. 2020); *Samar* v. *Zoning Board*, Docket No. 922 C.D. 2018, 2019 WL 1749038 (Pa. Commw. April 16, 2019); *JBrice Holdings, LLC* v. *Wilcrest Walk Townhomes Assn., Inc.*, 644 S.W.3d 179 (Tex. 2022); *Schack* v. *Property Owners Assn.*, 555 S.W.3d 339 (Tex. App. 2018); *Boatner* v. *Reitz*, Docket No. 03-16-00817-CV, 2017 WL 3902614 (Tex. App. August 22, 2017); *Heef Realty & Investments, LLP* v. *Cedarburg Board of Appeals*, supra, 361 Wis. 2d 185; *State ex rel. Harding* v. *Door County Board of Adjustment*, 125 Wis. 2d 269, 371 N.W.2d 403 (App.), review denied, 125 Wis. 2d 584, 375 N.W.2d 216 (1985).

Contrastingly, most courts that have determined that short-term rentals are prohibited generally apply a different canon of interpretation in which a zoning board's interpretation of the applicable zoning regulation is afforded greater deference. See *Styller* v. *Zoning Board of Appeals*, supra, 487 Mass. 597; *Bostick* v. *Desoto County*, 225 So. 3d 20 (Miss. App. 2017); *Slice of Life, LLC* v. *Hamilton Township Zoning Hearing Board*, supra, 652 Pa. 224. In addition, some courts have relied on certain language not present within the regulations at issue in the present case—such as "single-housekeeping unit" and "lack of profit motive" in the definition of a family or a requirement that the property be used for "residential purposes" or "private occupancy" *as expressly distinguished from* "commercial purposes"—to prohibit short-term rentals. See, e.g., *Wortham* v. *Barrington Hills*, 202 N.E.3d 987, 997 (Ill. App.) (short-term vacation rentals of single-family residential home constituted commercial use in violation of municipal zoning ordinance prohibiting commercial use of residential property except as specifically authorized in ordinance), appeal denied, 197 N.E.3d 1134 (Ill. 2022); *Siwinski* v. *Ogden Dunes*, 949 N.E.2d 825, 830 (Ind. 2011) (by dividing city into residential and commercial districts, zoning scheme implicitly meant residential areas

could not support commercial uses; use as short-term rental was commercial and prohibited in residential area); *Hensley* v. *Gadd*, 560 S.W.3d 516, 519, 524 (Ky. 2018) (restrictive covenant limited use to residential purposes and prohibited commercial uses including hotel; court determined short-term renters could not be considered "residents" and use of property for short-term rentals met statutory definition of hotel); *Eager* v. *Peasley*, 322 Mich. App. 174, 190–91, 911 N.W.2d 470 (2017) (restrictive covenant limited use to private occupancy and prohibited commercial use; short-term rental was impermissible commercial use); *Kintner* v. *Zoning Hearing Board*, Docket No. 532 C.D. 2018, 2019 WL 178486, *5 (Pa. Commw. January 14, 2019) (because short-term rentals necessarily involve remuneration, they violated single-family residential zoning ordinance defining " 'family' " as " '[a]s many as six (6) persons living together as a single, permanent and stable nonprofit housekeeping unit' "), appeal denied, 655 Pa. 327, 217 A.3d 1214 (2019).

[16] Courts in other jurisdictions have, however, reached the opposite conclusion. For example, the Supreme Court of Indiana rejected a homeowner's argument that the court should construe language in a city's zoning code restricting use to single-family dwellings, which were defined as "a separate detached building designed for and occupied exclusively as a residence by one family," to allow for short-term rentals. *Siwinski* v. *Ogden Dunes*, 949 N.E.2d 825, 828 (Ind. 2011). In that case, the court interpreted the definition of single-family dwelling to unambiguously exclude short-term rentals because "one family" did not mean one family at a time, but rather one family, consistent over time. Id., 829–30. For the reasons previously set forth in this opinion, we disagree with the analysis in *Siwinski* and find it unpersuasive. See footnote 15 of this opinion. Similarly, in *Bostick* v. *Desoto County*, 225 So. 3d 20 (Miss. App. 2017), the court found that, "[r]egardless of whether any particular group that rented from [the homeowners] met the definition of a 'family' . . . the transient nature of the rentals resulted in the houses being 'occupied by . . . more than one family,' a non-permitted use under the applicable zoning regulations." (Citation omitted.) Id., 25. Significantly, the court in *Bostick* expressed deference toward the zoning board's interpretation of the zoning regulations. See id., 24 ("unless manifestly unreasonable, we will give great weight . . . to the construction placed upon the words by the local authorities" (internal quotation marks omitted)). As previously noted in this opinion, however, no such deference is required in the present case.

[17] The corollary to that proposition, of course, is that rental to multiple families, or any group of individuals that does not meet the definition of "family" set forth in § XIII, was not a permitted use under the 1994 regulations.

[18] In his appellate brief, the plaintiff notes that the board did not issue a collective statement of reasons for denying his appeal of the cease and desist order. He made similar statements in his briefs to the trial court. The defendants have not suggested otherwise, and our review of the record confirms that, although the members of the board individually made statements as to why they were voting to deny the plaintiff's appeal, the board made no collective statement of its reasoning.

Typically, "[i]n the *absence* of a statement of purpose by the zoning [agency] for its actions, it [is] the obligation of the trial court, and of this court upon review of the trial court's decision, to search the entire record to find a basis for the [agency's] decision." (Emphasis in original; internal quotation marks omitted.) *Verrillo* v. *Zoning Board of Appeals*, 155 Conn. App. 657, 673, 111 A.3d 473 (2015); see also *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, 220 Conn. 527, 545, 600 A.2d 757 (1991) (when no collective statement is provided by zoning agency, court must "search the record for a basis upon which to uphold the [agency's] decision"). That obligation stems from the "strong presumption of regularity" that attaches to municipal land use agency decision making. *Murach* v. *Planning & Zoning Commission*, 196 Conn. 192, 205, 491 A.2d 1058 (1985); see also *Levine* v. *Zoning Board of Appeals*, 124 Conn. 53, 57, 198 A. 173 (1938) ("[t]here is a presumption that [zoning agencies] have acted . . . upon valid reasons" (internal quotation marks omitted)); *Parker* v. *Zoning Commission*, 209 Conn. App. 631, 684–85, 269 A.3d 157 (in light of strong presumption of regularity applied to municipal land use proceedings, reviewing court presumes that agency made "all necessary findings that are supported by the record" when decision lacks specificity), cert. denied, 343 Conn. 908, 273 A.3d 694 (2022).

This case presents the exceptional circumstance in which the municipal land use agency and the intervening defendants have affirmatively and explic-

itly disclaimed any rationale for the board's denial of the plaintiff's appeal other than that short-term rentals were not permitted under the 1994 regulations as a matter of law. Throughout this litigation, the defendants steadfastly maintained that the board did not reach the factual question of whether the plaintiff had established a lawful nonconforming use in light of that threshold legal determination. In light of that affirmative representation, we will not search the record for a basis to uphold the board's decision that the board itself has told us repeatedly does not exist.