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DEAN V. TINE ET AL. *v.* ZONING BOARD
OF APPEALS OF THE TOWN OF
LEBANON ET AL.
(SC 18872)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and McDonald, Js.

Argued February 14—officially released April 23, 2013

Michael A. Zizka, for the appellants (defendants).

Harry B. Heller, for the appellees (plaintiffs).

Opinion

EVELEIGH, J. The defendants, the zoning board of appeals (board) of the town of Lebanon (town) and Philip Chester, the zoning enforcement officer, appeal from the judgment of the trial court, sustaining the appeal of the plaintiffs, Dean V. Tine and Robin Tine, from the decision of the board.[1] The dispositive issue on appeal is whether a deck attached to a residential property is a "building" as that term is used in General Statutes § 8-13a (a). The answer to that question determines whether the three year statute of limitations set forth in § 8-13a (a) applies to the enforcement action in the present case. The trial court concluded that the deck at issue in this case was a "building" and, therefore, that the defendants' enforcement action was untimely. We conclude that the deck is not a "building" under the statute and, accordingly, reverse the judgment of the trial court.

The following facts and procedural history, as set forth in the trial court's memorandum of decision and the record, are relevant to our resolution of this appeal. The plaintiffs acquired lakefront property in the town in 1999. The plaintiffs thereafter obtained a variance from the board to construct a single-family house on the property. The variance allowed the building to extend thirty-five feet into what otherwise would have been a prohibited setback area, which was designed to protect the water quality of the lake.[2] After obtaining the variance, the plaintiffs applied for and received a zoning permit and a building permit from the town to construct the house. The construction plans submitted to the town did not include a deck.

During construction of the house, the town building official made several inspections of the plaintiffs' property. At the time of the inspections, construction of the deck had not begun. In 2003, the plaintiffs completed construction of the house, which conformed with the construction plans that were previously approved by the town. The plaintiffs, despite having completed construction of the house, did not seek a certificate of occupancy at that time.

Later, in April and May of 2004, the plaintiffs constructed a deck, which connected to the back of the house and included stairs for ingress and egress to the house through French doors. The deck was not visible from the street. The deck measured twelve feet in width, and the full twelve feet extended toward the lake and completely beyond the permitted setback. No inspections of the plaintiffs' property occurred during construction of the deck. The plaintiffs did not receive the required building permits for the deck, nor did they notify the town of the deck's construction.

In the fall of 2008, the plaintiffs sought a certificate of zoning compliance and a certificate of occupancy

from the town in connection with a potential sale of the property. Chester, in compliance with state law,[3] inspected the property and discovered that the deck violated the town's zoning regulations because it extended beyond the permitted setback. The plaintiffs thereafter sought a second variance for the deck, which was denied by the board. In January, 2009, Chester issued a notice of violation and cease and desist order to the plaintiffs requiring them to abate the setback violation. The plaintiffs appealed that order to the board, and claimed, inter alia, that Chester was barred from pursuing enforcement action against them because the violation had existed for more than three years at the time that the cease and desist order was issued and, therefore, the statute of limitations set forth in § 8-13a (a) had run.[4] The board denied the plaintiffs' appeal.

The plaintiffs appealed from the decision of the board to the Superior Court pursuant to General Statutes § 8-8 (b). The trial court reversed the decision of the board and sustained the plaintiffs' appeal. Specifically, the trial court concluded that the three year statute of limitations in § 8-13a (a) begins to run upon construction of the offending building, regardless of whether the town has notice of the violation. Additionally, the trial court concluded that the deck was a "building" within the meaning of the statute, because it was attached to the house and provided a means of access to the house. Thus, the trial court concluded that the statute of limitations applied and, therefore, the cease and desist order was untimely because it was issued more than three years after construction of the deck had begun. This appeal followed.[5]

The question before us is one of statutory interpretation. "[I]ssues of statutory construction raise questions of law, over which we exercise plenary review." (Internal quotation marks omitted.) *Ugrin* v. *Cheshire*, 307 Conn. 364, 379, 54 A.3d 532 (2012). When construing a statute, "[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, including the question of whether the language actually does apply." (Internal quotation marks omitted.) *Picco* v. *Voluntown*, 295 Conn. 141, 147, 989 A.2d 593 (2010). General Statutes § 1-2z[6] directs this court to first consider the text of the statute and its relationship to other statutes to determine its meaning. If, after such consideration, the meaning is plain and unambiguous and does not yield absurd or unworkable results, we shall not consider extratextual evidence of the meaning of the statute. General Statutes § 1-2z; see also *Saunders* v. *Firtel*, 293 Conn. 515, 525, 978 A.2d 487 (2009). Only if we determine that the statute is not plain and unambiguous or yields absurd or unworkable results may we consider extra-

textual evidence of its meaning such as "the legislative history and circumstances surrounding its enactment . . . the legislative policy it was designed to implement . . . its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Thomas* v. *Dept. of Developmental Services*, 297 Conn. 391, 399, 999 A.2d 682 (2010). "The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Weems* v. *Citigroup, Inc.*, 289 Conn. 769, 779, 961 A.2d 349 (2008). "We presume that the legislature did not intend to enact meaningless provisions. . . . [S]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant . . . ." (Internal quotation marks omitted.) *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 303, 21 A.3d 759 (2011).

On appeal, the defendants claim that the trial court improperly reversed the board's decision denying the plaintiffs' appeal from the cease and desist order. Specifically, the defendants claim that the trial court improperly concluded that the deck is an integral part of the house and, therefore, constitutes a "building" within the meaning of § 8-13a (a).[7] In response, the plaintiffs claim that the trial court correctly determined that the deck is an integral part of the house and, therefore, is a "building" under § 8-13a (a). Thus, the plaintiffs claim that the statute of limitations in § 8-13a (a) applies and that, because the cease and desist order was issued more than three years after construction of the deck began, the deck is a "nonconforming building" under the statute. We agree with the defendants.

We begin our analysis by examining the relevant statutory text. Section 8-13a (a) provides in relevant part: "When a building is so situated on a lot that it violates a zoning regulation of a municipality which prescribes the location of such a building in relation to the boundaries of the lot . . . and when such building has been so situated for three years without the institution of an action to enforce such regulation, such building shall be deemed a nonconforming building in relation to such boundaries . . . ." This provision "amounts to a statute of limitations for [certain] non-conforming buildings." (Internal quotation marks omitted.) *Benson* v. *Zoning Board of Appeals*, 89 Conn. App. 324, 330, 873 A.2d 1017 (2005), quoting R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (2d Ed. 1999) § 4.35, p. 110. In the present case, the defendants assert that the deck is not a "building" under the statute and that, therefore, the three year statute of limitations does not apply and the notice of violation and cease and desist order is valid.[8] We agree.

Section 8-13a (a) does not contain a definition of the

term "building." In the absence of a definition of a term in the statute itself, "[w]e may presume . . . that the legislature intended [a word] to have its ordinary meaning in the English language, as gleaned from the context of its use." (Internal quotation marks omitted.) *Paul Dinto Electrical Contractors, Inc.* v. *Waterbury*, 266 Conn. 706, 725, 835 A.2d 33 (2003). Under such circumstances, "it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Ugrin* v. *Cheshire*, supra, 307 Conn. 380. Webster's Third New International Dictionary (2002) defines building as "a constructed edifice designed to stand more or less permanently, covering a space of land, [usually] covered by a roof and more or less completely enclosed by walls . . . distinguished from structures not designed for occupancy . . . ." Black's Law Dictionary (9th Ed. 2009) defines "building" as "[a] structure with walls and a roof, [especially] a permanent structure." Therefore the dictionary definitions support a construction of the term "building" as it is used in § 8-13a (a) as an edifice with walls and a roof.

Other provisions in our statutes demonstrate that the legislature is aware that there is a difference between a building and other types of structures, and that it knows how to make specific reference to all structures when it intends to do so. For example, the legislature has differentiated between "buildings" and "structures" within the scope of zoning statutes. See General Statutes § 8-2 (a) ("[t]he zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures"); General Statutes § 8-12 ("[i]f any building or structure has been erected . . . or any building, structure or land has been used"). Indeed, the statutes are replete with provisions that distinguish between "buildings" and "structures." See, e.g., General Statutes § 52-557f (2) (defining " '[l]and' " to include both buildings and structures); General Statutes § 10-410 (defining " 'historic preservation' " to include, inter alia, the protection of "buildings, structures . . . significant in the history . . . of this state"); General Statutes § 33-221 ("[a] cooperative shall have power . . . to construct . . . buildings, structures"); General Statutes § 13b-36 (c) ("the terms railroad properties and related facilities shall mean all the land, structures, buildings . . . used for rail transportation purposes"); General Statutes § 8-44 (a) ("[a]n authority shall [have power] . . . (4) to demise any . . . buildings, structures"); General Statutes § 7-130a (d) (" '[p]roject' . . . means . . . all buildings, structures and other facilities for the public convenience"). These statutes indicate that the legislature knows how to use the term "structure" when it intends to and, thus, suggests to us that its failure to use that term in § 8-13a (a) was purposeful. See, e.g., *Windels* v. *Environmental*

Protection Commission, 284 Conn. 268, 299, 933 A.2d 256 (2007) (legislature knows how to convey its intent expressly). Accordingly, because § 8-13a (a) applies only to "buildings" and not all "structures," defining "building" to include all "structures" would produce absurd and unworkable results. We therefore conclude that the plain meaning of the term "building" as it is used in § 8-13a (a) refers to an edifice designed to stand permanently, with a roof and walls. It is undisputed that the deck in the present case has neither walls nor a roof, and we therefore conclude that the deck, viewed by itself, is not a "building" under the statute.

The plaintiffs, however, claim that, even if the deck is not a "building," it is nevertheless covered by the statute because it is an integral and necessary part of the house. The plaintiffs contend that, if the deck is deemed not to be integral to the house, then components of a house, such as steps and chimneys, would also be excluded from the definition of "building" and thus subject to an enforcement action by the town. The plaintiffs maintain that the legislature did not intend for such essential components of a house to be subject to an enforcement action and, therefore, claim that the trial court properly determined that the deck is entitled to protection under the statute. We disagree.

The deck was not included in the construction plans submitted to the town in connection with the plaintiffs' zoning and building permit applications. If the deck was an essential component of the house, it would have been included in the construction plans originally submitted to the town. Additionally, if the deck in the present case were deemed to be part of the house and exempt from an enforcement action, notwithstanding the fact that the town never approved the deck's construction, property owners would be incentivized to omit such structures from construction plans, particularly when a variance is sought to accommodate construction of a house, and then commence construction of the deck after approval of the construction plans for the house has been received. We have stated that " '[i]t is well established . . . that the granting of a variance must be reserved for unusual or exceptional circumstances. . . . Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition precedent to the granting of a zoning variance.' " *Moon* v. *Zoning Board of Appeals*, 291 Conn. 16, 24, 966 A.2d 722 (2009), quoting *Bloom* v. *Zoning Board of Appeals*, 233 Conn. 198, 206–208, 658 A.2d 559 (1995); see General Statutes § 8-6 (a) (3). Thus, variances are granted only under those demanding circumstances, and are only as extensive as necessary to prevent unusual hardship on the property owner. Consequently, a town may be hesitant to extend a variance to allow a property owner room to construct an extensive deck. Indeed, the board in the present case denied the plaintiffs' request to extend the variance to include the area covered by the

deck. As such, if the deck in the present case were immune from an enforcement action because it was deemed an integral component of the house, a property owner would be encouraged to submit construction plans to the town that show the house covering the entire area of the variance, and then subsequently construct the deck at a time when an inspection of the property is unlikely to occur. Such actions would circumvent the statutory procedure for obtaining a variance, usurp the authority of the board and frustrate a town's zoning regulations. Accordingly, because the town never gave approval for the deck, construction of the deck in the prohibited setback area violated the town's zoning regulations. We therefore conclude that the trial court improperly determined that the deck was a part of the house and not subject to an enforcement action.[9]

The judgment is reversed and the case is remanded to the trial court with direction to affirm the decision of the zoning board of appeals denying the plaintiffs' appeal.

In this opinion the other justices concurred.

[1] The defendants sought certification to appeal to the Appellate Court, which was granted. We subsequently transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] Section 5.2 of the Lebanon zoning regulations provides in relevant part: "Where rear or front yard borders a stream, pond or other body of water, whether natural or man-made, all structures except boat houses not used as dwellings, shall be a minimum of [75 feet] from edge of water."

[3] General Statutes § 8-3 (f) provides in relevant part: "No building permit or certificate of occupancy shall be issued for a building, use or structure subject to the zoning regulations of a municipality without certification in writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid nonconforming use under such regulations. . . ."

[4] General Statutes § 8-13a (a) provides: "When a building is so situated on a lot that it violates a zoning regulation of a municipality which prescribes the location of such a building in relation to the boundaries of the lot or when a building is situated on a lot that violates a zoning regulation of a municipality which prescribes the minimum area of the lot, and when such building has been so situated for three years without the institution of an action to enforce such regulation, such building shall be deemed a nonconforming building in relation to such boundaries or to the area of such lot, as the case may be."

[5] See footnote 1 of this opinion.

[6] General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from 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."

[7] The defendants also claim that the trial court improperly determined that: (1) the three year statute of limitations in § 8-13a (a) begins to run at the time of the construction of the offending building, rather than when the municipality receives notice of the violation; and (2) the doctrine of equitable estoppel does not preclude the plaintiffs from relying on § 8-13a (a). Our conclusion that the violation is not subject to the three year statute of limitations in § 8-13a (a) resolves this case and, therefore, we need not reach these claims.

[8] This is not to say that, even if the deck was deemed a building and therefore fell under the purview of the statute, the cease and desist order would have necessarily been untimely. Whether the order would have been timely depends on whether the statute of limitations begins running upon

construction of the offending building or when the town receives notice of the violation. As we stated in footnote 7 of this opinion, we need not resolve this issue in the present case.

[9] The plaintiffs additionally rely on *Raymond* v. *Zoning Board of Appeals*, 76 Conn. App. 222, 820 A.2d 275 (2003), as support for their claim that the deck in the present case is an integral part of the building. The relevant issue in *Raymond* was whether the attachment of a retractable awning and windscreen (temporary enclosure) to a deck violated the town's zoning regulations. Id., 224. The deck at issue in that case was attached to a restaurant owned by the defendants. Id. The defendants received permission from the town to construct the restaurant and the deck. Id., 224 n.3. The deck was deemed a "nonconforming structure" under the town's zoning regulations, however, because construction of the deck extended over the permitted setback line. Id. The plaintiffs, owners of real property abutting the restaurant, objected to the construction of the temporary enclosure. Id., 224–25. The plaintiffs claimed, among other things, that the temporary enclosure converted the deck from a "nonconforming structure" to a "nonconforming building," and, therefore, constituted an impermissible expansion of the nonconforming deck in violation of the regulation. Id., 240. The trial court agreed with the plaintiffs. Id.

On appeal, the Appellate Court concluded that the trial court improperly determined that the construction of the temporary enclosure was a substantial expansion of the deck in violation of the town's zoning regulations. Id., 240–41. The court stated that "[t]he floor level of the deck is several feet above the ground, and the floor level is at the same level as the first flooring of the main part of the restaurant building. Given those circumstances, the deck is not a separate structure, but is, as the defendants claim, part of the restaurant." Id., 241. The plaintiffs contend that this language supports their claim that a deck attached to a building is an integral component of the building.

We disagree with the plaintiffs that the Appellate Court's decision in *Raymond* should have any influence on our resolution of the present case. Most importantly, *Raymond* did not involve an interpretation of § 8-13a (a), but rather involved an interpretation of a town's zoning regulations. Furthermore, the defendants in *Raymond* received permission to construct the deck, whereas the plaintiffs in the present case constructed their deck without permission from the town. Accordingly, although the court in *Raymond* stated that the deck was a part of the restaurant, the court arrived at that conclusion in a different factual and legal context than in the present case. Thus, the court's conclusions in *Raymond*, insofar as they relate to the deck being a component of the restaurant, are inapplicable to the present case.