VICTOR ANATRA ET AL. *v.* ZONING BOARD OF APPEALS OF THE TOWN OF MADISON
(SC 18784)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Harper, Js.*

Argued November 1, 2012—officially released February 5, 2013

Michael A. Zizka, for the appellant (defendant).

Proloy K. Das, with whom was *Glenn E. Coe*, for the appellees (plaintiffs).

Opinion

ZARELLA, J. The principal issue in this appeal is whether the conditions attached to the granting of a variance must be explicitly described in the certificate of variance.[1] The defendant, the zoning board of appeals of the town of Madison (board), appeals from the judgment of the Appellate Court reversing the judgment of the trial court, which dismissed the appeal of the plaintiffs, Victor Anatra and Heather Anatra, from the board's decision upholding the denial of their application for a certificate of zoning compliance by the town zoning enforcement officer (zoning officer). The plaintiffs sought permission to convert an existing balcony on their beachfront house into a large, uncovered deck that would fully comply with the zoning regulations but arguably would not comply with a previously approved variance limiting the size of the house to the footprint of the previous, nonconforming structure. The board claims that the Appellate Court's conclusion that the board could not deny the plaintiffs' application because the footprint limitation was not expressly described in the certificate of variance is not in accordance with the applicable law and nullifies important public safeguards provided by statutory and regulatory procedures. The plaintiffs respond that the Appellate Court's conclusion is consistent with the applicable law and with preserving public safeguards because requiring that conditions be explicitly described in a certificate of variance recorded in the land records is the best way to inform the public of the restrictions that may apply to a property. We agree with the board and, accordingly, reverse the judgment of the Appellate Court.

The following relevant, undisputed facts and procedural history are set forth in the Appellate Court's decision, which relied in part on the trial court's findings of fact. "On October 5, 2001, the [plaintiffs] applied for a variance to the [board] to replace the then-existing house on the footprint of that prior structure.[2] The prior structure was a much aged cottage. The proposed structure was a modern, multistory home. The [plaintiffs'] application requested variances for front yard and side yard setbacks, additional maximum building coverage, and [c]ritical [c]oastal [r]esource setback. Detailed plans were submitted with the application [which stated that the proposed residential use would remain the same without expanding the footprint of the building]. The application stipulated, immediately above the signature line, that THE PLANS SUBMITTED WITH THE BUILDING APPLICATION MUST BE THE SAME AS THOSE SUBMITTED AND APPROVED WITH [THE] VARIANCE APPLICATION. . . .

"On [December 4, 2001], the [board] considered the application. The [plaintiffs'] architect, Robert Mangino, presented a floor plan and a model of the proposed house to the [board]. The minutes of the meeting state

that Mangino referred to the model and said the house will not change from the model, although there may be a change in the windows. Neither the application nor the model included a deck extending beyond the footprint of the house." (Internal quotation marks omitted.) *Anatra* v. *Zoning Board of Appeals*, 127 Conn. App. 125, 127, 14 A.3d 386 (2011). The minutes also state that the plaintiffs' attorney assured the board that the building was a two bedroom house that "cannot be enlarged" and that "the footprint will not be increased . . . ." After the public portion of the hearing was closed, one of the board members likewise remarked that "[t]he footprint is the same . . . ."

"The board granted the plaintiffs' application and issued a certificate of variance on December 4, 2001. The certificate of variance . . . certifie[d] that on [December 4, 2001] a variance was granted to [the plaintiffs] . . . by the [board] to vary the application of [§§] 2.1.7 and 3.6 [(d) and (f)] of the [Madison] [z]oning [r]egulations [zoning regulations] . . . . The certificate also set forth the exact nature of the variance granted: To allow 10.9 [percent] area coverage, 35.1 [feet] front yard and 10.5 [feet] side yard variances to permit [the] existing structure to be replaced in the same location within 50 [feet] of the critical coastal resources as presented at the hearing and as shown on the plans and the survey submitted. [A] [c]oastal [s]ite [p]lan [r]eview was [also] approved with the following condition: [1] that all construction be in conformance with the construction standards put forth by . . . [the Federal Emergency Management Agency (FEMA)]; and [2] that the proposed harvesting and replanting of beach grass be scheduled for early spring to ensure the shortest period of plant storage and the best possible conditions for the re-establishment of the beach grass; careful watering of the replanted grass through the first growing season (typically from early spring through October) is recommended to aid its successful re-establishment within the disturbed area. The certificate [of variance] also contained a preprinted standard clause at the bottom of the page that provides: This variance shall not become effective until a copy of this [c]ertificate of [v]ariance, certified by the [board], is recorded in the [town] land records . . . at the expense of the record owner." (Internal quotation marks omitted.) *Anatra* v. *Zoning Board of Appeals*, supra, 127 Conn. App. 131–32.

Thereafter, the plaintiffs built a new house on the property in accordance with the submitted plans. "On September 2, 2003, the plaintiffs were issued another certificate of variance to enable them to install new stairs and an air conditioning unit on the outside of their new home. This certificate provides: This certifies that on [September 2, 2003] a variance was granted to Victor Anatra . . . by the [board] to vary the application of [§§] 2.1.7, 3.6 [(d) and (f)] and 12.6 of the [z]oning [r]egulations . . . . The certificate also set forth the

exact nature of the variance granted: To allow an increase in coverage from [10.9 to 11.1 percent] and side variances of 19.5 [feet] to [the] new west side stairs, 16 [feet] to [the] air conditioning unit on [the] west side and 2 [feet] to [the] new deck on the south side and front yard variances of 27 [feet] to [the] new stairway on the east side, 21 [feet] to [the] new deck on the east side and 36 [feet] to [the] new stairway on the west side and to allow the generator and air conditioning units in the critical coastal resource area as presented at the hearing subject to the condition that the air conditioning units be 18 SEER [seasonal energy efficiency ratio] or better. The certificate also contained the same preprinted standard clause at the bottom of the page, providing: This variance shall not become effective until a copy of this [c]ertificate of [v]ariance, certified by the [board], is recorded in the [town] land records . . . at the expense of the record owner." (Internal quotation marks omitted.) Id., 132–33.

"On July 27, 2006, [t]he [plaintiffs] filed an application for [a] variance modification to add [nine feet] to [the] existing balcony in [the] rear of [the] house—[nine feet by twenty feet]. The existing balcony—which appears to be within the footprint of the existing structure—was stated to be [three feet by twenty-two feet]. The proposed addition extended beyond that footprint. On September 5, 2006, the [board] denied the application. The [plaintiffs] did not appeal [from that] decision.

"On December 19, 2007, the [plaintiffs] decided to try again. This time, instead of requesting another variance modification, they submitted an application for a [certificate of zoning compliance] to the [zoning officer]. A drawing attached to the application show[ed] a proposed deck [thirty-two] feet long and [seven] feet wide for [twenty] feet of the total length, expanding to [ten] feet wide in the last [twelve] feet of length. A privacy wall was to be built at the narrow end of the deck. The proposed deck and privacy wall extend[ed] beyond the footprint of the existing structure.

"On January 3, 2008, the [zoning officer] denied the application. [The] denial state[d] that . . . [p]rior variances for this building were granted by the [board] based on specific plans and representations for the building. The variances are effective for that building only. Any modification to the building must be approved by the [board].

"On January 11, 2008, the [plaintiffs] appealed [from] the decision of the [zoning officer] to the [board]. The appeal describe[d] the [plaintiffs'] application as one for zoning approval for [a] building permit to construct [an] extension to [the] existing balcony in the rear of [the] home. [The] [p]roposed extension is an uncovered deck in accordance with [§] 19.5.1 [of the zoning regulations], [seven feet] wide for [twenty feet] then [ten feet] wide for [twelve feet], set entirely within the side and

rear yard setbacks. On March 4, 2008, the [board] voted to uphold the decision of the [zoning officer]. On March 25, 2008, the [plaintiffs] . . . appeal[ed] to the [trial] [c]ourt . . . ." (Internal quotation marks omitted.) Id., 127–28. In a memorandum of decision dated May 14, 2009, the trial court concluded that the board properly had upheld the decision of the zoning officer denying the plaintiffs' application for a certificate of zoning compliance and dismissed the appeal.

The plaintiffs appealed to the Appellate Court, on the granting of certification, from the trial court's judgment of dismissal. The plaintiffs argued that the proposed uncovered deck was in full compliance with the zoning regulations and did not intrude into any setback areas. Id., 129. They also argued that the deck would not increase the coverage area of the building because an uncovered deck is specifically excluded from the calculation of building coverage area under § 19.5.1 of the zoning regulations. Id. The Appellate Court agreed with the plaintiffs and reversed the trial court's judgment. Id., 127, 131.

The Appellate Court reasoned that the only conditions contained in the first two certificates of variance recorded in the land records were the two conditions required by FEMA in the first certificate and the condition concerning the air-conditioning units in the second certificate. See id., 138–39. Accordingly, "[t]here was no condition [set forth in] the certificates that would give anyone knowledge that the plaintiffs or the future owners of this property forever would be precluded from modifying the property in any manner that was inconsistent with the plans submitted at the time that the plaintiffs' variances were granted, even if such modifications fully complied with the zoning regulations." Id., 138. The court further reasoned: "A variance runs with the land and is not personal to the parties applying for it . . . and, if all interested parties, including subsequent purchasers of this property or neighboring property owners, are to have knowledge of the conditions placed on the property benefited by the variance, such conditions must be stated explicitly [in] the certificate of variance recorded in the land records." (Citation omitted.) Id. The board appealed to this court, which certified the following question for review: "Did the Appellate Court properly conclude that a zoning board may not deny a permit for a plan that complies with local zoning regulations but differs materially from that presented in a previous approved variance application?" *Anatra* v. *Zoning Board of Appeals*, 301 Conn. 902, 17 A.3d 1043 (2011). We now reframe the question to reflect more accurately the issue decided by the Appellate Court and appealed to this court, namely, whether conditions attached to the granting of a variance must be explicitly described in the certificate of variance or whether they may be construed in light of the entire public record, including the variance applica-

tion, exhibits, hearing transcripts and decision of record. See, e.g., *State* v. *Ouellette*, 295 Conn. 173, 184, 989 A.2d 1048 (2010) (court may reformulate certified question to conform to issue actually presented); *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 191, 884 A.2d 981 (2005) (court may reframe certified question "to reflect more accurately the [issue] presented"). Following our determination of that issue, we then consider whether the Appellate Court correctly concluded that the board improperly denied the plaintiffs' application for a certificate of zoning compliance.

We begin with the applicable standard of review. "Generally, it is the function of a zoning board . . . to decide within prescribed limits and consistent with the exercise of [its] legal discretion, whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply. The trial court ha[s] to decide whether the board correctly interpreted the section [of the regulations] and applied it with reasonable discretion to the facts. . . . In applying the law to the facts of a particular case, the board is endowed with . . . liberal discretion, and its action is subject to review . . . only to determine whether it was unreasonable, arbitrary or illegal. . . . Moreover, the plaintiffs bear the burden of establishing that the board acted improperly. . . .

"Ordinarily, this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes. . . . [A]n agency's factual and discretionary determinations are to be accorded considerable weight . . . . 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. . . . Furthermore, when [an] agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . [I]t is for the courts, and not administrative agencies, to expound and apply governing principles of law. . . . These principles apply equally to regulations as well as to statutes." (Internal quotation marks omitted.) *Alvord Investment, LLC* v. *Zoning Board of Appeals*, 282 Conn. 393, 408–409, 920 A.2d 1000 (2007).

In the present case, the initial question of whether the conditions attached to the granting of a variance must be explicitly described in the certificate of variance requires the interpretation of a statute and also presents a pure question of law that previously has not been subject to judicial scrutiny. Accordingly, that question is subject to our plenary review. See, e.g., *R & R Pool & Patio, Inc.* v. *Zoning Board of Appeals*, 129

Conn. App. 275, 287, 19 A.3d 715 (2011). The second question of whether the board properly denied the plaintiffs' application for a certificate of zoning compliance, however, is subject to review only to determine whether the board "acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) *Alvord Investment, LLC* v. *Zoning Board of Appeals*, supra, 409; see also *Clifford* v. *Planning & Zoning Commission*, 280 Conn. 434, 440, 908 A.2d 1049 (2006) ("[w]hen a commission is functioning in . . . an administrative capacity, a reviewing court's standard of review of the commission's action is limited to whether it was illegal, arbitrary or in abuse of [its] discretion" [internal quotation marks omitted]); *Winchester Woods Associates* v. *Planning & Zoning Commission*, 219 Conn. 303, 311–12, 592 A.2d 953 (1991) (planning and zoning commission abused its discretion by not examining all factors that it was required to examine in rejecting subdivision application); *Vaszauskas* v. *Zoning Board of Appeals*, 215 Conn. 58, 63–65, 574 A.2d 212 (1990) (zoning board of appeals abused its discretion when it acted beyond its authority in granting variance subject to satisfaction of condition that was impossible to satisfy). Mindful of these principles, we address each question in turn.

I

We first consider whether a condition attached to the granting of a variance must be construed solely on the basis of the language contained in the certificate of variance. The starting point for our discussion is General Statutes § 8-3d, which provides for the granting of variances. It is well established that, "[w]hen 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. . . . In seeking to determine that meaning, General Statutes § 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. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *McCoy* v. *Commissioner of Public Safety*, 300 Conn. 144, 150–51,

12 A.3d 948 (2011).

General Statutes § 8-3d provides in relevant part: "No variance . . . granted pursuant to this chapter, chapter 126 or any special act . . . shall be effective until a copy thereof, certified by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, containing a description of the premises to which it relates and specifying the nature of such variance . . . including the zoning bylaw, ordinance or regulation which is varied in its application . . . and stating the name of the owner of record, is recorded in the land records of the town in which such premises are located. The town clerk shall index the same in the grantor's index under the name of the then record owner and the record owner shall pay for such recording."

Although § 8-3d provides that a certified copy of an approved variance "specifying the nature of such variance" shall be recorded in the land records, neither the text of the statute nor any related statute refers to the conditions or limitations that may be attached to the granting of a variance. Moreover, in the very brief legislative debate on § 8-3d, the only relevant comments were that the recording of the certificate in the land records would provide interested parties with legal notice of the fact that a variance had been granted. See 18 S. Proc., Pt. 4, 1975 Sess., p. 1846; 18 H.R. Proc., Pt. 9, 1975 Sess., pp. 4088–89. We thus seek guidance from our case law in determining how the conditions of a variance should be construed.

In *Burlington* v. *Jencik*, 168 Conn. 506, 362 A.2d 1338 (1975), we stated that "[a] zoning board of appeals may, without express authorization, attach reasonable conditions to the grant[ing] of a variance. . . . [A] variance is authority extended to the owner to use his property in a manner forbidden by the zoning enactment . . . . The right to attach reasonable conditions to the grant[ing] of a variance is not dependent upon express authorization from the lawmaking body. . . . Were this not so, the board, for lack of such right, might be forced, at times, to deny a variance and thus to perpetuate an owner's plight crying for relief. Since variances allow uses forbidden by the regulations, the attachment of conditions to the granting of a variance alleviates the harm which might otherwise result. . . . Were it not for the conditions imposed by a board . . . variances might not be supportable as being in harmony with the general purpose and intent of the zoning ordinance. . . . Thus the variance and the attached conditions are inextricably linked, the viability of the variance being contingent upon the satisfaction of the conditions." (Citations omitted; internal quotation marks omitted.) Id., 509–10.

Although the court in *Burlington*, in which the defendants had been granted a reduction in the building set-

back lines in order to construct a garage, did not directly address the issue of how to construe a variance, it referred to comments by board members when they voted to grant the variance in that case, as well as to comments by the defendants at the hearing on the application, in concluding that the variance had been conditioned on the exclusive use of the garage for the parking of automobiles. Id., 507. Quoting liberally from the record of the proceedings, the court observed that, in voting to grant the variance, "the board noted that the existing parking situation presented 'an almost intolerable condition both for town road employees as well as property owners along the street.' It voted to grant the variance 'and approve the proposed construction of a garage to be used exclusively for the private garaging of automobiles and not for commercial repair work of any type. This variance [was] limited to construction of this garage exactly placed as indicated on the drawing accompanying the application and also limited to the exact size of the proposed garage . . . [that is] 30 by 38 feet.' At the hearing on the application for the variance, the defendants [also] . . . stated that the purpose of the garage was 'to get their three automobiles off the street and under cover and that if the variance were granted the garage that would be constructed would be used solely for the private garaging of motor vehicles.' " Id., 507–508.

Similarly, in *Raymond* v. *Zoning Board of Appeals*, 164 Conn. 85, 87–88, 318 A.2d 119 (1972), in which the plaintiff sought a license to conduct a business repairing motor vehicles on property subject to a variance that allowed for its nonconforming use as a gasoline service station, the court relied in part on the language in the variance application in concluding that the variance did not permit the type of business that the plaintiff was proposing. The court explained that, although certain statutory provisions allowed the holder of a license for the sale of gasoline to make repairs incidental to the sale of motor vehicle fuels, "[o]bviously, the defendant board in granting the variance did so in recognition of this statutory provision which permits certain things to be done 'incidental to the sale of motor vehicle fuels' without the requirement of a license as a repairer or limited repairer. There was no finding by the defendant board that the premises were suitable for the business of automobile repairs, nor was any such application made in 1967 for approval of the location as provided in [the statutory provision]." Id., 88.

The Appellate Court has adopted a similar approach. In *L & G Associates, Inc.* v. *Zoning Board of Appeals*, 40 Conn. App. 784, 673 A.2d 1146 (1996), the Appellate Court expressly held that the trial court properly had considered "the entire public record, rather than considering [only] the plain language of the variance certificate, in concluding that the variance did not allow the plaintiff to construct a building" not indicated in the

original application and site plan. Id., 787. The court cited *Raymond* for the fact that this court had considered not only the language of the certificate of variance but the proposed use of the property in the variance application when determining the use of the property permitted under the variance. Id. The Appellate Court concluded: "The proposition that the scope of a variance is determined by examining the specific use proposed in the variance application and approved by the zoning board of appeals is a necessary corollary of the limited nature of variances. [A] variance is authority granted to the owner to use his property in a manner forbidden by the zoning regulations. . . . Because a variance affords relief from the literal enforcement of a zoning ordinance, it will be strictly construed to limit relief to the minimum variance [that] is sufficient to relieve the hardship." (Citations omitted; internal quotation marks omitted.) Id., 787–88. The court added that "[t]he trial court did not improperly consider the entire public record in concluding that the variance did not allow [for the] construction of an office building on the [property]. The trial court would have been remiss had it failed to do so."[3] Id., 788.

Thereafter, in *Fleet National Bank* v. *Zoning Board of Appeals*, 54 Conn. App. 135, 137, 140–41, 734 A.2d 592, cert. denied, 250 Conn. 930, 738 A.2d 656 (1999), the Appellate Court again conducted an extensive examination of the record, which lacked a transcript of the minutes of the zoning board's 1993 meeting on the original application for a variance but included minutes of the board's meetings in 1997, which described its reasons for granting the original variance. The court ultimately concluded, on the basis of its review of the 1997 minutes, that the conditions in the original variance that the plaintiff sought to remove in 1997 were integral to the board's 1993 decision to grant the variance. Id., 141.

Recently, the Appellate Court rendered a more limited holding in *R & R Pool & Patio, Inc.* v. *Zoning Board of Appeals*, supra, 129 Conn. App. 275. In that case, the court concluded that, if undefined words or terms in a certificate of variance are clear and unambiguous on their face, the interpretation of their meaning requires nothing more than an examination of the certificate itself. Id., 287. In contrast, when "the undefined words or phrases [in a certificate of variance] are ambiguous or reasonably susceptible to multiple interpretations, a search for the intent of the board at the time it approved the variance is necessary to resolve that question . . . ." Id., 287–88. The Appellate Court thus reviewed the relevant record in *R & R Pool & Patio, Inc.*, including the original application for a variance, the testimony at the hearing and the zoning board's deliberations in concluding, as a matter of law, that the term "fine furniture," as used in the variance, referred to "high quality" furniture. Id., 296.

Courts in other jurisdictions also have considered the public record in construing conditions attached to the granting of a variance. See *Hazel* v. *Metropolitan Development Commission*, 154 Ind. App. 94, 101–103, 289 N.E.2d 308 (1972) (examining public record, including variance petition, exhibits and plans filed, to determine portion of lot to which variance applied); *Clark County Board of Commissioners* v. *Taggart Construction Co.*, 96 Nev. 732, 735, 615 P.2d 965 (1980) ("[i]n order to determine the scope of the variance, [the court] must consider both the representations of the applicant and the intent of the language in the variance at the time that it was issued"); *Rye* v. *Ciborowski*, 111 N.H. 77, 79–82, 276 A.2d 482 (1971) (considering application for variance and neighbors' understanding of requested variance as expressed at hearing to determine whether defendant's use of private airport established on property exceeded use permitted by variance granted); *Warren* v. *Frost*, 111 R.I. 217, 220–21, 301 A.2d 572 (1973) (examining record, including evidence and testimony at hearing, to determine whether board of review imposed express conditions on granting of variance). Among the reasons for reviewing the public record is that a variance application and accompanying materials, the testimony at the hearing, and the comments of board members as revealed in the minutes and hearing transcripts provide more comprehensive information than the language in a certificate of variance regarding the changes being sought and the nature of the limitations and conditions imposed by a board.

Moreover, this court explicitly has concluded that the published notice of a variance for purposes of appeal need not be highly detailed. For example, in *Bridgeport Bowl-O-Rama, Inc.* v. *Zoning Board of Appeals*, 195 Conn. 276, 281–82, 487 A.2d 559 (1985), we upheld as legally adequate, for the purpose of informing members of the public who wished to appeal, the published notice of approval of a variance stating only that the variance had been " 'granted conditionally' "; id., 279 n.3; without any reference to the actual conditions. In that case, we explained: "There can be no doubt that the notice of decision . . . gave the plaintiff the opportunity of knowing that there was a decision to appeal from. The notice of decision explicitly stated that a decision relating to specifically identified property adjacent to that occupied by the plaintiff had been rendered granting the . . . petition conditionally. The adequacy of the notice with regard to the opportunity granted the plaintiff . . . must be determined from the notice *construed as a whole, including its references to the prior notice of hearing*. The prior notice adequately disclosed the nature of [the] application. It is not essential that a notice of decision expressly state every consideration that might be relevant to any party who might want to appeal the board's decision. It is only necessary to provide notice adequate to ensure a reasonable

opportunity within the applicable time constraints to obtain the information required to form an opinion whether . . . to appeal. The reference to the earlier notice of hearing in the notice of decision accomplished this result." (Emphasis added.) Id., 281–82.

In a similar vein, this court has concluded that notices filed in the land records regarding secured obligations need not be highly detailed. See, e.g., *Connecticut National Bank* v. *Lorenzato*, 221 Conn. 77, 81, 602 A.2d 959 (1992) ("the recordation of a valid mortgage gives constructive notice to third persons if the record sufficiently discloses the real nature of the transaction so that the third party claimant, exercising common prudence and ordinary diligence, can ascertain the extent of the encumbrance"). In *Dart & Bogue Co*. v. *Slosberg*, 202 Conn. 566, 522 A.2d 763 (1987), we discussed the "mistaken premise" that "[o]ur recording system is predicated upon the principle that one searching the land records can learn all he needs to know about the ownership of the land and its encumbrances from the records themselves"; (internal quotation marks omitted) id., 579–80; stating that it "overstates the purpose of record notice. The record need not recapitulate all the particulars of a secured obligation, provided it includes enough information to allow subsequent creditors, by common prudence and by the exercise of ordinary diligence, [to] ascertain the extent of the [e]ncumbrance. . . . A creditor who wants to know all of the terms of a secured obligation may inquire of the parties themselves, or examine the note or other instrument evidencing the obligation. . . . In modern secured lending, such inquiry is prudent as a matter of course. A potential secured creditor may wish to know, for example, whether a mortgagee has exercised rights under an acceleration clause, or whether contemplated future advances have in fact been made, or whether a mortgagor has exercised rights to extend or renew a promissory note. No creditor can expect to glean all of this information from the record alone. The record is the starting point for inquiry, not . . . the starting and ending point." (Citations omitted; internal quotation marks omitted.) Id., 580.

In light of this substantial body of law, we agree with the board that it makes more sense to treat a certificate of variance, which refers to conditions having been attached, as a notice to all those searching the land records that further investigation should be undertaken by reviewing the administrative file. Accordingly, we conclude that the Appellate Court improperly determined that the conditions attached to the granting of a variance must be explicitly stated in the certificate of variance. Rather, consistent with our precedent, such conditions should be construed not only by examining the language contained in the certificate of variance, but by considering the entire public record, including the variance application, the accompanying plans and

exhibits, the minutes or hearing transcript, and the record of decision.

The plaintiffs rely on *Dodson Boatyard, LLC* v. *Planning & Zoning Commission*, 77 Conn. App. 334, 338–39, 823 A.2d 371, cert. denied, 265 Conn. 908, 831 A.2d 258 (2003) (*Dodson*), in contending that conditions must be explicitly described in the certificate of variance filed in the land records because there is no other way for future landowners to know what, if any, restrictions apply to the property. We disagree with the plaintiffs' interpretation of *Dodson*.

We first note that, even if we agreed with the plaintiffs, *Dodson* would not constitute binding precedent because it is not a decision of this court. See, e.g., *Stuart* v. *Stuart*, 297 Conn. 26, 45–46, 996 A.2d 259 (2010) ("it is manifest to our hierarchical judicial system that this court has the final say on matters of Connecticut law and that the Appellate Court and Superior Court are bound by our precedent"). More importantly, *Dodson* cannot be construed as narrowly as the plaintiffs suggest. The plaintiffs rely exclusively on the Appellate Court's conclusion that a variance granted to a former owner of the property permitting a reduction in the rear yard setback and an increase in the floor area ratio was not subject to any limitations or conditions because "[t]here [was] nothing in the certificate of variance as granted that limit[ed] it to one building or to the proposed building shown on the site plan or to a particular part of the premises." *Dodson Boatyard, LLC* v. *Planning & Zoning Commission*, supra, 77 Conn. App. 339. Before reaching that conclusion, however, the court examined the record and observed that the "variance was sought to erect a building for winter storage and repair of boats. *Neither the record of decision nor the certificate of variance* recorded on the land records contained any limitations or restrictions." (Emphasis added.) Id., 336. "*The records of the board for the meeting of August 9, 1983*, disclose that the application sought a variance to permit a reduction in the rear yard setback to six feet and an increase in the floor area ratio to 0.41 for the property . . . . The application was approved, and *the record of decision* noted that the '[b]uilding is needed to store and repair boats in the winter time.' " (Emphasis added.) Id., 339. Thus, the Appellate Court's explicit conclusion that the certificate of variance contained no limitations was based in part on its corresponding, but equally important, *implicit* conclusion that the certificate was consistent with the application and the records of the zoning board's meeting, which contained no reference to "any limitations or restrictions." Id., 336.

In insisting that the certificate of variance should contain an explicit statement of the conditions imposed to provide future landowners with proper notice, the plaintiffs also rely on authority stating that a zoning

board "must clearly state any conditions in its decision so that all interested parties are fully aware of the nature and extent of the conditions." 2 P. Salkin, American Law of Zoning (5th Ed. 2008) § 13:36, pp. 13-103 through 13-104. In other words, "[c]onditions imposed by a zoning board of appeals must be expressed with sufficient clarity to inform the applicant of the limitations on the use of the land, and to protect nearby owners. Thus, conditions have been held to be ineffectively expressed where they limited use in terms of the applicant's verbal statements to the board. Conditions that are too vague, or not clearly articulated are found to be void. To be enforceable, conditions must be expressed in sufficiently definite terms to enable the permit holder, adjacent landowners, and all interested parties to know what is required of the permit holder." Id., § 13:37, pp. 13-104 through 13-105. The plaintiffs fail to recognize, however, that the decision of a board is expressed not only in the certificate of variance but in the decision of record, which may be found in the meeting minutes or hearing transcript. Accordingly, there is no legal support for the proposition that the desired clarity must be provided *solely* by way of the information contained in the certificate of variance.

This conclusion is in accord with the principle that, when the land records indicate that conditions have been attached to a variance, due diligence requires a potential buyer of the property or other interested persons to investigate the public record in order to obtain a full understanding of the scope of the variance. Indeed, it would seem almost obligatory to do so in light of the fact that even relatively explicit language describing a condition attached to a variance may not be sufficiently precise to indicate its effect in every conceivable context in which future changes to the property may be contemplated. Cf. *R & R Pool & Patio, Inc.* v. *Zoning Board of Appeals*, supra, 129 Conn. App. 287–88. Moreover, in enacting § 8-3d, knowledgable lawmakers indicated that it would serve to give interested property owners legal notice "of the *fact* that a variance . . . has been granted"; (emphasis added) 18 S. Proc., supra, p. 1846; see also 18 H.R. Proc., supra, pp. 4088–89; not of its substantive details or particular scope. Additionally, the lack of an incentive to review the record to better understand the conditions attached to a variance could perpetuate an improper understanding of their meaning, thus allowing a property owner to enjoy the benefits of a variance without adhering to its requisite conditions. See *Burlington* v. *Jencik*, supra, 168 Conn. 509–10 ("Were it not for the conditions imposed by a board of appeals, variances might not be supportable as being in harmony with the general purpose and intent of the zoning ordinance. . . . Thus the variance and the attached conditions are inextricably linked, the viability of the variance being contingent upon the satisfaction of the conditions." [Citation omit-

ted.]). Accordingly, conditions attached to the granting of a variance are not to be construed solely on the basis of the language in the certificate of variance.

II

We next consider whether the Appellate Court correctly concluded that the board improperly denied the plaintiffs' application for a certificate of zoning compliance to convert their present balcony into a large, uncovered deck. The board argues that expansion of the balcony was precluded by a condition in the certificate of variance issued in 2001. The condition provided that the final building plans must conform to plans presented to the board in October of that year indicating that the proposed new structure would not exceed the footprint of the existing, nonconforming structure. The plaintiffs respond that the proposed deck fully complies with the zoning regulations, does not increase the coverage of the building and is not prohibited by any condition attached to the certificate of variance. We agree with the board.

The following additional facts are relevant to our resolution of this issue. The transcript of the hearing in 2008 to consider the plaintiffs' appeal from the denial of their application for a certificate of zoning compliance, or building permit, indicates that the zoning officer, Marilyn Ozols, denied the requested permit because prior variances granted for the property had been tied to specific house designs presented to the board and the proposed deck would result in an enlargement of the previously approved designs.[4] Ozols specifically explained: "I denied [the permit application] even though the proposed new construction by itself would meet all zoning yard requirements because this was an enlargement of the building design [for] which the board had granted the previous variances. The board frequently hears arguments as to why certain additions or changes are the best options for a building, even though other options may exist within the regulations. The resulting variances are based on these premises and frequently on the overall compatibility of the proposal with the neighborhood. The board makes it clear, when it evaluates any request to vary the [zoning] regulations, that allowing intrusion into side or other yards or allow[ing] coverage greater than is permitted by the regulations [is permissible] only after evaluating the impact of the total building on the neighborhood and adjacent property owners. Changes to the size or shape of the building would potentially have resulted in . . . a different decision on the requested variances if, after the building is constructed as represented, an applicant could make additional changes to the building as long as they complied with the regulations, [and] the integrity of the initial premises would be compromised. So, therefore, based on that understanding and my belief that the variance was granted based on the plans submitted,

I denied the zoning approval for the building permit as requested."

The transcript of the hearing also indicates that, during the deliberations on the application after the public hearing was closed, some board members noted that the original variance had been granted in 2001 on the basis of the dimensions of the entire structure and that the width of the balcony that the plaintiffs sought to expand had been considered at that time. According to Joel Marcus, the only board member who also had been a member when the variance was approved in 2001, the board had presumed that every application was subject to the exhibits and documents submitted and that, in this case, the board had approved the entire structure and not merely the portions of the structure that did not comply with the regulations. Marcus further expressed his opinion that, unless a minimal change was proposed, the board should be able to review any subsequent material change when the plans were used as a basis for granting the underlying variance. The board ultimately decided to uphold Ozols' decision for the reasons that she gave in her presentation.

We first address the plaintiffs' contention that the variance contained no condition prohibiting construction of the deck, which otherwise fully complied with the zoning regulations. Although the certificate of variance did not contain an express restriction on the addition of a conforming deck, the certificate provided that the building coverage and front and side yard variances had been granted "to permit [the] existing structure to be replaced in the same location within 50 [feet] of the critical coastal resources *as presented at the hearing and as shown on the plans and the survey submitted*." (Emphasis added.) Accordingly, the variance was subject to a condition that, by its very terms, could not be construed on the basis of the language in the certificate alone but required a review of the administrative record to determine whether the proposed deck complied with the *plans and survey submitted*[5] with the variance application in 2001. See *Bridgeport Bowl-O-Rama, Inc.* v. *Zoning Board of Appeals*, supra, 195 Conn. 279 n.3, 281–82 (concluding that published notice of approval stating only that variance had been " 'granted conditionally' " without reference to actual conditions constituted sufficient notice for purposes of appeal because notice must be "construed as a whole, including its references to the prior notice of hearing").

The record, in turn, supports the board's conclusion that the proposed deck did not conform to the plans and survey submitted. The application for a variance proposed a new structure to be built on the footprint of the prior, nonconforming structure. The board's application form for variances specifically instructs: "THE PLANS SUBMITTED WITH THE BUILDING APPLICATION MUST BE THE SAME AS THOSE SUB-

MITTED AND APPROVED WITH [THE] VARIANCE APPLICATION." Additionally, when the plaintiffs' architect presented a floor plan and model of the proposed house to the board in 2001, the minutes of the hearing indicated that he "referred to the model and said the house will not change from the model, although there may be a change in the windows." Neither the application nor the model included a deck extending beyond the footprint of the house. The minutes also reflect that the plaintiffs' attorney assured the board that the new house would not exceed the footprint of the existing structure. The hearing minutes further allude to one board member's observation that the footprint of the proposed structure would be the same as the existing structure. Finally, the only board member in 2008 who also was a member in 2001 recalled at the public hearing in 2008 that the board had considered the effect of the entire building on the surrounding environment in granting the original variance.

From this evidence, there can be no doubt that the original variance contemplated that the proposed new building would not exceed the footprint of the prior, nonconforming structure and that the board properly considered this information, along with information that a prior variance "modification" request based on a similar proposal had been denied in 2006, when it was presented by the zoning officer at the public hearing in 2008. It is immaterial that the condition attached to the variance granted in 2001 did not explicitly stipulate that the balcony in question could not be expanded because the same conclusion easily could be drawn by inference from the fact that the condition required the new house to conform to the footprint of the prior, existing structure. Moreover, although not discussed in the minutes of the hearing in 2001 when the board approved the original variance, the applicable zoning regulation in effect at that time defined a "building" as including "decks . . . ."[6] Madison Zoning Regs., § 19.4. Consequently, the board, in deciding to limit the new building to the footprint of the existing, nonconforming structure in 2001, would not have anticipated the construction of a future deck that exceeded the building footprint without the granting of another variance, even if the deck was in conformance with the zoning regulations in all other respects. In fact, the plaintiffs themselves appeared to understand that a zoning modification would be required to obtain the necessary approval when they initially filed an application in 2006 to modify the variance granted in 2001, which application was denied. We therefore conclude that the board did not act unreasonably, arbitrarily, illegally or in abuse of its discretion in denying the plaintiffs' application for a certificate of zoning compliance in 2008 on the basis of the condition attached to its granting of the variance in 2001.

III

The plaintiffs argue, as an alternative ground for affirmance of the Appellate Court's judgment, that the board cannot retain continuing jurisdiction over a property regarding all modifications. In other words, a property owner with a nonconforming structure has a right to continue to make modifications without seeking approval from the zoning board as long as the modifications are not restricted by the applicable regulations. The plaintiffs thus contend that, once the nonconforming house was rebuilt on their beachfront property, modifications to the structure that conformed to the zoning regulations could be made as a matter of right. The board responds that a variance condition requiring conformance with an approved plan does not mandate the board's perpetual jurisdiction. It argues that an applicant becomes subject to a zoning board's jurisdiction only through the applicant's voluntary actions, that a property owner may appeal a variance condition that he believes to be unlawful, and that an owner may choose to modify a property to conform to the regulations. We conclude that the plaintiffs' claim has no merit.

The plaintiffs concede that the Appellate Court did not address this issue on appeal but argue that it may be raised in this court pursuant to Practice Book § 84-11 (a). Practice Book § 84-11 (a) provides in relevant part that "the appellee may present for review alternative grounds upon which the judgment may be affirmed provided those grounds were raised and briefed in the appellate court. . . ." We conclude that the issue was raised and briefed in the Appellate Court and we thus consider it on appeal.[7]

As previously noted, a variance and attached conditions "are inextricably linked, the viability of the variance being contingent upon the satisfaction of the conditions." *Burlington* v. *Jencik*, supra, 168 Conn. 510. When the variance in the present case was approved subject to the condition that the new house could not exceed the footprint of the prior, nonconforming structure, the plaintiffs were required to accept the condition as a means of obtaining the board's approval of their plan. The plaintiffs did not appeal this condition. Accordingly, to the extent the proposed deck violated that condition, it was subject to approval by the board as a modification of the variance previously granted. We therefore conclude that the Appellate Court's judgment cannot be affirmed on the alternative ground that the plaintiffs urge, and we need not go beyond this conclusion to address whether a zoning board's approval is required in every case in which a property owner attempts to modify a property subject to a variance in a manner consistent with the zoning regulations.

In arguing that they have a right to build the proposed deck, the plaintiffs principally rely on *Petruzzi* v. *Zoning Board of Appeals*, 176 Conn. 479, 480, 408 A.2d

243 (1979) (property owners requested permission to convert church into single-family residence), *Seaside Properties* v. *Zoning Board of Appeals*, 14 Conn. App. 638, 639, 542 A.2d 746 (1988) (property owners sought to use nonconforming summer cottages as year-round residential homes), and *Lampasona* v. *Planning & Zoning Commission*, 6 Conn. App. 237, 238–39, 504 A.2d 554 (1986) (property owner requested permission to replace and continue use of existing, nonconforming mobile home). All three cases, however, are factually dissimilar from the present case because they do not involve restrictions to the size or location of the building. Accordingly, we find them unpersuasive.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] We do not address the issue of whether the record should be consulted in order to determine whether restrictions or conditions have been attached to the granting of a variance when there is no indication in the variance that approval was granted with conditions.

[2] The plaintiffs had filed a similar application for a variance in May, 2001, to demolish and replace the existing, nonconforming structure with a much larger two-story house "on [the] present footprint . . . ." Following a public hearing, the board denied that application without prejudice, in part because the proposed house would have been too large and not "in keeping with the neighborhood."

[3] We disagree with the plaintiffs that the holding in *L & G Associates, Inc.*, applies only to situations in which the *use* permitted by the variance is questioned because there is no indication in that case that such a limitation was contemplated.

[4] Ozols described this history as follows: "The board's minutes clearly indicate . . . that [the first application in May, 2001] was denied because of the size of the proposed additions to the existing house. There was much discussion of the dimensions of the proposed additions. Members commented that the final design of the house would be too large to conform to the neighborhood. Presentation [of the second application in October, 2001], which was granted in December, 2001, included a display by the architect of the proposed building, along with a statement that the house would not change from the model. The attorney for the applicant[s] stated that the footprint would not be increased from the existing house, but a second floor would be added. . . . Considering the previous denial, the total size and shape of the building were of concern to the board, and given the comments of the applicants' consultant, the board presumably expected the house to be constructed as represented. A different design may not have been granted [in] the variances, and the certificate of variance expressly stated that the variance was granted to permit the existing house to be replaced in the same location within fifty feet of the critical coastal resources as presented at the hearing, and as shown on the plans and survey submitted. . . . The [variance application in 2006] sought to modify the original variance in order to enlarge the rear balcony with a [nine by twenty] foot deck addition. The minutes reflect the applicants' understanding that [they] needed a modification of the prior variances to do this because the prior variances had been tied to the specific house designs that were presented to the board. There was also specific discussion during the hearing of the board's policy of basing variances on the specific plans presented. The board denied this application, and no appeal of that decision was filed. Subsequently, the applicant[s] applied for a building permit, which is the subject of this application."

[5] To the extent the plaintiffs argue that the only conditions attached to the variance were the conditions imposed by FEMA, we note that those conditions were not imposed under the town's zoning regulations but, rather, under FEMA's coastal site plan review.

[6] Section 19.4 of the Madison zoning regulations, which remained in effect until superseded by amendment on July 1, 2009, defined "building" in relevant part: "A man-made object, including structures, machinery, equipment, piles, accumulations, swimming pools, tennis courts and *decks*, but excluding a fence less than six feet high . . . ." (Emphasis added.)

[7] The plaintiffs framed the principal issue before the Appellate Court as follows: "Did the [trial] court err in dismissing the plaintiffs' appeal based [on] its conclusion that when the [board] in December, 2001, and September, 2003, granted the plaintiffs' variances, the [board] had continuing jurisdiction to monitor and approve all proposed modifications to the new structure from that which was shown on the plans submitted with the applications, even when the proposed departure from the plans [did] not affect or increase any nonconformity and would [have been] in compliance with the zoning [regulations]?" *Anatra* v. *Zoning Board of Appeals*, Conn. Appellate Court Records & Briefs, September Term, 2010, Plaintiffs' Brief p. ii. In briefing this issue, the plaintiffs contended that "the board did not have jurisdiction to monitor and approve modifications to the structure [that] did not affect aspects of the structure for which variances had been granted." Id., p. 4. The board responded in its brief that it had conditioned approval of the variance in 2001 by limiting the replacement house "as presented at the hearing and as shown on the plans and survey submitted." (Internal quotation marks omitted.) Id., Defendant's Brief p. 6. In their reply brief, the plaintiffs argued that the board had argued in the trial court that the variance granted in 2001 had been conditioned on "perpetual, continuing jurisdiction over any alterations made to the building, whether conforming or not," and that the trial court had noted that "a property owner submitting detailed plans in support of a variance application will [not] necessarily be held to every detail of those plans, not affecting the basic nature of the structure, until the end of time." (Internal quotation marks omitted.) Id., Plaintiffs' Reply Brief p. 6.