



House of Representatives

General Assembly

File No. 320

January Session, 2007

House Bill No. 5414

House of Representatives, April 4, 2007

The Committee on Planning and Development reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING APPEALS OF DECISIONS BY LOCAL TREE WARDENS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 23-59 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 The town or borough tree warden shall have the care and control of
4 all trees and shrubs in whole or in part within the limits of any public
5 road or grounds and within the limits of his town or borough, except
6 those along state highways under the control of the Commissioner of
7 Transportation and except those in public parks or grounds which are
8 under the jurisdiction of park commissioners, and of these the tree
9 warden shall take the care and control if so requested in writing by the
10 park commissioners. Such care and control shall extend to such limbs,
11 roots or parts of trees and shrubs as extend or overhang the limits of
12 any such public road or grounds. The tree warden shall expend all
13 funds appropriated for the setting out, care and maintenance of such
14 trees and shrubs. The tree warden shall enforce all provisions of law

15 for the preservation of such trees and shrubs and of roadside beauty.
16 The tree warden shall remove or cause to be removed all illegally
17 erected signs or advertisements, placed upon poles, trees or other
18 objects within any public road or place under the tree warden's
19 jurisdiction. The tree warden may prescribe such regulations for the
20 care and preservation of such trees and shrubs as the tree warden
21 deems expedient and may provide therein for a reasonable fine for the
22 violation of such regulations; and such regulations, when approved by
23 the selectmen or borough warden and posted on a public signpost in
24 the town or borough, if any, or at some other exterior place near the
25 office of the town or borough clerk, shall have the force and effect of
26 town or borough ordinances. Whenever, in the opinion of the tree
27 warden, the public safety demands the removal or pruning of any tree
28 or shrub under the tree warden's control, the tree warden may cause
29 such tree or shrub to be removed or pruned at the expense of the town
30 or borough and the selectmen or borough warden shall order paid to
31 the person performing such work such reasonable compensation
32 therefor as may be determined and approved in writing by the tree
33 warden. Unless the condition of such tree or shrub constitutes an
34 immediate public hazard, the tree warden shall, at least ten days
35 before such removal or pruning, post thereon a suitable notice stating
36 the tree warden's intention to remove or prune such tree or shrub. If
37 any person, firm or corporation objects to such removal or pruning,
38 such person, firm or corporation may appeal to the tree warden in
39 writing, who shall hold a public hearing at some suitable time and
40 place after giving reasonable notice of such hearing to all persons
41 known to be interested therein and posting a notice thereof on such
42 tree or shrub. Within three days after such hearing, the tree warden
43 shall render a decision granting or denying the application, and the
44 party aggrieved by such decision may, within ten days, appeal
45 therefrom to the [superior court for the judicial district within which
46 such town or borough is located] zoning board of appeals of the town
47 or borough. The tree warden may, with the approval of the selectmen
48 or borough warden, remove any trees or other plants within the limits
49 of public highways or grounds under the tree warden's jurisdiction

50 that are particularly obnoxious as hosts of insect or fungus pests.

51 Sec. 2. Section 8-6 of the general statutes is repealed and the
52 following is substituted in lieu thereof (*Effective October 1, 2007*):

53 (a) The zoning board of appeals shall have the following powers
54 and duties: (1) To hear and decide appeals where it is alleged that
55 there is an error in any order, requirement or decision made by the
56 official charged with the enforcement of this chapter or any bylaw,
57 ordinance or regulation adopted under the provisions of this chapter;
58 (2) to hear and decide all matters including special exceptions and
59 special exemptions under section 8-2g upon which it is required to
60 pass by the specific terms of the zoning bylaw, ordinance or
61 regulation; [and] (3) to determine and vary the application of the
62 zoning bylaws, ordinances or regulations in harmony with their
63 general purpose and intent and with due consideration for conserving
64 the public health, safety, convenience, welfare and property values
65 solely with respect to a parcel of land where, owing to conditions
66 especially affecting such parcel but not affecting generally the district
67 in which it is situated, a literal enforcement of such bylaws, ordinances
68 or regulations would result in exceptional difficulty or unusual
69 hardship so that substantial justice will be done and the public safety
70 and welfare secured, provided that the zoning regulations may specify
71 the extent to which uses shall not be permitted by variance in districts
72 in which such uses are not otherwise allowed. No such board shall be
73 required to hear any application for the same variance or substantially
74 the same variance for a period of six months after a decision by the
75 board or by a court on an earlier such application; and (4) to hear and
76 decide appeals of a decision by a tree warden under section 23-59, as
77 amended by this act, concerning removal or pruning of any tree or
78 shrub.

79 (b) Any variance granted by a zoning board of appeals shall run
80 with the land and shall not be personal in nature to the person who
81 applied for and received the variance. A variance shall not be
82 extinguished solely because of the transfer of title to the property or

83 the invalidity of any condition attached to the variance that would
84 affect the transfer of the property from the person who initially applied
85 for and received the variance.

86 Sec. 3. Section 8-7 of the general statutes is repealed and the
87 following is substituted in lieu thereof (*Effective October 1, 2007*):

88 The concurring vote of four members of the zoning board of appeals
89 shall be necessary to reverse any order, requirement or decision of the
90 official charged with the enforcement of the zoning regulations or to
91 decide in favor of the applicant any matter upon which it is required to
92 pass under any bylaw, ordinance, rule or regulation or to vary the
93 application of the zoning bylaw, ordinance, rule or regulation or to
94 reverse any decision by a tree warden under section 23-59, as amended
95 by this act, concerning removal or pruning of any tree or shrub. An
96 appeal may be taken to the zoning board of appeals by any person
97 aggrieved or by any officer, department, board or bureau of any
98 municipality aggrieved and shall be taken within such time as is
99 prescribed by a rule adopted by said board, or, if no such rule is
100 adopted by the board, within thirty days, by filing with the zoning
101 commission or the officer from whom the appeal has been taken and
102 with said board a notice of appeal specifying the grounds thereof. Such
103 appeal period shall commence for an aggrieved person at the earliest
104 of the following: (1) Upon receipt of the order, requirement or decision
105 from which such person may appeal, (2) upon the publication of a
106 notice in accordance with subsection (f) of section 8-3, or (3) upon
107 actual or constructive notice of such order, requirement or decision.
108 The officer from whom the appeal has been taken shall forthwith
109 transmit to said board all the papers constituting the record upon
110 which the action appealed from was taken. An appeal shall not stay
111 any such order, requirement or decision which prohibits further
112 construction or expansion of a use in violation of such zoning
113 regulations except to such extent that the board grants a stay thereof.
114 An appeal from any other order, requirement or decision shall stay all
115 proceedings in the action appealed from unless the zoning commission
116 or the officer from whom the appeal has been taken certifies to the

117 zoning board of appeals after the notice of appeal has been filed that
118 by reason of facts stated in the certificate a stay would cause imminent
119 peril to life or property, in which case proceedings shall not be stayed,
120 except by a restraining order which may be granted by a court of
121 record on application, on notice to the zoning commission or the
122 officer from whom the appeal has been taken and on due cause shown.
123 The board shall hold a public hearing on such appeal in accordance
124 with the provisions of section 8-7d. Such board may reverse or affirm
125 wholly or partly or may modify any order, requirement or decision
126 appealed from and shall make such order, requirement or decision as
127 in its opinion should be made in the premises and shall have all the
128 powers of the officer from whom the appeal has been taken but only in
129 accordance with the provisions of this section. Whenever a zoning
130 board of appeals grants or denies any special exception or variance in
131 the zoning regulations applicable to any property or sustains or
132 reverses wholly or partly any order, requirement or decision appealed
133 from, it shall state upon its records the reason for its decision and the
134 zoning bylaw, ordinance or regulation which is varied in its
135 application or to which an exception is granted and, when a variance is
136 granted, describe specifically the exceptional difficulty or unusual
137 hardship on which its decision is based. Notice of the decision of the
138 board shall be published in a newspaper having a substantial
139 circulation in the municipality and addressed by certified mail to any
140 person who appeals to the board, by its secretary or clerk, under his
141 signature in any written, printed, typewritten or stamped form, within
142 fifteen days after such decision has been rendered. In any case in
143 which such notice is not published within such fifteen-day period, the
144 person who requested or applied for such special exception or variance
145 or took such appeal may provide for the publication of such notice
146 within ten days thereafter. Such exception or variance shall become
147 effective upon the filing of a copy thereof (A) in the office of the town,
148 city or borough clerk, as the case may be, but, in the case of a district,
149 in the offices of both the district clerk and the town clerk of the town in
150 which such district is located, and (B) in the land records of the town in
151 which the affected premises are located, in accordance with the

152 provisions of section 8-3d.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	23-59
Sec. 2	<i>October 1, 2007</i>	8-6
Sec. 3	<i>October 1, 2007</i>	8-7

PD *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

Any workload impact on either local zoning board of appeals or the Superior Court under the bill would be negligible and therefore have no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

HB 5414

AN ACT CONCERNING APPEALS OF DECISIONS BY LOCAL TREE WARDENS.

SUMMARY:

This bill changes where people and organizations may appeal a tree warden’s decision. By law, anyone objecting to a tree warden’s decision to prune or remove a shrub may appeal the decision to the warden, who must hold a public hearing on the matter and decide whether to grant or deny the appeal within three days after the hearing.

Under current law, the appellant may appeal the warden’s decision to Superior Court within 10 days of the decision. The bill instead allows the appellant to appeal the decision to the town’s zoning board of appeals (ZBA). He must bring the appeal within 10 days of the warden’ decision, and the ZBA must hear the appeal the same way it hears zoning appeals. The appellant may appeal the ZBA’s decision to Superior Court.

EFFECTIVE DATE: October 1, 2007

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable

Yea 20 Nay 0 (03/19/2007)