

CONNECTICUT RIVER GATEWAY COMMISSION

REGULAR MEETING MINUTES

April 26, 2018

Present/Absent: [Excused absence (E); Unexcused absence (U)]

Chester:	Margaret (Peggy) Wilson , <i>Errol Horner</i>
Deep River:	<i>Nancy Fischbach (E)</i> , Kate Cotton
East Haddam:	Harvey Thomas , <i>Crary Brownell (E)</i>
<i>Essex:</i>	Claire Matthews , <i>Vacancy</i>
<i>Fenwick:</i>	<i>Fran Adams</i> , <i>Borough Warden</i>
<i>Haddam:</i>	<i>Susan Bement (E)</i> , <i>Vacancy</i>
Lyme:	J. Melvin Woody , Wendy Hill
Old Lyme:	Peter Cable , Suzanne Thompson
Old Saybrook:	Bill Webb , <i>Vacancy</i>
<i>Regional Rep:</i>	<i>Raul Debrigard (E)</i>
DEEP:	David Blatt
Staff:	J H Torrance Downes
Guests:	None.

Call to Order

Chairman **Woody** called the regular meeting of the Connecticut River Gateway Commission to order at RiverCOG offices located at 145 Dennison Road, Essex at 7:31pm.

Approval of 3/22/18 Regular Meeting Minutes

Motion by **Matthews**, seconded by **Blatt**, passed unanimously with noted corrections. Webb abstains.

Treasurers Report

Motion to approve \$2,482.79 (JHTD \$911.61 [21 hours], PF \$20.27 [3/4 hours], Overhead \$1,817.35) in staffing bills. Incidental expenses: Staples \$85.04 (workshop posters), JHTD Mileage \$42.52, two Secretary of State filings for LCRLT totaling \$100. Motion to approve by **Thomas**, seconded by **Hill**, approved unanimously.

Request to Move New Business to This Point in Agenda

Motion to approve by Cable, seconded by Cotton, passed unanimously.

Discussion of Policies Concerning Staff Review of Variance

Downes introduces subject of discussion, a revisiting of the policy regarding when staff is to handle variance reviews administratively and when such proposals should be brought to the Commission as a whole. Historically, the Commission delegated the authority to write staff reviews of variance applications where no impacts seemed to exist to staff for reporting. The issue arose with concerns expressed by **Matthews** in a discussion with Downes over a recent series of variance applications submitted for one property where the first application was brought before the Commission for review with the succeeding two applications being handled administratively by staff. In this case, the Commission initially determined that no significant adverse impacts would be created if conditions regarding retention and planting of vegetation were applied by the municipal ZBA. The two successive versions of the application were interpreted by staff to be further reducing potential impacts by proposed reductions in setback encroachments from the original application. In the final iteration, the main structure was moved entirely into a conforming location with respect to its footprint with the exception of an accessory structure and the encroachment of a pool and patio into the 50 foot setback required in town (a request for a 2 foot height variance was not at issue for the Gateway Commission). Downes indicated that the staff determinations for the two latter applications were reported to the Commission *after letters had been written and submitted to the ZBA by staff*. As a result of these successive applications not being reviewed by the Commission as a whole (other than the first iteration), **Matthews**

expressed a desire, and staff concurred it is reasonable to seek, a revisiting of the standing policy describing when staff has the authority to administratively review an application and report results afterwards and when such applications should be brought before the Commission for review.

Numerous points were raised on both sides of the issue including timing of reviews versus the dates of application review by the local ZBAs, the ability of staff to work and coordinate with property owners to achieve mutually beneficial outcomes versus the need for a particular town representative to be made aware of pending actions impacting their particular town.

Based on the ZBA discussions she heard, **Matthews** felt that there is strong reliance of ZBA members on Gateway variance reviews in determining an application outcome. It was described that ZBA members might not be sure of their legal standing to deny applications where nuanced legal concepts regarding “hardships” are involved. Gateway reviews that are stricter in determining compliance with the Gateway mission may provide ZBA members with sufficient testimony to consider application denials where they otherwise might not. During the discussion, staff reminded members of the difference in the statutory authorities provided to a local ZBA and to the Gateway Commission, e.g. legal hardship determinations by a ZBA versus determinations on whether or not a particular design is consistent with the Gateway mission to preserve and protect the “natural and traditional river scene” by the Gateway Commission. **Woody** further reminded members that Gateway’s statutory authority in the variance process is limited to having standing in court to bring appeals of local decisions.

Following discussion, **Matthews** summarized saying that it’s her feeling that ZBAs are looking for more backup from the Gateway Commission in being able to determine outcomes on variance applications for properties located within the Gateway Conservation Zone. **Matthews** moved, seconded by **Wilson**, that Commission members in towns where sensitive applications have been submitted be notified in order to provide review opportunity prior to any staff actions being taken. **Blatt** offers a revision requesting that, where staff has any question regarding the extent of any adverse visual impact associated with a particular project, that such application is brought before the entire Commission for review. Members approved unanimously. **Webb** opined that he feels things are changing and that a way to help staff is to provide opinions on changes occurring in individual towns. Downes finished by saying that he may disagree with commissioner opinions regarding review process but will clearly articulate reasons for such difference in opinion before a process decision is made.

Correspondence/Staff Report

- Status of Deep River Land Trust and Land Acquisition. No status available.
- Discussion of Variance Review Policies.
- CT River Conservancy, “Currents & Eddies” newsletter
- CT River Conservancy “thank you” from Ex Director Andy Fisk
- CT River Conservancy – River Celebration 2018, June 16, 2018
Retreat Farm, Brattleboro, Vermont www.ctriver.org/celebration 413-772-2020 x211 RSVP by June 1st
- Reminder of **Debrigard** celebration for naming to the Haddam Killingworth Hall of Fame on May 3, 2018. **Bement** has indicated that she will attend.
- **Thompson** reported that a celebration of life will occur for Diane Atwood Johnson.
- **Thomas** recommended that staff send a congratulatory letter to the H-K celebration folks on behalf of **Raul Debrigard**

Referral of Zoning Regulation Petition

Essex, New Zoning Regulation Book. The Essex Zoning Commission has rewritten the zoning code. The Gateway regulation section includes the pre-2004 standards with no reference to standards adopted in 2004 or in draft as of 2018. A report from ZEO Joe Budrow indicates that the existing Gateway language was included as a “placeholder” that will be replaced with new Gateway standards once they are adopted by Gateway and moved forward to each of the eight member towns. Gateway members voted to approve the proposed regulations with the understanding that

the draft Gateway standards will be “slotted into” the Gateway section of the new zoning book. Motion by **Cable**, seconded by **Thomas**, passed unanimously. Members further discussed the potential schedule of moving forward with the Gateway adoption of the standards followed by the municipal adoption of the standards.

Special Exception Application for Commission Review

Lyme, 155 Cove Road, Michael Lech Application for a 26,000 square foot Residential Structure on Hamburg Cove
Downes presented the plans and application materials for a proposed large residential structure on cove front property on Hamburg Cove in Lyme. The structure totals just under 26,000 square feet in total area and appears to exceed the 35 foot height maximum both in the height of the main roof peak as well as the height of two architectural features that extend above the height of the main roof peak and (1) appear to occupy more than 10% of the total roof area and (2) appear to be habitable space. Members of the Commission expressed dismay at the inconsistency of the structure design with numerous standards included in Section 14 of the Lyme Zoning Regulations, many indicating that it was one of the most egregious examples of design inconsistency in their memory. That included **Woody**, who has been on the Commission since the early 1970s. The members agreed with the staff interpretation of inconsistency with both Gateway standards and the zoning regulations of the Town of Lyme, and asked Downes to write a letter of review reflecting their findings on consistency issues.

Special Exception Applications Reviewed by Staff

Haddam, 5 River Bluff Road, John Rak Application for a Residential Structure over 4,000 Square Feet
Downes reviewed the application for the large dwelling and presented aerials of the site. The property and the proposed structure will face north so that visibility is from the north and not from the more traditional view from the east. The structure extends to 35 feet in height and has some architectural features that extend above the 35 foot height. Interpretation by Town Planner Liz Glidden was that the structure meets the requirements of the zoning regulations but needs a special exception review due to the fact that the total area of the structure exceeds 4,000 square feet. Downes reported that a letter was written including the nine review standards. The building was described as potentially being inconsistent with the standard that states that structures cannot have “excessively massive form” when compared to the property on which it’s proposed. The letter pointed out that the most important part of the review is the recommendation that the property owner retain as many of the existing mature trees as possible in order to visually buffer this large structure as much as possible. Many of those trees are located within the 50 foot riparian buffer and cannot be removed without a variance of that regulation. A statement was included that recommended that dark colors be used for the structure *and* its roof. Because of the hillside backdrop to the structure, a darker color would perhaps help the structure blend into the river scene.

Old Saybrook, CalMar Marine-related Structure

Downes held a pre-application meeting with the applicant, his representatives and Old Saybrook ZEO Chris Costa and described a 10,000 square foot marine maintenance building to be located near the entrance of the Island Cove Marina site. The building will extend to 35 feet in height and have a muted gray color. It is located landward of the marina structures and a significant distance off the channel of the Connecticut River. Some trees and other vegetation exist on the site and will be retained for the purpose of visually buffering the structure as much as possible.

Committees Reports

Land Committee. **Wilson** had emailed David Brown and Jim McHutchison to ask if there were any updates of which they were aware. There was no news to report. Brown again indicated that a USF&WS purchase of the Brainerd Quarry property was “imminent”.

Governance Committee. Downes had reported earlier that **Fischbach** will have the completed standards prepared for the May, 2018 Gateway meeting. **Fischbach** was asked to circulate the draft standards to members ahead of time if at all possible.

Public Outreach Committee. **Cotton** reported that the committee discussed the boat trip and recommends that the trip go to the north this time rather than south. The Haddam properties can then be highlighted, including the Brainerd Quarry property. In addition, it was reported that Thompson will set up an “evite”. She needs an spreadsheet of email addresses in order to set up the Evite. New elected officials, new P&Z staff, if new. Same categories as last year – real estate agents, engineers and architects. The effort would be to ask *different* folks. Cotton spoke about speakers such as Chris Dobbs, Suzanne Burns, Alicia Charamut, the education head at the CT River Museum. Woody describes the southerly trip being one where development is more highlighted where going north highlights recent land acquisitions. Further partnering with the CT River Museum furthers Gateway’s mission. Cotton indicated that there was also discussion regarding the summer fairs and markets. Downes reminded the committee that planning had to be done for the refreshments.

Old Business:

Report on the Lower CT River Land Trust. Woody reported that the LTE met and decided that they needed to formalize in order to become an advisory committee on the LCRLT. The formal board has to decide if they *want* such a subcommittee. **Woody** and **Matthews** attended the recent LCRLT meeting and clarified the intent of passing the trust along to the RiverCOG, e.g. conservation purposes. Margot Burns, **Woody** reported, has a proposal set up to send to foundations for financial support in the form of grants for \$100,000. The cost would be used to aid in acquisition costs such as surveys, appraisals, etc. The direction is moving in just the direction that Gateway had hoped.

Downes, at the end, passed around the “Friends of CT Parks” to members.

Adjournment: Motion to adjourn by **Matthews**, passed unanimously at 8:45 pm.



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Chester
Deep River
East Haddam
Essex
Haddam
Lyme
Old Lyme
Old Saybrook

May 3, 2018

Mr. David Tiffany
Lyme Planning & Zoning Commission
480 Hamburg Road
Lyme, CT 06371

**SUBJECT: Special Exception Application, 26,000 SF Single Family Residential Dwelling
111 Cove Road, Lyme, Connecticut
Applicant: Michael Lech**

Dear Mr. Tiffany;

The Lyme Planning & Zoning Commission has submitted the subject application for a Special Exception to construct a 25,902 square foot residential structure at the subject address to the Gateway Commission for review. The property has frontage on the south shore of Hamburg Cove. The Gateway Commission is enabled through Sections 25-102a through 25-102s of the Connecticut General Statutes. These comments are being provided for the consideration of the P&Z at their upcoming public hearing scheduled to commence on Monday, May 14, 2018.

General Comments

At their regularly scheduled meeting on Thursday, April 26, 2018, members of the Connecticut River Gateway Commission reviewed the submitted plans and aerial photographs of the proposed development site. Members were unanimous in the consensus that this proposal is the largest, most egregious example of a development which is inconsistent with the mission and standards of the Gateway Commission that has been seen to date. Although this size structure is not uncommon for non-residential structures located outside of the Gateway Conservation Zone, the size of this residential structure is unmatched in the lower river valley, at least within the Gateway Conservation Zone. This opinion is joined by Chairman J. Melvin Woody who has been on the Commission and its predecessor Gateway Committee for over 48 continuous years.

Compliance with Zoning Regulations and the Standards of the Gateway Commission

Based upon review of submitted plans, it was recognized that the development does not appear to comply with the Zoning Regulations of the Town of Lyme and the Gateway standards as follows:

Section 2.24, Height (Definition), Section 7.2, Building and Structure Height.

The measurement of the total height, where the lowest portion of the structure at existing natural grade is exposed, to the total height of the several turret-like roof peaks appears to be well in excess forty (40) feet. As a note, where there is a provision for certain architectural features that are not habitable to exist above 35 feet by Special Exception as long as the total area of such structures is less than 10% of the total roof area, this plan does not appear to meet this allowance as the turret-like structures appear to be habitable space. Even without the turrets, the main peak of the roof appears to be greater than 35 feet as well. Without a redesign, it does not appear that the Planning & Zoning Commission would be able to find that this application meets the requirements of the Lyme Zoning Regulations.

14.3.1 Required Vegetative Buffer. Regulations state that "there shall be no cutting of vegetation within a strip of land extending 50 feet in horizontal distance inland from the high tide line except as provided in [Section 14.3.1]."

The following issues are further addressed in subsections:

- a. No clear cut openings. This regulation requires that well distributed stands of trees and other vegetation, including existing ground cover, be maintained and that existing vegetation less than three feet in height and other ground cover shall not be removed except to provide a footpath of other permitted uses. Aerial photographs of the site appear to indicate that there are a significant number of mature trees along the embankment between the proposed dwelling location and Hamburg Cove. Although a landscape plan has been submitted, the plan is not clear with respect to what vegetation removal is proposed in order to establish the landscaping nor is it clear with respect to whether there will be removal of mature trees to form "clear cut openings". Further, no information is presented in submitted application materials as to whether "existing vegetation less than three feet in height and other ground cover" exists or will be removed to make way for the new landscaping.
- c. Openings Cleared for Development. In no event shall an opening be cleared for development, including but not limited to surface regrading, storm water drainage structures, construction of retention walls, construction of principal or accessory structures, driveway construction, sewage disposal areas, and lawns and gardens. Submitted information does not clearly indicate that this development proposal meets these requirements and is therefore consistent with this standard.
- e. Stairs, Similar Structures. Stairs or similar structures may be allowed with a permit from the zoning enforcement officer to provide shoreline access in areas of steep slopes or unstable soils, provided that the structure is limited to a maximum of five feet in width and does not extend below or over the high tide line of the Connecticut River or its tributaries or the upland edge of a wetland and the applicant demonstrates that no reasonable access alternative exists on the property. The artist's renderings presented with application materials appear to show a hillside that includes several mature trees embedded within what appears to be a large set of landscaped steps. It is not clear if that site feature exists or is proposed.

Consistency with Gateway Standards

Section 14.4, Additional Requirements for Residential Structures over Four Thousand Square Feet in Total Area indicates that "...the purpose of this requirement is to assure that large scale residential structure and significant site modifications located within the Conservation District will not cause deterioration of the natural and traditional river scene." In support of this purpose, nine Gateway standards are included in the Lyme Zoning Regulations for the purpose of making that determination. The following Gateway standards, adopted as Section 14.4.3 a through i in the Lyme Zoning Regulations, are reviewed as follows:

1. Maintain essential natural characteristics of the site such as major landforms, natural vegetative and wildlife communities, hydrologic features, scenic qualities and open space that contributes to a sense of place. Without more information regarding the existing condition of the site, it is difficult to determine whether the proposed development maintains the essential natural characteristics of the site, including major landforms in that minimal site platforming or excavation seems to be proposed. Confirmation of how much "cut and fill" may be required should be submitted for review.
2. Structures shall be adapted to the existing terrain, rather than altering the earth form to create a platformed development site. As above, without more information on the condition of the "existing terrain", it is difficult to ascertain whether or not the structure is adapted to the terrain.
3. Structures located above the crest of hillsides facing the river shall be held back from the crest of the hill to maintain a clear sense of the hillside brow in its natural coordination. Given the rising hillside to the rear of the proposed structure, it would appear that the development is consistent with this standard.
4. Vertical architectural elements shall not be overemphasized in a manner which disrupts the natural silhouette of the hillside. Structures shall be designed so that the slope angle of the roof pitch is generally at or below the

angle of the natural hillside or manufactured slope. Based upon the arcuate footprint layout of the structure, the most prominent view of the structure facing Hamburg Cove includes vertical architectural elements that appear to be over-emphasized in comparison to the horizontal elements of the design. If the structure, from one end to the other, were linear and not arcuate, one could argue that the vertical features are diminished when compared to the shear horizontal scale. Being arcuate in shape, however, that is not the case. It would appear that the proposed design is therefore not consistent with this Gateway standard.

5. Building forms shall be scaled to the particular environmental setting to avoid excessively massive forms that fail to enhance the hillside character. Massing of structural elements such as large roof areas shall be broken up to approximate natural slopes. This proposed structure, based upon its size both in height, width and overall square footage, was found by members to be an “excessively massive form” for the property located at 111 Cove Road. When viewed from the cove, the structure will have an overwhelming visual mass that certainly will not “enhance” the hillside character, but rather likely detract from it. As described at the outset of this letter, Commission members found this proposal to be one of the most extreme examples of inconsistency with this particular Gateway standard. It was found that the size and design of this structure is *not* “traditional” when compared to the size and design of most residential structures found throughout the Gateway Conservation Zone. It is more compatible with commercial or industrial structures located in the Gateway compact towns, few of which are visible from the Connecticut River or its tributaries.
6. Roof lines shall relate to the slope and topography. Rooftop treatment shall be designed to avoid monotony of materials, forms and colors. Dark colored roof treatments which reduce visual impact of the structure on the landscape, are preferred. One comment that can be made about the design of the structure is that its rooftop treatment is not monotonous in materials or form. Submitted application materials provide no indication with respect to the proposed coloring of the dwelling or its roof.
7. Site design shall preserve the existing natural landscape where possible and include new landscaping which is compatible with existing natural vegetation, the scenic character of the area, and increases visual buffering between the building and the River or its tributaries within the Gateway Conservation Zone. Without information on how the site will be prepared (it appears that an existing dwelling must be demolished before any significant site work can commence), it is difficult to confirm that the design preserves the existing natural landscape. It would appear that the proposed new landscaping may be compatible with the existing natural vegetation. Members found that the proposed structure design, however, does *not* preserve the scenic character of the area as the structure is significantly larger than those around it.
8. Development shall be located so as to minimize disturbance of sensitive areas. The smallest practical area of land should be exposed at any one time during development and the length of exposure should be kept to shortest practical time. Disturbed areas shall be replanted with trees, shrubs and ground cover which are compatible with existing vegetation. Insufficient information regarding the sequence of development has been submitted in order to confirm consistency with this regulation. Unless staged, the size of the footprint will create a challenge with respect to exposing minimum upland to erosion while construction moves forward.
9. Site grading shall avoid straight and unnatural slope faces. Cut and fill slopes shall have curved configurations to reflect as closely as possible the forms and shapes of surrounding topography. At intersections of manufactured and natural slopes, abrupt angular intersections should be avoided and contours should be curved to blend with the natural slope. It appears that these considerations are taken into account in the plan for development of this property.

Section 14.4.4, Findings

- a. Proposed structures and site work have been designed to fit the hillside rather than altering the hillside to fit the structure and its design. *Without more site preparation information, it is difficult to determine whether this proposal is consistent with finding (a).*

- b. Disturbance to existing topographic forms is minimized and proposed grading and excavation will not result in soil erosion and silting of lower slopes. *Again, insufficient information has been presented to determine if the development is consistent with finding (b).*
- c. The proposed development retains or enhances the visual character of the site and the area by utilizing proper structural scale and character, varied architectural treatment and appropriate plant material to buffer the mass of the building from the river or its tributaries in the Gateway Conservation District. *Members found that the design of the proposed 25,902 square foot residential structure, in both size and height, and with respect to "proper structural scale and character", does not retain or enhance the visual character of the site and the area. The consensus of the members was that the proposal diminishes the visual character of the site and area.*
- d. The proposed design preserves or enhances significant natural features and maintains or restores the natural and traditional character of the River scene. *Members found that, where significant natural features may not exist at the site based upon previous development, the proposed design does not maintain or restore the natural and traditional character of the River scene in that area.*

Conclusion

First, based upon review of the submitted drawings, it would appear that the application does not conform to the Lyme Zoning Regulations with respect to structure height nor with respect to numerous standards of the Gateway Commission codified in Section 14.4.3, Special Permit Criteria. As a result, without substantial redesign, members of the Gateway Commission found that the development as submitted would create deterioration of the natural and traditional character of the river scene.

The Gateway Commission expresses it's thanks to the Lyme Planning & Zoning Commission for its ongoing dedication to protection of the natural and traditional river scene and Gateway's legislative mission of protection. If the P&Z has any questions, please don't hesitate to contact us at (860) 581-8554.

For the Commission,



J. H. Torrance Downes
Deputy Director, River COG

Copy via email to:
Duo Dickinson, Architect