

LAKE GEORGE PARK COMMISSION RECORD OF DECISION # 96-01

RE: Policy & Procedure Memorandum 02-96

REGULATORY REFERENCE: 646-1.1

SUBJECT: Existing Wharfs

ISSUE

Whether the Lake George Park regulations allow the complete removal and in-kind replacement of an existing non-conforming wharf. Whether a permit may be issued for such an in-kind replacement which involves the modification of the wharf.

INTRODUCTION

The regulations require a permit and set standards for the construction of new docks, wharfs and moorings. The regulations establish that no permit is required for the maintenance and repair of existing docks, wharfs and moorings which are registered provided that repairs do not change the size, shape or location. There are many hundreds or thousands of registered non-conforming wharfs, docks and moorings.

BACKGROUND

The regulations require a permit and set standards for the construction of new docks, wharfs and moorings. The regulations establish that no permit is required for the maintenance and repair of existing docks, wharfs and moorings which are registered provided that repairs do not change the size, shape or location. There are many hundreds or thousands of registered non-conforming wharfs, docks and moorings.

APPLICABLE LAW

Extracted from NYCRR Title 6, Environmental Conservation Law:

645-2.1 (x) Existing dock, wharf, mooring or marina means a dock, wharf, mooring or marina registered or for which a permit has been issued pursuant to the provisions of Subpart 646-1 and its predecessor. A dock, wharf, mooring or marina which came into existence prior to the effective date of these regulations but which was not registered with the Department pursuant to predecessor Part 646, shall not be considered an existing dock, wharf, mooring or marina.

646-1.1 (a) (1) No person shall construct, erect, place alter, modify, enlarge, or expand any dock, wharf or mooring on waters of Lake George without having first obtained a permit from the Commission; and

646-1.1 (c) Special Requirements: All new docks, wharfs and moorings shall comply with the provisions of this paragraph.

646-1.6 (d) A permit shall not be required for maintenance and repair of an existing dock, wharf or mooring if such repairs do not alter the size or shape of the dock or wharf. All repairs must conform to the requirements of this Subpart.

DISCUSSION

Policy & Procedure Memorandum 02-96 for the first time sets forth the long-standing interpretation that the maintenance and repair of a wharf, dock or mooring may extend to the complete in-kind replacement. This is true whether the structure is destroyed by natural forces or removed voluntarily by the owner. The interpretation also sets forth that a modification in the size, shape or location of an existing dock, wharf or mooring, which requires a permit, may be authorized even for a pre-existing non-conforming dock, wharf or mooring provided that the resultant structure is no more non-conforming than that which existed.

CONCLUSION

The special requirements of 646-1.1 (c) were intended to apply to the new docks, wharfs and moorings. The restrictions were also intended to apply to the proposed construction of new additions to an existing wharf or dock. However, nothing in the regulations prohibits a wharf or dock legally registered and maintained in non-conformance with the design standards from being modified with a permit, even enlarged and reconfigured, as long as it becomes no more non-conforming.

Approved: Resolution #96-43
June 25, 1996

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November 15, 1996