

# LAKE GEORGE PARK COMMISSION RECORD OF DECISION # 96-02

RE: Policy & Procedure Memorandum 02-96

REGULATORY REFERENCE: 646-1.1

SUBJECT: Wharf Shape

## ISSUE

Application of Policy & Procedure Memorandum 02-96 to the proposed modification of an existing, non-conforming F-shaped wharf to a U-shaped wharf.

## INTRODUCTION

This decision is one of the first interpretations made following the issuance of Policy & Procedure Memorandum 02-96 (adopted June 25, 1996). It was made in the case of Permits 5234-25-96 & 5234-26-96, through Resolution #96-69 approving wharf modifications proposed by an existing wharf owner.

## BACKGROUND

The regulations do not specifically address modifications proposed to existing, non-conforming wharfs.

Policy & Procedure Memorandum 02-96 was the result of an extensive review of the regulations and prior decisions. It sets forth certain standards for review of modifications proposed to existing non-conforming wharfs. The interpretation expressed is that existing wharfs may be replaced in kind whether removed by natural forces or voluntarily. Also, that existing, non-conforming wharfs may be modified so long as the newly constructed portions do not *increase the non-conformity* of the structure. (see Record of Decision #96-01)

## APPLICABLE LAW

Extracted from NYCRR Title 6, Environmental Conservation Law:

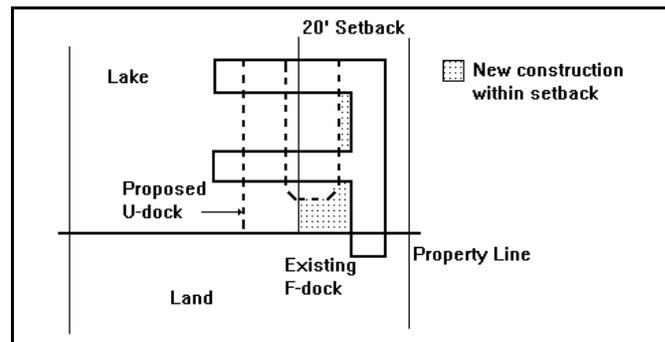
645-2.1(x) *Existing dock, wharf, mooring or marina means a dock, wharf, mooring or marina registered or for which a permit has been issued pursuant to the provisions of Subpart 646-1 and its predecessor. A dock, wharf, mooring or marina which came into existence prior to the effective date of these 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.*

## DIAGRAM



## DISCUSSION

There are many existing non-conforming wharfs on Lake George and many reasons for wanting to modify these wharfs. Often, the desired modifications include a reconfiguration of the wharf to afford improved access or more convenient navigation. Many of the properties containing existing non-conforming wharfs have insufficient frontage to allow anything but a single pier under the current rules. The nature of the non-conformity is generally intrusion into the setbacks and/or a configuration which would not be allowed for the amount of lakefront.

## DISCUSSION (continued)

A change in wharf configuration must be reviewed within the context of allowed configurations for the lakefrontage owned. There are several orders of wharf shape which are allowed depending on the amount of lakefront. Generally, the larger the lake frontage the greater the capacity for boat berthing or density afforded by the higher order configuration. An existing wharf establishes a certain order of configuration for a site. The orders are:

<u>Order</u>	<u>Configuration</u>	<u>Minimum Lakefront if new</u>
1	Straight pier	45'
2	T, L, U	66'
3	F	151'
4	E	151' + other limits

In this case, a change from an F-shape to a U-shape represents a decrease in the order of configuration.

However, replacement of a non-conforming F-shaped wharf with a U-shaped wharf generally requires some new construction within the setback area. This decision was based on a determination that this new area does not increase the non-conformity of the structure.

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## DECISION

The Commission approved the replacement of an F-shaped wharf to a U-shaped wharf which included new construction within the setback area without requiring a variance. In reaching this decision, the following was considered:

1. New construction does not extend the footprint of the dock any closer to property line or any further into the lake.
2. The U-shape of the proposed wharf is no more non-conforming for this amount of frontage than the existing F-shape.

The decision interprets that existing wharfs of an order of configuration higher than the regulations currently permit for new construction may be modified to a different configuration of an equal or lower order. That is, the density established by the non-conforming configuration of wharfs may be continued in the form of a different but no more non-conforming configuration.

## CONCLUSION

A non-conforming wharf may be modified from an F-shaped to a U-shaped within the setback area and on lakefrontage which would not allow a new U-dock without need for a variance.

This decision allows owners of non-conforming wharfs to retain some of the "grandfathered" aspects of their wharfs when redesigning to better accommodate berthing and access.

Recording of this decision will help future applicants to design approvable projects. A diagram of the subject case is included for clarification.

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**Approved:** Resolution #96-69  
September 24, 1996

**Prepared by:** Molly Gallagher  
February 24, 1997

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