

LAKE GEORGE PARK COMMISSION RECORD OF DECISION #96-03

Re: Policy & Procedure Memorandum 02-96

Regulatory Reference: 646-1.1

Subject: Boathouse Modifications

ISSUE

Application of Policy & Procedure Memorandum 02-96 to the proposed modification of an existing, non-conforming peak roof boathouse to a sundeck/boatcover.

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 Permit #'s 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. In addition, it is noted that although structures over wharfs were never required to be registered, nothing in the rules prevents them from being continued or modified as long as any new construction conforms to current limits.

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.

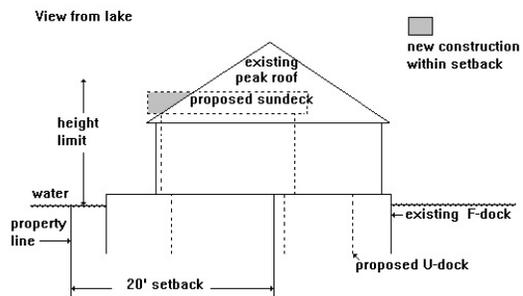
646-1.1(a)(1) *No person shall construct, erect, place, alter, modify, enlarge, or expand any dock, wharf or mooring on waters of Lake George without having first obtained a permit from the Commission; and*

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

(8) No structure shall be constructed on a dock, wharf or mooring which exceeds sixteen feet in height above the mean high water mark and which is not in compliance with local zoning.

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 a structure built on top of a wharf. The nature of non-conformity of these existing structures may be intrusion into the setback, exceedance of the height or length limit or non-compliance with local ordinances.

Although structures over wharfs were never required to be registered, they are currently considered to be *part of the wharf*. A permit is required to construct or modify such structures and the new construction must comply with all current limitations.

As such, modifications to or complete replacements of such structures must be reviewed in the context of the existing structure. Areas of "New construction" must be identified and reviewed against the current limits. A determination must be made as to whether the change will "increase the non-conformity" of the existing structure.

In this case, the conversion from a peak roof to a sundeck represents some new construction upwards, within the setback area. This decision was based on a determination that this new area does not increase the non-conformity of the structure.

DECISION

The Commission approved the replacement of a peak roof boatcover with a sundeck/boatcover 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 overall height of the structure was not increased. (it was, in fact, decreased)
3. New construction does not exceed the current height limit.

The decision interprets that existing structures over wharfs enjoy the same status as "Existing Wharfs" with respect to the review of proposed modifications. Specifically, an existing structure such as a boathouse or boatcover may be continued in a different but no more non-conforming configuration.

CONCLUSION

A non-conforming boathouse or boatcover may be reconfigured from a peak roof to a sundeck (with certain limits) without need for a variance.

This decision allows owners of non-conforming boathouses or boatcovers located within sideline setbacks to significantly modify such structures utilizing the same "no more non-conforming" approach as is used for modifications to "existing wharfs".

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

Approved: Resolution #96-69
September 24, 1996

Prepared by: Molly Gallagher
February 24, 1997

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