

MEMORANDUM

TO: Commission Staff

FROM: Carl R. De Santis, Sr.

DATE: 1 July 1996

SUBJECT: Lake George Park Commission
Policy and Procedure Memorandum #02-96
Decision of Policy and Direction to Staff
Existing Wharfs and Docks

Adopted June 25, 1996 Resolution 96-43

STATUTORY AUTHORITY: ECL §43-0117.4

REGULATORY ENACTMENT: 6 NYCRR 646-1 AND 6 NYCRR 645-2.1

Purpose: To set forth the Commission interpretation of its regulations relating to existing non-conforming wharfs, docks, moorings and including structures over wharfs such as boathouses, decks, residences.

General Statement of Policy: No permit shall be issued that will result in the non-conformity or the increase in non-conformity of any dimensional requirement as outlined in 646-1.1 (c). No structure with non-conformity of any dimension shall be expanded in any direction, vertically or horizontally, unless all the dimensions of the expansion conform to the requirements for new wharf, docks and moorings. Any registered wharf,

dock or mooring and any existing boathouse, sundeck, residence or building may be repaired and replaced in-kind provided there is no increase in any non-conformity.

Applicable Provisions of the Regulations:

645-2 (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.*

Background:

Lake George is one of the most intensively used recreational waterbodies in the nation. Land along the lake is developed with some 2,500 public and private wharfs and docks. These wharfs provide access and boat berthing for a large number of commercial and residential property owners who reside or operate tourist and marine related business along the lake. Many types of structures have been built and maintained over wharfs including boathouses, sundecks, residences, guest rooms, and others.

Wharfs and decks need to be designed and constructed to withstand the forces of wind, wave and ice. In addition, certain configurations are desirable to provide protected berthing slips. Rock filled cribs provide a structural foundation for many wharfs. Parallel piers provide for a four-way tie off of boats. This combination allows for the construction of a boat shelter or boathouse which may also protect the boat canvas, decks and equipment, as well as serve as a deck and storage building.

Water depth, bottom obstructions, exposure to prevailing wind and navigation are all factors which determine the suitability of a particular site to boat berthing. Along

a lakefront parcel, certain spots may be particularly better suited as a location for wharfs than others due to depth, shelter, underwater obstructions, access, prevailing wind direction and traffic.

Construction of wharfs along the lake occurred for many years without limitations or controls. This was also the case with the development of land immediately along the lake. The frequent result is a mixture of residential and commercial development. There are large areas with a pattern of small residential lots with substantial wharfs and boathouses developed densely along the shore. Commercial facilities with extensive wharf complexes often extend 200 feet or more may be interspersed. No program to regulate wharfs would be complete without some consideration of these historic patterns of development.

Limitations on the number, size and spacing of wharfs along the lake first took effect on July 3, 1981. These regulations first established a maximum number of wharfs which could be constructed along the private lands of a lakefront owner. In addition, the regulations established offshore distance limitations of 40 feet and prescribed spacing and configuration requirements as well.

One significant aspect of the regulations was that standards adopted were substantially more restrictive than prevailing patterns of wharf development. In effect, hundreds of commercial wharfs and perhaps thousands of residential wharfs maintained along the lake exceed new design standards in one or more aspects. These structures became in the parlance of local zoning, pre-existing, nonconforming structures the day the regulations took effect. It should be pointed out that the variance of some of the existing structures to the new standard was significant, especially commercial marinas which maintain large dock complexes.

Therefore, it is not always or even generally feasible to relocate a wharf or dock to achieve a design requirement such as a setback. Also, to require the reduction in a size of wharf to meet new requirements may mean the loss of some of the desirable aspects of a wharf.

The regulations were based on an understanding that it would be neither practical nor possible to require existing structures to be brought into compliance with the regulations. Nor, would it be feasible for the public to compensate affected entities for the loss of use, value and enjoyment that might occur from the elimination of non-conforming wharfs. Accordingly, the regulations exempted existing wharfs from standards for construction of new wharfs provided that the owners of existing wharfs registered them.

On July 3, 1988, regulations governing wharfs on Lake George were amended by the Lake George Park Commission. The Commission had been transferred the authority over such matters by the New York State Legislation January 1, 1988.

POLICY DIRECTIVE

Continuation of Existing Non-Conforming Wharfs:

1. While uniform conformance with new wharf standards is a broad goal, it is the policy of the Commission and intent of the regulations that existing wharfs may be continued to be maintained whether or not those wharfs conform with the construction standards for new wharfs. Further, that continuation and maintenance of existing wharfs allows for the complete replacement, in-kind of a structure. This replacement in-kind is provided for in the regulations, regardless of whether the wharf is destroyed or removed by the owner.

Wharfs which were never registered but which are determined to have been legally existing on July 3, 1981 may be registered at the discretion of the Commission as recorded wharfs and thereafter maintained.

2. Construction of any new wharf shall conform in all respects with the design standards and limitations for new wharfs except in cases where a variance is granted. Design standards apply to newly constructed portions of a wharf which alter, expand, extend, or enlarge any existing wharf.
3. New construction to alter, enlarge or expand an existing non-conforming wharf requires a permit but does not require a variance when the newly constructed areas conforms with standards for new wharfs provided that construction does not increase the nature or extent of the non-conformance.
4. Existing structures built over wharfs included boathouses, decks, residences, storage areas, boat hoists, restaurants, boat repair facilities, boat museums and others were never required to be registered.

Nothing in the regulations prohibits the continuation of these structures. However, any new construction over wharfs shall be limited to the height of 16 feet and shall be in compliance with local zoning pursuant to 646-1.1 (c) (8).

5. Whenever permit requirements are applicable, no permit shall be issued for construction of a new area unless that new area conforms with the distance and setback requirements for new wharfs.
6. Whenever a permit is required for a structure over an existing non-conforming wharf, the permit will not authorize the new construction to increase the non-conformance by further encroachment into the setback or extension offshore.

cc: Commission Members
Martin Auffredou