

# LAKE GEORGE PARK COMMISSION

Fort George Road, PO Box 749  
Lake George, New York 12845-0749  
phone 518-668-9347 fax 518-668-5001

e-mail [permits@lgpc.state.ny.us](mailto:permits@lgpc.state.ny.us)

website [www.lgpc.state.ny.us](http://www.lgpc.state.ny.us)

## VARIANCE REQUEST INSTRUCTIONS For Dock, Wharf and Mooring Projects

### A. GENERAL INFORMATION

This information is intended for people who have learned that their proposed wharf, dock or mooring project does not conform with one or more of the Lake George Park regulations' standards for new construction and are considering whether to seek a variance from the Commission. Included in the following few pages is basic information about the general purposes of the regulations, the variance procedures, and the criteria applied to all variance requests. This is intended as a helpful guide to applicants about official New York State regulations and precedent decisions of the Commission. As such, the information contained herein should not be construed as a substitute for the actual text of the regulations which is the guiding basis for Commission decisions.

There are three important precepts which those considering a variance are advised to keep in mind. First, the overwhelming number of applicants find a way to bring their projects into compliance with the regulations, often reducing their project to do so. In fact, as you will read below, limiting the size of projects and thereby the physical and visual disturbance of the lake and its shoreline is a key element of the regulations. Second, granting of a variance by the Commission is possible only in cases of unique or peculiar circumstances. Through the years, the Commission has reviewed numerous cases and has very likely considered circumstances similar to yours. Information about prior variance determinations is available to you. Third, variances decisions by rule are based upon the written record which is up to the applicant to establish. Applicants are in effect requesting that a special exception be made in their case due to a significant hardship. The hardship must be carefully detailed and documented in writing for the variance to meet criteria for approval.

A variance is a special procedure which can only be approved by the full Commission. Approval of a variance occurs quite infrequently considering the total number of applications. Applicants are strongly urged to first consider a modification to their plans to a conforming design which might help avoid any additional delays and expense associated with the variance procedures. Applicants should evaluate whether they can easily identify the specific uniqueness which affects their property. This should be differentiated from a personal situation or circumstance. Also, consider whether there is specific financial documentation or expert testimony available to demonstrate that such uniqueness results in a significant financial technological or safety burden upon the applicant or the public.

The Lake George Park regulations are New York State regulations established pursuant to Article 43 of New York State Environmental Conservation Law. The regulations set forth standards for the construction of wharfs, docks and moorings which include limitations on the number, location and size of wharfs docks and moorings. These restrictions are intended to preserve the natural resources of the lake, especially its superior water quality and to reduce congestion, overcrowding and safety hazards. The regulatory standards allow for the construction of substantial wharfs subject to permit requirements. The Commission requires strict conformance with the design standards.

The maximum number of wharfs, docks and moorings that may be permitted on a parcel of property is based on the amount of lake frontage owned. Within the general density standards there are any number of possible combinations for suitable boat berthing which allow for reasonable use of lakefront property. Variances are considered only as a last resort when virtually no conforming arrangement is feasible. Often expanded wharfs or moorings would afford additional or otherwise more favorable berthing. However in order to qualify for a variance an applicant must demonstrate by written documentation that the strict application of the regulations in their instance will result in unnecessary hardship.

For these reasons, there is a mechanism for relief from regulatory limits for cases where documented, substantial hardship is proven. A **variance** from specified limits such as setbacks or number of docks allowed may be requested from the Commission. There are the strict standards which govern the review of variance requests. The Commission is required to make certain findings before it can grant a variance. A variance decision is based primarily on the written record so be prepared to support and substantiate facts which are important to your application.

A variance is a decision which results in the issuance of a permit for construction of a project which fails to conform with one or more specific standards of the regulations. The concept of a variance or waiver is not uncommon in government programs. However, standards for the granting of a variance for the use of private land often employ an easier standard than the Lake George Park regulations which are intended as a means to manage a public resource. For this reason, applicants are encouraged to review the criteria in 6NYCRR 645-8 carefully to evaluate whether there is credible justification for the issuance of a variance.

A variance request must be reviewed and acted upon by the full Commission. The Commission meets monthly. For this reason you should plan ahead and submit your request early enough to leave time for a 15 day public comment period and scheduling of review for the next Commission meeting.

## **B. DO YOU NEED A VARIANCE?**

You may be able to easily identify the need for a variance once you have reviewed the design standards and designed your project. However, in some cases, especially those involving modifications to existing wharfs, the question of whether a variance is needed from a particular limit may not be as apparent. Commission staff is available to assist you and there are documents available which explain the criteria used for this type of determination. You may fax or mail your project plan for a conceptual review prior to submitting an application. Your plan must contain sufficient detail for this determination. Consult the Application Instructions for the *Application for Permit for Docks, Wharfs, and Moorings* Form for details required for project plans. Be sure to include your name, address, phone number and tax map number of your lot with your request.

Once you have determined that a variance will be necessary for your project try to consider whether there is any alternative which will achieve your goals. Bear in mind that variances are designed to provide regulatory relief for applicants facing unique situations which make it impossible to construct reasonable berthing accommodations. The variance procedure is not meant to be used to circumvent the regulatory intent of limiting the number and size of docks and moorings. Projects which achieve berthing spaces over and above those which would be achieved by conformance with the general density limits are not generally candidates for variance since granting such exceptions would provide unfair advantage over conforming applications.

For example, an applicant owning 70' of shoreline is limited to the construction of one straight, T, L or U-shaped wharf. An applicant requesting relief from a property line setback to construct a U-shaped wharf due to a large bedrock protrusion located in the center of his/her property would probably be able to construct a good case for a variance. An applicant requesting relief from the shape of wharf allowed

to construct an E-shaped wharf on the same amount of lakefront based on the desire for additional slips would not have a compelling case for a variance. This is because a conforming U-shaped wharf could be permitted and would afford reasonable use of the lakefront.

BEFORE requesting a variance from the Commission, please consider the following:

1. Is there any way to design a wharf on my property which conforms to the regulatory limits?
2. Have I created my own "hardship"? ie. did I purchase a larger boat which cannot be berthed at my current facilities?
3. Do I have a truly unique situation which no other property owners can also claim?
4. Am I asking for the minimum variance necessary to achieve my goal?
5. Will my project impose adverse impacts upon my neighbors, interfere with navigation or increase congestion?
6. Will I be unable to achieve a reasonable return on my property without the project?

Conditions which are fairly common around the lake and are not generally, by themselves, reasons to grant a variance, include

- Shallow water
- Rough water
- Insufficient frontage for the construction of the desired number or shape of wharfs
- Lakefront which is shared
- Deeded berthing or mooring rights which are not based on the presence of legal docks or moorings
- Lakefront located in a cove which results in converging property lines

Findings which the Commission is required to make in order to grant a variance limit the discretion of board members as they apply fairly rigid legal criteria to the written record of a case. The burden is upon the applicant to meticulously document unique and peculiar circumstances and financial hardship.

### **C. FILING YOUR APPLICATION**

A pre-application meeting with Commission staff is recommended for large or complex projects which require a variance and for projects requiring a variance from more than one limit. Please contact the Commission Regulatory Services staff with any questions regarding variances or to schedule a pre-application meeting.

#### ***A complete application must include the following:***

- ☺ A completed *Application for Permit for Docks, Wharfs, and Moorings*, application fee and all attachments including project plans.
- ☺ If the applicant is an Association, Appendix D to the *Application for Permit for Docks, Wharfs, and Moorings*.
- ☺ A completed *Variance Request Form* and supporting documentation.

The Variance Request Form specifically solicits all the information required to support findings that the Commission is required to make for every variance approval. The form is drawn directly from 6NYCRR 645.8, the Commission's variance regulations and is provided to applicants to assist in the filing of a variance request sufficient to form the basis of a variance decision. Failure to completely answer each question on this form is the most common reason for delay of review of a variance request. Since a variance is a special exception to the regulations granted only for relief in certain cases, the burden of proof is on the applicant to document the unique & peculiar circumstances which result in an unnecessary hardship.

To succeed, your submission must include evidence of the unique and peculiar conditions claimed as well as evidence of the lack of reasonable return on the property attributable to the inability to construct a conforming structure. Evidence may include photographs of the site and surrounding area, cost estimates from dock contractors for the proposed project and alternatives considered, engineering plans, surveys of the shoreline, any in-lake obstructions, hazard buoys, neighboring docks and moorings, water depth measurements citing the date taken, fair market value analysis (appraisal) by a licensed real estate broker and copies of deeds if deeded access to the shoreline is involved.

#### **D. PROCESSING YOUR APPLICATION**

Applicants are generally notified within a week that their application has been received and within 15 days whether the application is complete or additional information is required. There is a minimum 15 day review period including notice and opportunity for comments from adjacent owners and other involved agencies. Projects subject to review under the State Environmental Quality Review Act may require longer review periods.

Your project will generally be scheduled for review by the full Commission at the first regularly scheduled monthly meeting after the close of the public comment period. Meetings of the Commission are public meetings and anyone wishing to speak on behalf of or in opposition to your project will have an opportunity to speak at the meeting. You are encouraged to be present or to send a representative to speak on your behalf. Although oral comments are taken at the meeting and are considered, the Commission primarily relies on written records in its review and determination on permit applications. Therefore you should be sure to have all of your documentation submitted at least two weeks prior to the meeting. New information presented at a meeting may form the basis for extending the review period and result in tabling of a decision on your application until the next monthly meeting.

#### **E. PERMITS FROM OTHER AGENCIES**

If approval from your local municipality is required, a variance may also be required from municipal rules. Regulatory requirements and limits for docks and moorings vary in some of the municipalities around the lake, as do the standards for review of variances. You must contact your local Zoning Administrator for information about municipal requirements which may apply to your project.