



Town of Southampton

116 Hampton Road
Southampton, NY 11968

DEPARTMENT OF LAND MANAGEMENT
BUILDING AND ZONING DIVISION

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TOWN PLANNING AND DEVELOPMENT ADMINISTRATOR

MICHAEL BENINCASA
CHIEF BUILDING INSPECTOR

Telephone 631 287-5700
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March 17, 2004

John Bennett
Bennett & Read
212 Windmill Lane
Southampton, New York 11968-4841

Re: Application of 94 Dune Road Holding Corp. (a/k/a "Dockers")

Dear Mr. Bennett:

This letter is in response to your request for my opinion as to whether or not the expansion of the boat slips at the above captioned premises (which possesses a pre-existing certificate of occupancy, *inter alia*, for a marina use) requires approval from the Zoning Board of Appeals pursuant to §330-167(B)(1)(a) of the Southampton Town Zoning Code. You also inquire as to whether or not the Zoning Board of Appeals decision #9380 dated April 19, 1993, prohibits your client from removing the tennis courts to provide additional parking. My answer to both questions is no.

The premises benefits from a updated certificate of occupancy #C021964 dated April 11, 2003, issued pursuant to a Zoning Board of Appeals decision dated April 19, 1993. The applicant has applied to the Board of Trustees for permission to install approximately 60 dock slips in a manmade dug-canal. You advise that your client is not proposing to expand the dug canal. §330-167(B)(1)(a) states:

In the case of a nonconforming use, such enlargement or extension shall not exceed, in all, 50% of the floor area of such building or structure actually devoted to such nonconforming use on the effective date of this use having first become nonconforming.

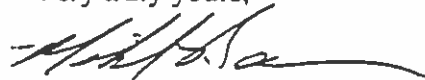
The application does not propose to expand the floor area of any of the upland existing buildings or structures. Expansion of the dock slips is not expansion of any floor area. If you were expanding any of the upland structures, for example the restaurant, then this section of the code would apply.

Condition #3 of the ZBA decision states:

Tennis courts are to be used only for tennis – no parking, commercial or otherwise on the tennis court surface.

I have reviewed this decision, and it does not preclude the applicant from removing the tennis court to provide additional parking spaces. This condition was put into the decision because the facility, at one time, was allowing people to park **on** the tennis court. Furthermore, the ZBA has in the past made the interpretation that parking is permitted in all zones as an accessory use, although accessory to a non-conforming use, is not in itself a non-conforming use, and that no variances are necessary for the expansion of a permitted use (parking area)(decision of Everett Reisig, SCTM #: 0900-44-2-30.1, dated February 20, 1997). I have reviewed my decision with counsel who concurs with me.

Very truly yours,



Michael Benincasa
Chief Building Inspector

Cc: Board of Trustees
Kimberly A. Judd, Sr. Assistant Town Attorney