

CUBA LAKE DISTRICT LAND USE RESTRICTIONS AND CONTROLS

SECTION 1: AUTHORITY

Pursuant to Section 10 of Chapter 263 of the Laws of 1981, the Cuba Lake District, subject to a vote of the electors, is authorized to adopt the following restrictions and controls as to the type of uses of property owned by the District and the type of structures that may be erected on lands of the District and into the waters of Cuba Lake. These restrictions shall apply to lands within the District upon adoption and shall continue as restrictions running with such lands.

SECTION 2: PURPOSE

The primary objective of these regulations is to identify and achieve ways and means of maintaining Cuba Lake as:

- A pleasant place to live and enjoy
- An environmentally responsible community
- A safe recreation resource

Another objective of these regulations is to protect existing views of the lake, to the maximum extent possible, so that current and future generations may enjoy Cuba Lake.

These regulations are for the benefit of all current and future owners of the lots comprising the Cuba Lake District and shall be binding on all present and future leaseholders and/or lot owners.

SECTION 3: APPLICABILITY

Prior to any change of use of any lease lot, land or structure within the District, or prior to the commencement of any work which:

- (a) alters any part of the lake (for example, dock, break wall or dredging work); or
- (b) alters any part of the lands within the District by the construction, improvement or demolition/removal of any building, structure or tree; or
- (c) changes a septic or waste treatment system; or
- (d) changes the use of any structure or lands within the District; or
- (e) changes the amount of coverage of any lot with impervious surfaces; or
- (f) alters lot lines or subdivides or re-subdivides a lot; or
- (g) stores trailers or recreational vehicles on a lot for more than 30 days; or
- (h) creates new right-of-way access to one or more lots; or
- (i) allows home-based commerce
- (j) allows rafts, slides, or any other object that is anchored in Cuba Lake

The leaseholders and/or lot owners shall apply to the Cuba Lake District Board of Commissioners for a permit. Such permit shall be in addition to any other approvals or permits otherwise required by any local government or any other agency having jurisdiction.

SECTION 4: INTERPRETATION AND DEFINITIONS

Section 4.1 Interpretation

The following rules shall apply to interpreting the text of these regulations:

- (a) Words used in the present tense shall include the future.
- (b) Words used in the singular shall include the plural, and words used in the plural shall include the singular.
- (c) Words used in the masculine form shall include the feminine.
- (d) The word "shall" is mandatory. The word "may" is permissive.
- (e) The word "lot" shall include the words "plot," "piece," and "parcel."
- (f) The word "person" shall include an individual, firm or corporation.
- (g) The phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for," and "occupied for."
- (h) The phrases "to erect," "to construct," and "to build" a building have the same meaning and include the excavation for a building foundation and the relocation of a building from one location to another.

Section 4.2 Definitions

The following words and terms, wherever they occur in these regulations, shall be interpreted as herein defined.

ACCESSORY OR APPURTENANT STRUCTURE A structure located on the same lot as a principal building and used for purposes customarily incidental to and subordinate to the principal structure.

BUILDING Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattel.

DISTRICT LANDS All lands within the Cuba Lake District, as defined in Section 3 of Chapter 263 of the Laws of 1981, whether such lands are held in fee or whether they are lease lots.

DWELLING UNIT A building or portion thereof that provides complete housekeeping facilities for one family. Each dwelling unit shall have its own sleeping, cooking, and toilet facilities. A dwelling unit is designed for permanent summer or year-round residential occupancy and shall not be construed to include a hotel, motel or other such use of a transient nature.

DWELLING, SINGLE-FAMILY A building that contains one dwelling unit.

FEE LOT A lot within District lands that is owned by a property owner. Fee lots are sometimes referred to as "deeded lots."

GARAGE A structure intended for vehicle (e.g. car, truck, boat and the like) storage. Generally characterized as having a door or doors of sufficient size to enable entry of the vehicle(s) in question. Attic storage may be included in the design. Garages may be a part of a dwelling unit or be an accessory or appurtenant structure.

HOME BASED COMMERCE Any activity carried out for financial gain by one or more residents conducted as an accessory use in the resident's dwelling unit. Home based commerce shall be clearly incidental and subordinate to the use of the dwelling unit as a residence and shall not alter or change the exterior character or appearance of the dwelling. Home based commerce shall not materially affect the residential character of the neighborhood in which it is located, especially in respect to traffic and noise. Renting or leasing of a property shall not be construed to be "home based commerce."

LEASE LOT A lot within District lands that is leased from the State of New York or from the Cuba Lake District.

LOT Either a fee lot or a lease lot.

LOT LINE ADJUSTMENT A type of resubdivision in which there is solely a simple alteration of lot lines, and in which no additional lots are created. A lot line adjustment shall not be considered to be a subdivision.

MANUFACTURED HOME A transportable, factory-built home designed to be used as a year-round residential dwelling that is manufactured according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (24 CFR 3280 HUD Code). "Manufactured Home" does not include a trailer. Manufactured homes are often referred to as mobile homes.

MOORING Any device that is fixed in the waters of Cuba Lake to which a vessel can be made fast, including buoys, chains, ropes, piles, and spars.

PRINCIPAL STRUCTURE A structure in which the principal use of the lot on which the structure is located is conducted. Any additions to a principal structure, such as an attached garage or porch, shall maintain the same setbacks and other restrictions that apply to the principal structure.

RESUBDIVISION Any change in a map of an approved or recorded subdivision plat, or lot of record, if such change affects any lot line, any street layout, or area reserved for public use.

SETBACK The least horizontal distance permitted between a lot line of a lot and the nearest portion or part (including eave overhang) of any building on such lot.

STORY That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above, then the space between the floor and the ceiling next above it.

STRUCTURE Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

SUBDIVISION The division of any parcel of land into two or more lots or parcels. A lot line adjustment that does not involve the creation of a new lot shall not be considered a subdivision.

TRAILER A vehicle so constructed as to be suitable for attachment to a motor vehicle for the purpose of being drawn or propelled by the motor vehicle, and capable of being used for the temporary living, sleeping or eating accommodation of persons, notwithstanding that such vehicle is jacked up. A self-propelled recreational vehicle shall also be construed to be a trailer. The terms "motor home," "camper," "recreational vehicle," and "travel trailer" shall also be construed to mean a trailer. A trailer is not a mobile home or a manufactured home.

VIEWSHED A viewshed is a visibly sensitive area that is visible from a defined observation point. As used herein, Cuba Lake is the "visibly sensitive area," and the "observation points" are the decks, terraces and lawns on the lakeside of a dwelling. See Section 7.6

SECTION 5: SINGLE-FAMILY DWELLINGS

All new, replacement and remodeled dwelling units shall comply with the following restrictions. Any variances to these restrictions known at the time of application for permit; or, discovered during review of the application for permit, shall be subject to the Variance process (see Section 11, VARIANCES):

5.1 Only one (1) single-family dwelling unit may be constructed on each lot.

5.2 No single-family dwelling unit may be less than twenty (20) feet in length or width and not less than 800 square feet in area on the main floor, exclusive of porches, decks and garages.

5.3 In order to protect views of the lake from the roadway and from near-by properties, the Cuba Lake District Board of Commissioners will assess the need to restrict the height of any residential dwelling.

5.4 Setbacks

All dwelling units shall conform to the following setbacks:

- (a) Side: a minimum of five (5) feet on each side. For dwellings that are more than twenty (20) feet high (see Section 5.4), the required side yard setback shall be increased $\frac{1}{4}$ of a foot horizontal setback for every one (1) foot of vertical height. Therefore, a thirty-six (36) foot high building will have a required setback of nine (9) feet from the side property lines.
- (b) Roadside: a distance sufficient, to the satisfaction of the Cuba Lake District Board of Commissioners, to allow legal off-road parking. At a minimum, the structure shall be

setback a minimum of twenty-five (25) feet from the centerline of the road, which is a requirement of both Allegany and Cattaraugus Counties.

- (c) Lakeside: In order to preserve, to the maximum extent feasible, existing views for abutters, a new dwelling or an expansion of a dwelling shall be set back from the lakeside a distance that is the average lakeside setback distance of the closest four adjacent dwellings, two to the right and two to the left of the proposed new building or addition. However, the dwelling shall maintain a lakeside setback of a minimum of five (5) feet in all cases. For purposes of this provision, the lakeside setback distance shall be measured from the closest side of the break-wall, or where there is no break-wall, from the normal summer shoreline. (*See clarification No. 1*)
- (d) In accordance with NYS Uniform Fire Prevention and Building Code provisions, all new structures shall be separated by a distance of six (6) feet from all other existing buildings, whether or not the existing building is located on the same or an adjacent lot. This setback requirement applies to both the residence and any accessory buildings such as garages or sheds.

Where a foregoing setback provision is the same as a provision of a New York State Code, County Code or other regulation, and the regulations change, the most restrictive regulation shall apply.

5.5 Height

- (a) The height of a dwelling unit shall not exceed two (2) stories at the roadside wall of the house. Due to the change in grade on lots, a dwelling unit could be two (2) stories at the roadside and three (3) stories measured at the lakeside wall of the house; **and**,
- (b) The height of the dwelling unit shall not exceed thirty-six (36) feet, measured from the lowest point of the building wall at the existing grade to the highest point of the roof, excluding any chimney.

5.6 No temporary residential structure, including recreational vehicles and trailers, shall be placed on a lot, except that one trailer or manufactured home may be permitted by the Cuba Lake District Board of Commissioners during the construction period for a permanent dwelling. In granting such permit the Board of Commissioners shall find that appropriate sanitary facilities and drinking-quality water are available for the temporary structure. The time period for a temporary residential permit shall not exceed the construction period for the new home, and in no case shall exceed one year.

5.7 A guest of the leaseholder and/or lot owner may reside in a recreational vehicle or trailer on the leaseholder's/ lot owner's lot for a period of up to two weeks. Residential use of such vehicles for longer than two weeks shall require a permit from the Cuba Lake District Board of Commissioners.

In addition, nothing in this section shall be construed so as to prohibit the temporary use of a tent, by children, other family members or guests of a property owner, on a lot with a dwelling unit and established sanitary facilities.

5.8 Trailers (including motor homes, campers, travel trailers and recreational vehicles) owned by a resident of the Cuba Lake District may be stored on such owner's property provided that the

trailer is not used for residential or commercial purposes and provided that the trailer is parked or stored between the street right-of-way line and the residence.

5.9 Any manufactured home that is installed on a lot shall be installed on a permanent foundation, in accordance with local and state building codes. A permanent foundation may consist of either a solid perimeter foundation or tie-downs. If a manufactured home is not placed on a perimeter foundation, the home owner shall install masonry skirting that is compatible with the exterior of the home within thirty (30) days of completion of the installation of the manufactured home.

5.10 No dwelling shall extend beyond the normal summer shoreline.

SECTION 6: ACCESSORY OR APPURTENANT STRUCTURES

All new, replacement and remodeled accessory or appurtenant structures shall comply with the following restrictions. Any variances to these restrictions known at the time of application for permit; or, discovered during review of the application for permit, shall be subject to the Variance process (see Section 11, VARIANCES):

6.1 No fence, hedge, or shrub which impairs a neighbor's view of the lake from another lake front property shall exceed four (4) feet in height.

6.2 A dock shall not come closer than three feet to the normal winter shoreline, but in no case shall it be more than fifty (50) feet in length.

6.3 The combination of docks, slips, boatlifts, and moored boats, rafts, slides and other floating devices shall not occupy more than forty percent (40%) of any individual lot's shoreline length, or more than fifty (50) feet of shoreline, whichever is the lesser. Docks shall not be located closer than six (6) feet to an adjoining property line.

6.4 No structure, except fences, may be closer than three (3) feet to an adjoining property line.

6.5 Height

- (a) No accessory structure, except garages, may exceed fifteen (15) feet in height.
- (b) No detached garage may exceed twenty (20) feet in height, at the road side measured from the garage floor to the roof peak.
- (c) When reviewing applications for permits for new and remodeled structures, the Board of Commissioners shall find that the peak height of the structure is in reasonable proportion to its width at the bottom of the gable. Typically the height to width ratio as viewed from the road level shall not exceed 1.14:1. As viewed from the lake the height to width ratio shall not exceed 1.5:1. If the gable ends face the sides of the lot, the ratio of 1.14:1 shall apply to the peak height vs. the width at the bottom of the gable.
- (d) Flat roofs or non-peaked or non-gabled roofs are discouraged.

6.6 Setbacks

All accessory or appurtenant structures shall maintain the following setbacks:

- (a) Side: a minimum of three (3) feet.
- (b) Roadside: a distance sufficient, to the satisfaction of the Cuba Lake District Board of Commissioners, to allow legal off-road parking. At a minimum, without county approval to the contrary, the structure shall be setback twenty-five (25) feet from the centerline of the road, which is a requirement of both Allegany and Cattaraugus Counties.
- (c) Lakeside: Garages may not be located closer to the lakeshore than the lakeside wall of the dwelling. Sheds and other accessory structures shall be sited to minimize intrusion into a neighbor's viewshed, as determined by the Board of Commissioners.
- (d) In accordance with NYS Uniform Fire Prevention and Building Code provisions, all new buildings shall be separated by a distance of six (6) feet from all other existing buildings, whether or not the existing building is located on the same or an adjacent lot. This setback requirement applies to both the residence and any accessory buildings such as garages or sheds.

Where a foregoing setback provision is the same as a provision of a New York State Code, County Code or other regulation, and the regulations change, the most restrictive regulation shall apply.

6.7 No accessory or appurtenant structure, excluding boathouses, boat lifts/shore stations, and docks, shall extend beyond the normal summer shoreline.

6.8 Moored Objects: Moored boats, rafts, slides and other floating devices shall be tethered so as not to extend more than 50 feet, at its greatest extremity, from the break-wall, or normal summer shoreline if there is no break-wall. Moored objects shall also be tethered so that the extremities of the object are a minimum of six (6) feet away from a line coincident with the side lot line, extended fifty (50) feet into the lake. If this method of extension of property line into the lake is considered inequitable to the leaseholder/lot owner or to the neighbor, the disagreement will be settled by application of the more recognized "Perpendicular Method"; or, "Long Lake Method"; or, "Round Lake (Pie) Method" as most applicable to the shape of the lake at the lot position in question. (Ref. Subtitle G Office of General Services, Part 274, Interference with Riparian Rights, Statutory authority: Navigation Law, Par 32), Par 274.5 Standards.)

At the time of the Board's review of these objects, the Board of Commissioners shall determine if an anchorage light affixed to the object is required.

SECTION 7: PROPERTY USE AND MAINTENANCE

7.1 Development on the properties and shoreline of the Cuba Lake District are restricted to single-family residential dwelling use exclusively, with the exception of that shoreline and property owned and/or controlled by other governmental entities. In addition, properties that were used for any lawful use on the date of adoption of these regulations are considered to be allowable non-conforming uses. (See Section 12).

7.2 Home-based commerce may be allowed by permit granted by the Cuba Lake District Board of Commissioners, provided that:

- (a) It does not bring a noticeable amount of vehicular or watercraft traffic to the property.
- (b) It is conducted entirely within an enclosed building on the lot, either within the residence or within an accessory structure such as a garage. If conducted in the residence, no more than twenty-five percent (25%) of the total area of the house could be used for the commercial purpose. If conducted in an accessory structure, no more than twenty-five (25%) of the total area of the house and the accessory structure could be used for the commercial purpose.
- (c) There are no signs in excess of two (2) square feet that proclaim the property as a place of business.
- (d) There are no on-site employees or employee facilities.
- (e) Only one (1) home based commerce shall be permitted in a dwelling unit.

7.3 Coverage: In order to limit and control the amount of runoff into Cuba Lake, coverage of a lot with impervious surfaces, should not exceed forty percent (40%) of the total lot area. Where the 40% target is exceeded drainage provision must be made to assure minimum amount of soil or sediment entry into the lake and to assure no drainage diversion on to neighboring properties. Impervious surfaces include paved parking areas, houses, accessory buildings, decks, paved terraces and sidewalks, docks and similar man-made features. For purposes of these calculations, the parts of structures that extend over the lake shall be excluded. (Also see Section 8.2 and Section 10.3(b)v.).

7.4 Harvesting: The leaseholder/lot owner shall not harvest from the property any natural resources, including without limitation, timber, sand, gravel, rock, oil, natural gas, and other minerals.

7.5 No lake lot shall be used for purposes of lake access by persons other than the Cuba Lake District residents who reside on that lot.

7.6 Protection of Viewsheds

It is a purpose of these Land Use Restrictions and Controls to protect views of the lake for every leaseholder and lot owner. For purposes of this section, a viewshed of the lake shall be defined as the view from the decks, terraces and lawns on the lakeside of a dwelling. To the maximum extent possible, landscaping and the construction and/or alteration of dwelling units and accessory/appurtenant structures shall be designed and sited to avoid intruding upon the existing viewshed of a near-by property. In their review of any application for a Permit pursuant to these Land Use Restrictions and Controls, the Board of Commissioners, and its designated Agents, will assess the need to restrict the height of any dwelling unit or other structure on the lot, to change the location of any dwelling unit or other structure on the lot, or to make any other reasonable changes to provide a reasonable level of protection of existing viewsheds from near-by lots within the Cuba Lake District, notwithstanding any other provision of these regulations.

7.7 Maintenance of premises

The lease/lot/fee lot (lot or lots) premises including the grounds, vegetation and all structures shall be maintained:

- so as not to create a potential devaluation in market value of other lots in that area of the Cuba Lake District,
- to eliminate the potential for attraction of vermin,
- to eliminate the potential for creating a stench or odors,
- to maintain a pleasant visual representation of the District by keeping grass mowed, keeping clear of trash, waste materials or other unsightly clutter.

SECTION 8: ENVIRONMENTAL CONSIDERATIONS

8.1 On-site sewage treatment systems that do not conform to the minimum standards of the applicable units of government and their agencies shall be upgraded or replaced to meet these standards whenever a permit for new construction, alteration or remodeling of the living area of a dwelling unit is issued by the Cuba Lake District Board of Commissioners.

Prior to the issuance of a Permit for such new construction, alteration or remodeling, the applicant shall present approval for the replacement system, from the appropriate County Health Department.

8.2 Development on any lot shall not result in an increase in stormwater runoff on an adjacent lot.

8.3 Break-walls shall follow the natural contour of the lake and shall not protrude into the lake. They shall be designed and constructed so as to provide a stable break-wall that has a long-term design life. Materials used in the construction of the break-wall shall not pose a hazard to the lake, either in terms of toxicity or safety.

SECTION 9: SUBDIVISIONS AND LOT LINE ADJUSTMENTS

Section 9.1 Subdivisions

No lakefront lot that exists on the date of adoption of these regulations may be subdivided.

No other lands in the District may be subdivided or resubdivided without the express written approval of the Cuba Lake District Board of Commissioners.

Written request for subdivision approval shall be made to the Board of Commissioners simultaneously with an application for subdivision approval to the local municipality. In the absence of any local municipal regulations governing subdivisions, the request to the Board of Commissioners shall be made at least 120 days prior to the anticipated date of recording of the subdivision in the appropriate County Clerk's office. The District's response shall be provided within 90 days of receipt of said request.

A request for a permit for a subdivision from the Board of Commissioners shall be accompanied by all documents submitted to the local government, or to the County Clerk's office.

In considering the request for a subdivision, the Board of Commissioners shall consider the following:

- (a) whether or not adequate sewage treatment facilities can be provided to the proposed site
- (b) whether adequate water supply can be provided
- (c) the effect of runoff to the lake, to area roadways and to adjacent properties
- (d) whether the proposed site has adequate frontage on an existing right-of-way.
"Adequate" shall be defined as spacious enough to allow for placement of a normal size house, garage, parking area, and other normal structures on the proposed lot(s) without being out-of-scale with other properties in the immediate vicinity.
- (e) whether the proposed lot size is significantly smaller than other lots in the immediate vicinity.

Section 9.2 Lot Line Adjustments

Written requests for a lot line adjustment shall be made to the Cuba Lake District Board of Commissioners in an identical manner as those for subdivisions. The Board of Commissioners shall review the request to insure that the lot line adjustment does not result in any additional lots and to insure that the size of the lots which result from the lot line adjustment will not create a problem in terms of placement of houses or other structures on the lot.

SECTION 10: PERMIT PROCESS

10.1 Whenever a leaseholder and/or lot owner wants to undertake an action identified in Section 3, Applicability, or identified elsewhere in these regulations, as requiring a permit, he/she shall first apply to the Cuba Lake District Board of Commissioners for a permit before beginning any construction or undertaking any activity requiring a Permit. Any variances to these restrictions known at the time of application for permit; or, discovered during review of the application for permit, shall be subject to the Variance process (see Section 11, VARIANCES):

10.2 Small-scale Projects

- (a) The Cuba Lake Board of Commissioners may designate an Agent to review and approve projects involving the following activities:
 - tree removal
 - moorings
 - break-walls
 - parking areas
 - docks, boat lifts, and boat slips
 - accessory/appurtenant structures with a maximum height of 15 feet and a floor area of 120 square feet or less.

The Agent may opt to refer the application to the Board of Commissioners for its determination.

- (b) **Application Documents:** Application shall be made on a form provided by the District. The application shall include any drawings or other information needed for an adequate understanding of the project. Any required drawings shall be drawn to scale. The application shall include a copy of any necessary permits from other agencies (e.g. County Health Department, etc.). Two copies of all documents shall be submitted.
- (c) **Application Review:** Following receipt of the applicable application documents, and before making a decision on the application, the Agent shall conduct an on-site review of the project. The Agent will respond to the request for a permit within thirty (30) days of receipt of said request, assuming the request is accompanied by all the required documents.
- (d) **Standards:** In making a determination on the application, the Agent shall consider the purpose and any applicable requirements of these regulations. Upon a finding by the Agent that (1) the proposal is in conformance with the purpose of these Land Use Restrictions and Controls and (2) that the proposal complies with all applicable regulations herein, the Agent will issue a Permit.
- (e) **Reporting & Records:** Following a decision on an application, the Agent shall maintain a permanent record of the decision. The Agent will report his activities to the Cuba Lake Board of Commissioners in a manner to be determined by the Board.

10.3 Large-scale Projects

- (a) Projects involving structures classified as single family dwellings, structures of more than one story, structures with floor areas greater than 120 square feet, or any other project not listed in Section 10.1 (a) must be approved by the Board of Commissioners, as provided herein.
- (b) **Application Documents:**

Application for a Permit shall be made to the Board of Commissioners on a form provided by the Board. Two copies of all application documents shall be submitted. Accompanying the application shall be the following documents and drawings:

 - i. A detailed map or plan and elevation views of the property, drawn to scale (see NOTE below), showing the following information:
 - ii. a site plan, showing existing structures and proposed structures giving the exact location on the lot and relationship to the road,
 - iii. site elevation drawings showing heights of existing structures and proposed structures.
 - iv. All the proposed change(s), including new paving and impervious surfaces
 - v. Engineering drawings that show how runoff and the potential for erosion will be handled during and after construction.
 - vi. all lot boundaries, all existing structures, and any trees that would be affected by the project

- vii. The location of all existing water supply and waste disposal systems on the lot.
- viii. Where the NYS Uniform Fire Prevention and Building Code requires that building plans, which are submitted to the Towns for a building permit, must be prepared by a licensed professional, those professional drawings shall also be submitted to the Board of Commissioners.
- ix. Any other material the Board of Commissioners deems necessary for its review.

NOTE: The Board of Commissioners recommends and may require that these maps or plans be prepared by a licensed surveyor, engineer or other professional. This is recommended for applications where the proposal is close to a side lot line; where lot coverage may be an issue; or where other physical constraints are a potential issue.

The Board of Commissioners may waive the requirement to submit items that it deems are not relevant to its consideration of a particular application.

The Cuba Lake District reserves the right to require the leaseholder or lot owner to provide satisfactory evidence that the property's on-site sewage treatment system complies with accepted standards and current regulations, pursuant to Section 8.

(c) Application Review

- i. The Board of Commissioners will respond to the request for a permit within thirty (30) days of receipt of said request, assuming the request is accompanied by all the required documents.
- ii. For major structures that are close to lot lines, the Board of Commissioners may require that the building location shall be staked by a licensed professional surveyor or engineer, for the Board's review prior to any decision on the application. The Board of Commissioners and/or its designated Agent shall be able to enter the lot to view the proposed changes in relationship to the existing conditions.
- iii. The Board of Commissioners shall act to approve, to approve with conditions and/or changes to the proposal, or to deny the application. The decision of the Board shall be by a vote of a majority of the total membership of the Board of Commissioners.
- iv. Upon final action on an application, the Board of Commissioners shall send the application to New York State, with its recommendation. After notification of final approval by the State, the Board of Commissioners will issue a written Permit for the project. The Permit shall note any conditions of approval or changes to the project.
- v. The Cuba Lake District shall maintain a permanent file, containing all applications and all decisions on those applications and all permits issued.
- vi. A copy of the decision shall be sent to the person who serves as the Board of Commissioner's Agent for enforcement of these Land Use Restrictions and Controls.

(d) **Standards:**

In making a determination on the application, the Board of Commissioners shall consider the purpose and any applicable requirements of these regulations. Upon a finding by the Board that (1) the proposal is in conformance with the purpose of these Land Use Restrictions and Controls and (2) that the proposal complies with all applicable regulations herein, the Board will issue a Permit.

10.4 PERMITS:

- (a) No Large-Scale nor Small-Scale projects' construction or alteration may commence until the leaseholder or lot owner is in receipt of a written Permit issued by the Board of Commissioners or its designated Agent. All work shall be performed as stated in the Permit.
- (b) If the applicant makes any changes to the project during construction, the applicant shall immediately stop work and notify the Board of Commissioners or its designated Agent of such changes. The Board will evaluate whether or not the change(s) require an amendment to the Permit. All changes affected by these land use restrictions are subject to approval by the Cuba Lake District's Board of Commissioners.
- (c) During construction, the applicant shall post a copy of the Permit in a location visible to the public.

10.5 Inspection

The Board of Commissioners, or its designated Agent, may inspect the site for compliance with the Permit at any time during construction. If there is any discrepancy between the approved project and the project under construction, the Board of Commissioners, or its designated Agent, shall issue a stop work order to allow time to resolve the discrepancy. If a stop work order is issued, no further work may be performed on the site until the stop work order has been lifted. (See Section 13).

10.6 Compliance Certificate

Upon completion of all work authorized by any Permit, the Board of Commissioners, or its designated Agent, shall inspect the building and/or other authorized activity, and shall determine if the work was done substantially as stated in the Permit.

- (a) If the work was substantially completed as shown in the Permit, the Board, or its Agent, shall issue a Compliance Certificate, which shall state that work has been completed in substantial conformance with the approved plans. Three copies of the Compliance Certificate shall be issued: one to the leaseholder/lot owner, one to the Board's enforcement Agent, and one copy shall be retained as a permanent record of the District.
- (b) If the work was not completed substantially as shown in the Permit, the Board of Commissioners shall pursue abatement of the violation pursuant to Section 13.

10.7 Validity

All permits are valid for one (1) year from the date of issuance. All work included in the permit must be completed within one (1) year. The Board of Commissioners may act to extend a permit for an additional period of up to one (1) year, if circumstances so warrant.

SECTION 11: VARIANCES

When approving a permit pursuant to the regulations of these restrictions; or, when a potential violation of these Land Use Restrictions and Controls has been reported to the Board of Commissioners, the Cuba Lake District Board of Commissioners shall have the authority to allow variances from the strict provisions of these regulations. However, the Board shall not have the authority to grant a variance that allows the subdivision of a lakefront lot that is in existence at the time of adoption of these regulations.

In granting a variance the Board of Commissioners shall consider the following:

- (a) Whether the strict interpretation of these regulations would impose an unfair hardship on a particular property.
- (b) Whether the regulation to be varied applies only to a small number of properties.
- (c) Whether granting the request will change the essential character of the neighborhood or impose a hardship on a near-by property.

Before deciding on a variance, the Board of Commissioners shall hold a hearing, to which the leaseholder and/or lot owner of the lot in question and the leaseholders and/or lot owners of the lots adjoining the lot in question are given notice, permitted to attend and present evidence.

The minutes of the Board of Commissioners shall contain a full description of the Board's reasoning on each particular application, and prior decisions shall be referred to by subsequent Boards of Commissioners.

SECTION 12: NONCONFORMING USES, BUILDINGS AND LOTS

Any lawfully established use of a building or land existing at the time of adoption of these regulations may be continued, even though such use does not conform with the provisions of these regulations, subject to the following conditions:

- (a) No use shall be expanded or enlarged, except in conformity with these provisions. However, normal repair and maintenance is permitted and encouraged.
- (b) When a building containing a nonconforming use is damaged by fire, flood, or other Act of God, to the extent of more than 50% of its assessed value at the time the damage occurred, it shall be restored within twelve (12) months of the date of damage. If it is not restored within this time period, the nonconforming use may not be restored except in conformity with these regulations.
- (c) If the nonconforming use of any building or lot is discontinued for a period of twelve (12) months, any further use of the building or premises shall conform to the provisions of these regulations.

SECTION 13: ABATEMENT POWERS

13.1 Non-compliance

Non-compliance with any of the provisions and/or requirements of these Land Use Restrictions and Controls shall authorize the Cuba Lake Commission to take action to abate the non-compliance. The broad classifications of such violations include:

- (a) Initiation of construction without obtaining a required permit:
- (b) Construction not consistent with a permit granted.
- (c) Failure to abide by requirements or standards provided for in these Land Use Restrictions and Controls not related to construction

13.2 Abatement

The Cuba Lake District shall have the power to take actions to abate violations of these Land Use Restrictions and Controls using such powers, rights and remedies as provided in this document or as otherwise may be provided at law or in equity. This includes, without limitation, the following powers:

- (i) To order compliance including the removal of non-complying structures at the owners expense.
- (ii) To take any action permitted by the underlying lease of leased lands
- (iii) To order and accept payment of reasonable monetary penalties for non-compliance in such established amounts as may be from time to time be approved by the Cuba Lake Commissioner by resolution; and/or
- (iv) To initiate judicial actions or proceeding to prevent or to enjoin such violations and/or to prevent the occupancy or use of structure or land not permitted by these Land Use Restrictions and Controls

13.3 Variance &/or Stop Work Order

When the Board of Commissioners, or its designee, becomes aware of construction or other activity that is occurring or has occurred without a valid permit issued by the Board of Commissioners, or work that is occurring that is not in conformance with a Permit that that has been issued, the Board shall issue an order to stop work occurring on a lot. The Stop Work Order shall be issued and delivered to the Lot owner/lessee or to the contractor performing the work.

Upon receipt of the Stop Work Order, the leaseholder/lot owner shall apply to the Board of Commissioners for a Permit, or upon approval of the Board or its designated Agent shall commence work in accordance with a permit that has been issued.

Failure to comply with a Stop Work Order or an order as determined through the variance process is a violation of these land use restrictions and controls.

SECTION 14: GRANDFATHER CLAUSE

Any lawfully established structures existing prior to the adoption of this document, or which existed prior to any amendments to this document, shall not be subject to the requirements of this document except upon replacement or remodeling of the structure for any reason.

Note that living, maintainable “structures” such as hedges shall not be grandfathered at heights not in accordance with these restrictions.

SECTION 15: SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of these Land Use Restrictions and Controls are severable. If any phrase, clause, sentence, paragraph or section is declared unenforceable or unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unenforceability or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections.

SECTION 16: AMENDMENT

These Land Use Restrictions and Controls shall be amended only by a vote of the eligible voters in the District, in accordance with the procedures established in Chapter 263 of the Laws of 1981, the legislation which created the District.

Clarification Record:

This Section covers clarifications of use of this document that do not change the substance of the Adopted version.

Clrf No.	Date	Page/Par Ref	Description
1	2/1/08	5/5.4(c)	<p>“For purposes of this provision, the lakeside setback distance shall be measured from <u>the closest side of the break-wall</u>”</p> <p>Clarification – this is interpreted to be the side closest to the water. So dimensions are taken from the front or water side of the break wall to the closest point of the structure.”</p>