Town of

Westport Island

in

Lincoln County, Maine

Westport Island Increased Housing Opportunities Ordinance

Adopted: June 22, 2024

Section 1 Purpose

1-1 To implement Title 30-A M.R.S. §§ 4364 to 4364-C (local housing density) and to supplement Section 13 "Land Use Standards" Section A, Minimum Lot Standards of the Westport Island Building Code Ordinance.

1-2 This Ordinance sets forth the additional density allowed for certain residential dwelling units as required by state law, Title 30-A MRSA §§4364 through 4364-C (sometimes referred to as "LD2003"). The effect of this Ordinance is to authorize certain housing density in circumstances that the state law required regardless of whether such density was previously allowed under Town ordinances. The statute increases the number of potential dwelling units per lot up to a total of 3, depending on the circumstances. This is the smallest total number of increased additional or accessory dwelling units required under state law. This ordinance does not prohibit any residential construction that is already allowed under existing town ordinances.

1-3 Both the Shoreland Zoning Ordinance and the Subdivision Ordinance requirements all remain intact and all the setbacks and density requirements in each of those two ordinances are not affected in any respect by this Ordinance.

1-4 Restrictive covenants

This Ordinance shall not be construed to interfere with, abrogate or annul the validity or enforceability of any easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this Ordinance.

Section 2 Authority

Home Rule authority pursuant to 30-A MRSA §§ 3001, Article VIII, Part 2 Section 1 of the Maine Constitution, 30-A MRSA §§ 4364, 4364-A, 4364-B, 436

Section 3 Administration and Enforcement

3-1 Enforcement

This Ordinance shall be enforced by the Board of Selectmen, who may delegate enforcement responsibilities to the Planning Board, a Code Enforcement Officer and/or a Local Plumbing Inspector.

3-2 Procedure

The Procedure for Administering Permits, Section 14 of the Town Building Code, shall govern the procedure for processing applications for a permit made under this ordinance and any appeals taken from decisions made relating to permits under this Ordinance. The applicant seeking to take advantage of the additional density under Section 5 or Section 6 shall indicate that fact on the building permit application. The applicant may elect to file any application for higher density than one dwelling unit per lot under either Section 5 "Additional Dwelling Unit" or Section 6 "Accessory Dwelling Unit", but not both.

3-3 Fee

In addition to the standard building permit fee, an applicant for a building permit which relies on Section 5 or Section 6 of this Ordinance shall be required to pay the cost of an expert if the Town determines it needs to retain an expert to address any issues raised by the application under this Ordinance.

3-4 Year Round Dwelling

Any dwelling unit constructed pursuant to a permit issued under this Ordinance shall be a year round dwelling suitable for utilization as a residence throughout the year which includes an integral permanent heating system. No permit may be issued under this ordinance for construction of a seasonal dwelling unit.

3-5 Curb cuts

Any dwelling unit permitted under this ordinance must utilize a single curb cut in common with other dwelling units on the same lot. No lot on which there is a dwelling unit permitted under this ordinance shall have more than one curb cut. In the event such lot has frontage on more than one street, the curb cut shall be on the least heavily travelled street. Any new access to Town Roads must be approved by the Road Commissioner as set forth in the Building Code.

3-6 Non-Conforming Use

A dwelling unit which would meet the requirements of this Ordinance but which was in existence prior to the adoption of this Ordinance and was a non-conforming use prior to the adoption of this Ordinance will remain non-conforming until approved by making a successful application under this Ordinance.

Section 4 30-A MRSA §4364 Does Not Apply to Westport Island

Westport Island does not fall within the scope of 30-A MRSA §4364 because Westport Island does not have a "designated growth area" and because no development on Westport

Island will be served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system.

Section 5 Increased Density - "Additional Dwelling Units"

5-1 This section permits the construction of additional dwelling units on a lot in certain circumstances as mandated by the state statute, 30-A M.R.S. § 4364-A, regardless of whether the Town's existing ordinances would have allowed them. The state statute refers to the dwelling units authorized by this Section 5 as "Additional Dwelling Units."

5-2 Lot Area, Lot Coverage, Set back and Height Requirements

All dimensional requirements set forth in Westport Island ordinances including but not limited to lot area, lot coverage, setbacks and height limits shall apply to additional dwelling units constructed pursuant to the allowances of this Section 5. Any Additional Dwelling Unit constructed pursuant to this Section 5 shall meet the minimum lot area per dwelling unit requirement of 2.0 acres per dwelling unit in the Shoreland Zone and 1.5 acres per dwelling unit elsewhere, as set forth in the lot area per dwelling unit requirements of Section 13(A) of the Building Code Ordinance, the Minimum Lot Size Ordinance and Section 15(A)(1)(a) of the Shoreland Zoning Ordinance.

5-3 Lots with No Existing Dwelling Unit

In any area in which residential uses are allowed, the owner of a lot without an existing dwelling unit as of July 1, 2024, may build up to two dwelling units on the lot subject to the limitations of this Ordinance.

5-4 Lots with One Existing Dwelling Unit

In any area in which residential uses are allowed, the owner of a lot with a single dwelling unit as of July 1, 2024, may build up to two additional dwelling units on the lot subject to the limitations of this Ordinance. The additional dwelling units may be built either

(a) within the existing dwelling unit, or

(b) attached to the existing dwelling unit or

(c) as an additional detached dwelling unit.

There may be no more than one of any of these types of units.

5-5 Lots with two or more existing dwelling units

If there are two or more existing dwelling units on a single lot as of July 1, 2024, no additional dwelling units may be built on the lot pursuant to the allowances of this Section 5. Nothing in this Section 5 shall be construed to prohibit the construction of dwelling units in circumstances allowed by the Town's Building Code Ordinance.

5-6. Loss of dwelling unit which existed after July 1, 2024

Where a dwelling unit that existed as of July 1, 2024 is destroyed or otherwise removed resulting in lot with no dwelling unit, the lot will be treated as a lot with no existing dwelling unit under section 5-3, and up to two dwelling units are allowed.

5-7 The applicant for a building permit under this Section 5 must demonstrate the following:

a) the well water will meet EPA quality standards for potable water, including but not limited to, meeting the standards outlined in 01-672 CMR Ch. 10 section 10.25(J) "Land Use Districts and Standards", and

b) the septic system must be verified adequate by a local plumbing inspector pursuant to 30-A MRSA 4221 and plans for a subsurface wastewater disposal system must be prepared by a licensed site evaluator in accordance with 10-144 CMR Ch. 241 "Subsurface Wastewater Disposal Rules", and

c) compliance with all other applicable requirements set forth in the Town of Westport Island Ordinances.

Section 6 Increased Density - Accessory Dwelling Unit

6-1 This section permits the construction of one Accessory Dwelling Unit on a lot in circumstances mandated by the state statute, 30-A M.R.S. § 4364-B, regardless of whether the Town's existing ordinances would have allowed them. Nothing in this section prohibits the construction of dwelling units in circumstances already allowed by the Town's Building Code Ordinance. The state statute refers to the dwelling units authorized by this Section 6 as "accessory dwelling units."

6-2 If more than one additional dwelling unit has been constructed or approved for construction on a lot under Section 5, no Accessory Dwelling Unit under this Section 6 will be allowed.

6-3 No more than one Accessory Dwelling Unit allowed by this Section 6 is permitted on any lot.

6-4 An Accessory Dwelling Unit under this Section 6 may only be constructed:

a) within an existing dwelling unit on the lot

b) attached to or sharing a wall with a single-family dwelling unit; or

c) as a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

6-5 Minimum and maximum size of accessory dwelling units.

The minimum size for an Accessory Dwelling Unit shall be 190 square feet and the maximum size shall be 850 square feet measuring the space which is heated and enclosed.

6-6 Lot Area, Lot Coverage, Set back and Height Requirements.

(a) Any accessory dwelling unit constructed in the Shoreland Zone pursuant to this Section shall comply with the minimum lot area per dwelling unit requirement of 2.0 acres per dwelling unit as set forth in Section 15(A)(1)(a) of the Shoreland Zoning Ordinance.

(b) An Accessory Dwelling Unit constructed pursuant to this Section 6 outside the Shoreland Zone is not subject to a minimum lot area per dwelling unit requirement, as long as the primary dwelling unit meets the minimum lot area per dwelling unit.

(c) All other dimensional requirements, including but not limited to lot coverage, setbacks and height under Westport Island ordinance shall apply to accessory dwelling units.

6-7 The applicant for a building permit under this Section 6 must demonstrate the following:

a) the well water will meet EPA quality standards for potable water, including but not limited to, meeting the standards outlined in 01-672 CMR Ch. 10 section 10.25(J) "Land Use Districts and Standards", and

b) the septic system must be verified adequate by a local plumbing inspector pursuant to 30-A MRSA 4221 and plans for a subsurface wastewater disposal system must be prepared by a licenses site evaluator in accordance with 10-144 CMR Ch. 241 "Subsurface Wastewater Disposal Rules", and

c) compliance with all other applicable requirements set forth in the Town of Westport Island Ordinances.

Section 7 Severability

A finding of invalidity or unconstitutionality of any section or provision of this Ordinance shall not invalidate any other section or provision thereof.

Section 8 Variances

No variances shall be permitted from the limitations set forth in this ordinance.

Section 9 Definitions

10-1 "Dwelling unit" is a fully enclosed heated space which will support every aspect of human habitation, including but not limited to warmth, dryness, cooling, cooking, bathing, sleeping, and disposal of human waste by way of a subsurface sanitation system approved under Town Ordinances and State Statutes.

10-2 "Additional Dwelling Units" refers to dwelling units that may be built on a lot that will increase the density (number of residences on the same lot) pursuant to 30-A MRSA 4364-A.

10-3 "Accessory Dwelling Unit" ("ADU") refers to the homes that may be built on a lot that will increase the density (number of residences on the same lot) pursuant to 30-A MRSA 4364-B. An accessory dwelling unit is secondary to and smaller than a primary dwelling unit.

10-4 All definitions set forth in all the Town Ordinances otherwise apply and govern terms used in this ordinance.