Town of

Westport Island

in

Lincoln County, Maine

Cluster Residential Development Ordinance

Adopted: June 11, 1988
Amended: June 29, 2013

SECTION 1. – PURPOSE

The purpose of this Ordinance is to provide a system under which a Clustered Residential Development can be designed to harmoniously exist in a municipality such as Westport Island. Cluster residential development is a form of development, which allows for creation of smallerlots in return for setting aside a portion of the tract of land as permanent common space.

Under this concept, the type and amount of development which can occur on the site remain the same as if the site were developed under the normal district regulations, but the arrangement of the buildings on the site may be varied to group them in one portion of the site,rather than spreading them uniformly over the entire parcel.

SECTION 2. – AUTHORITY

This Ordinance is adopted pursuant to and consistent with the Town's Home Rule Authority under Title 30-A M.R.S.A. Section 3001 and Art. VIII, Pt. 2, Section 1 of the Maine Constitution.

SECTION 3. – APPLICABILITY

In all residential districts, the Planning Board may approve cluster residential developments as alternatives to conventional subdivisions. In clustered residential developments, the size of individual lots may be less than that required by town ordinances, provided that a sufficient area of the total parcel to be developed is set aside as permanent common space. The overall residential density of the development shall not exceed the density that would be permitted ifthe lots conformed to the district requirements.

SECTION 4. – ADMINISTRATION

4.A. – Permits required

4.A.1. Building Permit- The applicant shall obtain a Building Permit Application form at the Town Office and pay the required fee. See the Fee Schedule at the Town Office. The applicant shall complete the application form as well as the accompanying Soil andErosion Control Plan and the notification to the Fire Chief of any existing or planned underground propane tanks. Any additional submission requirements shall also be obtained including any State and Federal requirements. The applicant may wish to confer with the Code Enforcement Officer as to the various requirements for a complete application.

4.A.2. Site Evaluation for sewage and wastewater disposal – An approved site or sites for acceptable sewage and wastewater disposal shall be determined by a State of MaineLicensed Site Evaluator or Maine certified engineer. An HHE 200 form shall be completed and provided to the Local Plumbing Inspector (LPI) for a signature if all information is correct.

4.A.3. – Planning Board Review – A Planning Board Review is required for a Cluster Residential Development. The application shall be completed and the required fee paid at the Town Office before such a review shall be scheduled. The Planning Board shall hold a review within thirty-five (35) days. The applicant shall adhere to the Planning Board review and approval procedure outlined in the Subdivision Ordinance including the Sketch Plan review and the Preliminary and Final Plan and Plat for Minor or Major subdivisions, as applicable. The Planning Board shall render a decision to affirm, deny oraffirm the application with conditions if the application is complete. The applicant shallbe notified of the decision and the reason(s) for the decision. The applicant may appeal an unfavorable decision or action of the Planning Board to the Board of Appeals, as outlined in **Section 8.**

4.A.4. – Permit issued - If the Planning Board review results in an approval or approvalwith conditions, all material shall be provided to the Code Enforcement Officer who shall issue a permit for the project. If the application is approved with conditions, theCode Enforcement Officer shall determine that the conditions are or will be met.

4.B. Notwithstanding other provisions of this Ordinance and other Ordinances of the Town of Westport Island relating to space and bulk, the Planning Board in reviewing and approving proposed residential developments located on Westport Island, may modify said provisions related to lot size and dimensional requirements to permit innovative approaches to housing and environmental design in accordance with the following standards. This shall not be construed as granting variances to relieve hardship. In all otherrespects, the procedures and provisions of the Subdivision Ordinance of the Town of Westport Island shall control.

4.C. The purpose and intent of all land use ordinances of the Town of Westport Island shall be upheld.

4.D. There shall be compliance with all Federal, State and local Codes and Ordinances.

4.E. Each building shall be an element of an overall plan for site development.

4.F. There shall be no approval of any proposed development, which exceeds the allowable residential densities permitted in the district in which the Cluster Residential Development is located. For the purposes of this Ordinance, residential density shall be established by using the area of residential space available for residential development after deductions of vehicular rights-of-way and land not buildable because of drainage, subsurface conditionsor other natural impediment.

4.G. Common Space - Residential common space shall be usable for recreational or other outdoor living purposes and for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life and wildlife cover. The use of any common space maybe further limited or controlled at the time of Final Approval where necessary to protect

adjacent properties or uses. Residential common space shall be set aside for recreationaland environmental enhancement of the development and shall be recorded as such.
Provisions for such common land may include private covenants to preserve the integrity of common spaces and their use for agricultural or conservation purposes. The common spaceshall be accessible to the residents of the project. At a minimum, this use may include such activities as walking, picnics, fishing, swimming, cross-country skiing and other low intensity recreational uses unless otherwise provided for in the Planning Board approval. Common land shall not be designated as open space, permanently protected open space, public access open space or forever wild open space, as referenced in Title 36 M.R.S.A. Sections 1101-1121.

SECTION 5. – REQUIREMENTS WITHIN THE CLUSTER RESIDENTIAL DEVELOPMENT

The developer shall take into consideration the following points, and shall illustrate the treatment of spaces, paths, roads, service and parking areas and other features required in theproposal.

5.A. Orientation: The buildings and other improvements shall respect scenic vistas, natural features, and potential solar access.

5.B. Streets: Access from public ways, internal circulation and parking shall be designed to provide for vehicular and pedestrian safety and convenience, emergency and fire equipment, snow clearance, road maintenance, and delivery and collection services. Roads shall be laid out and constructed consistent with the requirements of the Subdivision Ordinance. The 911 Officer shall be contacted to determine that road names chosen are not similar in sound or designation to other roads on Westport Island and in neighboring communities. Boundaries of all lots and proposed driveways shall be designated by staking,so that the 911 Officer can determine 911 addresses for each lot.

5.C. Drainage: Adequate provision shall be made for storm waters, with particular concernfor the effects of any effluent draining from the site. Erosion resulting from any improvements on the site shall be prevented by landscaping or other means.

5.D. Sewage Disposal: Adequate provision shall be made for sewage and wastewater disposal, and shall take into consideration soil conditions and potential pollution of surfaceor ground waters.

5.E. Water Supply: Adequate provision shall be made for both ordinary use as well as special fire needs.

5.F. Utilities: All utilities shall be installed underground where possible. Transformer boxes, pumping stations and meters shall be located so as not to be unsightly or hazardousto the public.

5.G. Recreation: Recreational facilities shall be provided consistent with the development proposal.

5.H. Buffering: Planting, landscaping, disposition and form of buildings and other improvements, or fencing and screening shall be utilized to integrate the proposed development with the landscape and the character of any surrounding development.

5.I – Ownership of the Land - The tract or parcel of land involved must be either in single ownership, or the subject of an application filed jointly by the owners of all the properties included.

5.J. – Financial and Technical Ability – The owner(s) or the appropriately designated agent shall provide evidence that the developer has the technical and financial ability to carry the project to its conclusion or to provide sufficient funding for the Town to return the site to itsformer condition in the event of failure of the owner to complete the project.

5.K– Common Space – There shall be no further subdivision of the common space, nor structure constructed upon it without further Planning Board review. In no event shall further subdivision or building cause the residential density to exceed the density permitted in that district.

5.K.1. - Any structure placed within the Common Space shall be limited to a small structure for storage of equipment and small bridges and steps. Such structures may beused to cross over bogs or swamps, or to access trails through the Common Space.

5.K.2. – Common Space Mapping – The Common Space shall be shown on the development plan with appropriate notation on the face thereof to indicate that the Common Space shall not be used for future building lots.

SECTION 6. DEVELOPMENT OF A NEIGHBORHOOD ASSOCIATION

6.A. Since any or all of the Common Space is to be reserved for use by the residents, the formation and incorporation by the developer of a neighborhood association shall be required prior to Final Plan Approval.

6.B. Covenants for mandatory membership in the association setting forth the owners' rights and interest and privileges in the Association and the Common Land shall be approved by the Planning Board and included in the deed for each lot.

6.C. This Neighborhood Association shall have the responsibility for maintaining the Common Space and the operation and maintenance of local neighborhood recreationalfacilities within such Common Space.

6.D. The Association shall levy annual charges against all property owners to defray the expenses connected with the maintenance of the Common Space and neighborhood recreational facilities.

SECTION 7. – COMMON SPACE RESPONSIBILITY OF THE DEVELOPER

7.A. The developer or subdivider shall maintain control of the designated Common Land and be responsible for maintenance until development sufficient to support the Association has taken place, or alternatively, the objectives of clustering have been met. Such determination shall be made by the Planning Board upon request of the Neighborhood Association or the developer.

7.B. In no event shall individual lot size be reduced to less than 50% of that required by the district regulations.

SECTION 8 – APPEALS

If a person, firm or other legal entity is aggrieved by any aspect of this Ordinance, an appealmay be made to the Board of Appeals.

8.A. Any appeal to the Board of Appeals shall be filed on a Board of Appeals application form, and shall include all required submissions as well as the Board of Appeals applicationfee. See the Fee Schedule, application form and instructions at the Town Office.

8.B. All appeals shall be filed within thirty (30) days of the action or decision which is being appealed. The application shall specify all points and reasons for appeal.

8.C. The Board of Appeals shall hold an appellate hearing if the decision or action being appealed is from the Planning Board or a *de novo* hearing if the decision or action being appealed is from the Code Enforcement Officer, within thirty-five (35) days of the receipt of the completed application, and may affirm, modify or reverse the decision or action. The Board of Appeals shall inform the applicant of the decision in writing within seven (7) days of its decision.

8.B.4. Any aggrieved party may appeal the Board of Appeals' decision to the Superior Courtwithin forty-five (45) days of the date of such decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

SECTION 9. – SEVERABILITY

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