

Decision on Variance
By Bayfield County Board of Adjustment

Case No. 1

January 25, 2007

Steven & Linda Hart have requested a use variance from the terms of Section 13-1-62(A) of the Bayfield County Zoning Ordinance. This section prohibits 12 or more dogs in a R-1 zoning district, but allows 1-11 dogs in a R-1 district.

Applicant requests a use variance for the total of 18 dogs. Property is a 2.67 acre parcel (ID#010-1118-01-009) described as Lot 9 of Siskiwit Shores, Section 20, Township 50 N, Range 6W, Town of Bell, Bayfield County, WI.

Findings of Fact

1. Steven and Linda Hart have requested a use variance to allow a private dog kennel for 12 or more dogs in a R-1 zone. Normally only 11 dogs are permitted in a R-1 zone.
2. This is a request for a use rather than an area variance, and the legal standard is whether the property owner would have any reasonable use of the property without the variance.
3. The issue was raised of whether Wisconsin Administrative Code NR115-05(6)(e) has any application to this situation. That portion of the Administrative Code appears to prohibit the granting or increasing of any use of property prohibited in that zoning district by the Shoreland Zoning Ordinance.
4. Director of Planning and Zoning, Karl Kastrosky, was asked whether the use requested of having 12 or more dogs is prohibited by the Shoreland Ordinance. Mr. Kastrosky indicated that to his knowledge it is not prohibited by the Shoreland Ordinance but rather, it is prohibited by the fact that this is a R-1 zoning district.
5. The applicants contend that they should be grandfathered in as a prior legal nonconforming use because prior to the passage of Sec. 13-1-62(A) in its present form they used the property for more than 11 dogs.
6. Sec. (12A) of the definitions section of 13-1-62(A) of the ordinance defines "dog kennel" as follows: "A parcel of land (under common ownership), including any structures thereon, where 12 or more dogs over the age of five (5) months are kept."
7. It is undisputed in the evidence that the Harts are good and conscientious dog owners who have the support of many people in the area, including most of the members of the Town of Bell board.
8. The new ordinance limiting kennels in R-1 district to no more than 11 dogs became effective July 29, 2003.
9. Assistant Zoning Administrator, Doug Kasina, indicated that he was at the property for an inspection related to a grading permit on May 8, 2002. He was also at the property on August 5, 2004 for an inspection to verify setbacks. A permit was granted to construct the residence on August 31, 2004. Doug Kasina indicated that he did not notice any dog yard or dog structures on any of his visits to the property.

10. Linda Hart testified that prior to October 2003 she had no records of how much use of the property they had made for kenneling dogs. She indicated that prior to that time their use of the property for kenneling dogs was sporadic or occasional until they started work on the house in 2004. The house was completed in 2005. Ms. Hart indicated that before they used the house they stayed in a hotel, with the dogs staying in a truck near the hotel, and not on the land.
11. A neighbor, Mr. Goodsell, indicated through a letter that he was a frequent visitor to the property and at no time prior to 2004 or 2005 when the house was constructed did he see evidence of kenneling at the property. He did see some small kennels in the summer of 2005 (Exhibit A-3).
12. Another neighbor, Tony Wishard, indicated that prior to October 2003 the Harts parked at the end of the road and ran the dogs from there. They did not house the dogs on the land when they were there. There were no kennels or a dog yard there prior to August 2004.
13. The board feels that there is a definite difference between planning to have dogs or exercising dogs in the area versus actually having the kennel or dog yard on site.
14. Based upon the definition of "kennel" in the ordinance, the board finds that there was no kenneling of dogs prior to October 2003 except on an occasional or sporadic basis. In reaching this decision the board has considered the recommendation of the Town of Bell town board and their conclusion that there was a preexisting, nonconforming use. The board does not believe there was any evidence of a prior actual active use of the land for a kennel as defined in the ordinance.
15. The board has considered whether or not a use variance should be granted. The standard for a use variance is whether or not the landowners would have reasonable use of the land without the ordinance.
16. The land is presently used for a new 1,880 square foot with 3 bedrooms and 2 baths. The applicants use the home as a seasonal dwelling but Linda Hart indicated that there is no reason why it could not be used year round.
17. The board has considered the fact that in making this change in the ordinance Bayfield County has held meetings and solicited the comments of mushers and other dog owners on how to deal with this issue. The board is also aware of other musher kennels in Bayfield County having 35 or more dogs. The board feels that this is a fine and justifiable use of property but under the ordinance it is not permitted in an R-1 zoning district and the fact of that prohibition does not deny reasonable use of the land.
18. The Harts, according to Sec. 13-1-62(A) have approximately 35 other possible uses for the land besides a kennel of 12 or more dogs, and even under the R-1 zoning they could have 11 dogs.
19. The board finds that the applicants would not be denied reasonable use of the land if this use ordinance were not granted.

Decision

Based upon all of the above information and for the reasons stated, the request for a use variance in this case is denied.

Motion made by Dick Compton, seconded by Phil Lupa

Motion carried. 4 yes; 0 no.

Dated: 30 JAN 2007

Randy Matis

Members Present: Phil Lupa, Richard Compton, Randy Matis, Kerry Tetzner

Also Present: Michael Fauerbach, Attorney for BOA; Karl Kastrosky