STATE OF MICHIGAN

COURT OF APPEALS

TERRY BOYNE and NANCY BOYNE Plaintiffs-Appellees,	UNPUBLISHED May 18, 2001
v	No. 218947 Tuscola Circuit Court
KOYLTON TOWNSHIP and KOYLTON TOWNSHIP ZONING BOARD OF APPEALS, Defendants-Appellants.	LC No. 98-016708-AA

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

MEMORANDUM.

By delayed leave granted, defendants appeal from the circuit court order granting plaintiffs a zoning variance. We decide this appeal without oral argument pursuant to MCR 7.214(E). We reverse.

Plaintiffs sought a variance from the township zoning ordinance which prevented plaintiffs from subdividing their property into lots with less than two hundred feet of road frontage. Defendant board of appeals denied the variance, finding that: (1) plaintiffs were aware of the frontage requirement, (2) the requirement had been enforced in other situations, and (3) plaintiffs had several options for meeting the requirements. The circuit court reversed the board's decision and directed that a variance be granted.

MCL 125.293a; MSA 5.2963(23a) authorizes a direct appeal to circuit court from decisions made by a zoning board of appeals. A decision of a zoning board of appeals should be affirmed by the courts unless it is: (1) contrary to law, (2) based on improper procedure, (3) not supported by competent, material, and substantial evidence on the record, or (4) an abuse of discretion. *Reenders v Parker*, 217 Mich App 373, 378; 551 NW2d 474 (1996). The court must accord due deference to the board's decision and may not "invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views." *Gordon v Bloomfield Hills*, 207 Mich App 231, 232; 523 NW2d 806 (1994) (citations omitted).

Plaintiffs were required to show a practical difficulty in following the zoning ordinance. *National Boatland, Inc v Farmington Hills Zoning Bd of Appeals*, 146 Mich App 380, 387; 380 NW2d 472 (1985). Factors to be considered when reviewing a claim of practical difficulty

include: (1) whether compliance with the frontage restriction would unreasonably prevent plaintiffs from using the property for a permitted purpose, (2) whether a variance would do substantial justice to plaintiffs as well as other property owners, and (3) whether relief can be granted in a way to observe the spirit of the ordinance and to secure public safety and welfare. *Id*. at 388. Self-created problems are not a basis for granting a variance. *Id*. at 386.

We conclude that the circuit court exceeded its reviewing power when it failed to give due deference to the board's decision. The record reveals that plaintiffs owned substantial property in the area. Although neighboring lots had less than two hundred feet of road frontage, those lots were established before the current zoning requirements took effect. Plaintiffs could have met the frontage requirement by either decreasing the number of lots or adding additional property to both lots. To accomplish the latter, plaintiffs could have bridged the ditch on their property or filled a lagoon that plaintiffs had created themselves. It does not appear that the board abused its discretion when it denied plaintiffs' request for a variance. Further, it does not appear that the board's decision was unsupported by competent, material and substantial evidence on the record. Accordingly, the circuit court impermissibly substituted its judgment for that of the board. *Gordon*, *supra* at 232.

Reversed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly