

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(Park Heights Avenue) *	OFFICE OF
4th Election District *	ADMINISTRATIVE HEARINGS
2nd Council District *	
Outy Properties, LLC *	FOR BALTIMORE COUNTY
<i>Legal Owner</i> *	
James R. & Ernestine R. Hurtt *	<b>Case No. 2021-0050-SPHA</b>
<i>Contract Purchasers</i> *	

**Petitioners**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Outy Properties, LLC, (Legal Owner) and James R. & Ernestine R. Hurtt (Contract Purchasers) (“Petitioners”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) § 1A04.3(B)(1)(b)(1), for a single lot of record that was in existence prior to September 2, 2003, a minimum lot size less than the required under BCZR § 1A04.3(B)(1)(a) and setbacks less than the required under BCZR § 1A04(B)(2), specifically 0.884 acres in lieu of 1.5 acres and 25 ft. side yard setbacks in lieu of 50 ft.as may be deemed necessary by the Administrative Law Judge (“ALJ”) for Baltimore County. In the alternative, a Variance from BCZR § 1A04.3 to permit a proposed dwelling with a side yard setback of 25 ft. on each side in lieu of the required 50 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”), and the Department of Planning (“DOP”) they did not oppose the relief subject to proposed conditions, which will be incorporated into the Order.

The contract purchasers, James and Ernestine R. Hurtt appeared at the hearing. Herbert Burgunder, III, Esquire appeared and represented the Petitioners. Daniel Blevins, the civil engineer who prepared the site plan also appeared and was accepted as an expert in civil engineering, land planning, and the BCZR. Several adjoining property owners appeared in opposition to the requested relief. William Jews, an adjoining property owner, submitted a packet of exhibits that were admitted as Protestant's Exhibits 1 thru 6. Several other letters in opposition were received and made part of the file.

Petitioners submitted a single exhibit of 24 pages, which was accepted into evidence as Petitioners' Exhibit 1. The site plans appear at pps. 5-8 of this exhibit. The property is approximately 38,507 square feet (.88 acres) and is zoned RC 5. Mr. Blevins explained that the parcel is rectangular and has fairly steep topography. It is substantially narrower than the surrounding lots, which is why the 50 foot setback requirements cannot be met. Specifically, the lot is 108 feet wide, so if the setbacks provisions were strictly enforced it would only leave 8 feet of buildable area. Mr. Burgunder submitted the SDAT printout which establishes that this parcel was a single lot of record prior to the adoption of the RC 5 zone on September 2, 2003. (Petitioner's Exhibit 1, p. 22). Mr. Burgunder argued that Petitioners are entitled to the requested special hearing relief under BCZR Sec. 1A04.3B.1.b(1), which would allow them to construct a home on this .88 acre lot, and with 25 foot side yard setbacks.

Mr. Jews and several other neighbors testified in opposition. They raised concerns about the potential impacts on their water supply and pressure, the presence of radon in the area that could be released during the construction of this dwelling, the loss of forest cover, and issues related to stormwater runoff. They also objected to the construction of a dwelling on this relatively small lot and pointed out that the next smallest residential lot in the immediate vicinity is 1.65 acres. They

complained that the grant of this petition could set a bad precedent that could allegedly lead to the subdivision of other parcels in the area. Several of the neighbors stated that they had purchased their properties because of the RC 5 zoning and with the understanding that a dwelling could not be built on a lot this size.

### DECISION

I certainly understand the neighbors' concerns and objections. However, I must follow the law as it is written. BCZR Sec. 1A04.3B.1.b (1) provides as follows:

This is a "grandfathering" provisions that was designed to preserve the development rights associated with "single lots of record" that were in existence at the time the RC 5 zone was enacted. The lot in this case is such a lot. I must therefore grant the special hearing relief. Contrary to the fears expressed by several of the neighbors, this precedent will not lead to the creation of other similarly sized lots in the RC 5 zone. Unless it is a "single lot of record" that existed prior to September 2, 2003, no lot can be created in the RC 5 zone that has "an area of less than one and a half acres." BCZR Sec. 1A04.3B.1.a.

Because the Petitioners' lot qualifies for the "grandfathering" protections of BCZR § 1A04.3B.1.b (1) they are permitted to construct a dwelling on this .88 acre parcel and with side yard setbacks of 25 feet. Therefore, the alternative request for variance relief is moot. In granting this special hearing relief I note that all of the provisions of BCZR Sec. 1A04.4 must be strictly complied with and will govern the development stage of this process.

THEREFORE, IT IS ORDERED this 21<sup>st</sup> day of **April 2021**, by this Administrative

Law Judge that the Petition for Special Hearing from BCZR § 1A04.3(B)(1)(b)(1), for a single lot of record and that was in existence prior to September 2, 2003, a minimum lot size less than the required under BCZR § 1A04.3(B)(1)(a) and setbacks less than the required under BCZR § 1A04(B)(2), specifically 0.884 acres in lieu of 1.5 acres and 25 ft. side yard setbacks in lieu of 50 ft. hereby **GRANTED**.

IT IS FURTHER ORDERED that the Variance from BCZR § 1A04.3.B.1.a to permit a proposed dwelling with a side yard setback of 25 ft. on each side in lieu of the required 50 ft. is hereby dismissed, without prejudice, as **MOOT**.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
- Petitioners must comply with the DEPS ZAC comment, a copy of which is attached hereto and made a part hereof.
- Petitioners must strictly comply with the provisions of BCZR Sec. 1A04.4.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.



PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm