

ZONING REFS #68-128-SFH & #68-33-SA

JOHN H. MASKET : IN THE
AND : CIRCUIT COURT
ESTRE R. MASKET : FOR BALTIMORE COUNTY,
VS : AT LAW
COUNTY BOARD OF APPEALS : Misc. No. 3933 & No. 4112
* * * * *

LOCH RAVEN BAPTIST CHURCH, INC. : IN THE
AND : CIRCUIT COURT
JOHN H. MASKET AND ESTRE R. MASKET : FOR BALTIMORE COUNTY
VS : AT LAW
COUNTY BOARD OF APPEALS : Misc. No. 4111
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MEMORANDUM

This is the second and third phase of a zoning trilogy to which this relatively small tract of land has been subjected.

The second phase (Cases Nos. 3933 and 4112) involves a petition by which Vernon L. Gordon and Anna O. Gordon sought and obtained from the County Board of Appeals a reclassification of land from R-6 to BL with a variance for parking. An appeal was taken by John H. Masket and Estre R. Masket, fee simple owners of adjoining property, who also hold by deed a sixteen foot right-of-way within the rezoned land.

The third phase (Case No. 4111) involves a petition (opposed by the Gordons) by John H. Masket and Estre R. Masket together with Loch Raven Baptist Church, Inc. for five parking spaces upon the church property proposed for use by customers

on November 19, 1968 (Misc. Case No. 4112):

"With respect to the application for a variance, the Board finds as a fact that the application is only for an additional four (4) parking spaces over and above that required by law so as to have a minimal effect, if any, upon the spirit and intent of the off-street parking regulations; that denial of this application would result in practical difficulty to the petitioners; that the granting of this variance will not cause any increase in residential density allowed by the zoning regulations; that the relief petitioned for can be granted without any, much less substantial, injury to the public health, safety and general welfare."

The Court has carefully examined the transcript of record made before the Board to determine whether there is any substantial evidence to support the finding of fact by the Board on this issue of a parking variance. It has found none. The only evidence bearing upon the requirements of Sections 307 and 409 of the Zoning Law is the testimony of the witness George E. Gavrellis, Director of Planning of Baltimore County. Without contradiction from any other source he said at page 25 of the transcript:

"We strongly question the need for any parking variance in this location. As we have noted before, the zoning regulations indicate that parking requirements are to be exceeded whenever possible. We believe that the proposed addition to the existing commercial building should be scaled down so that (a) less parking area will be required and (b) more land area will be left to be used for parking spaces. In the alternative, parking area should be secured and guaranteed on some other property nearby."

On cross-examination, Mr. Gavrellis did not retreat from that position, saying at page 39 of the transcript:

"Q Would it be characterizing your testimony fairly then, Mr. Gavrellis, that you would recommend that this application for reclassification be held

of the Maskets in the business conducted by them at 8608 Loch Raven Boulevard.

Although the two petitions were heard and decided separately by the Board and are the subject of separate appeals to this Court, they are so factually intertwined that their disposition in one memorandum opinion seems desirable, if not essential.

The relationship between the Maskets and the Gordons began in peace when the latter, owners of a tract of land with a frontage of approximately 100' along Loch Raven Boulevard, with a depth of approximately 210', sold to the former the northernmost 40' of the tract (see Deed dated April 11, 1958, and recorded among the Land Records of Baltimore County in Liber GLB No. 3332, folio 515), upon which the Maskets thereafter operated a cleaning and pressing enterprise. At the time of conveyance the property in question was dual zoned--the Loch Raven frontage to a depth of 130' being zoned "BL"--the rear 80' being zoned "R-6". In 1964, the Maskets petitioned for a reclassification of the rear land from R-6 to BL and for a variance to establish only nine parking spaces instead of the eighteen required by the zoning law. The Maskets' petition was granted without opposition or appeal (see Petitioners' Exhibit 2).

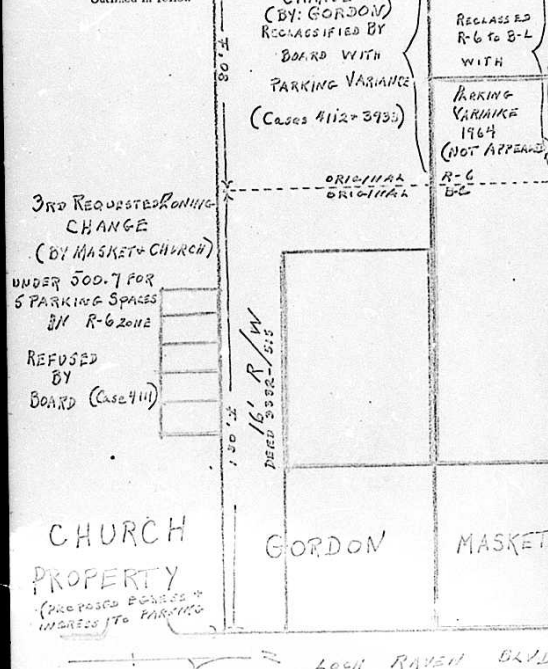
The Court has prepared a plat of the original Gordon land with the present Masket and Gordon holdings delineated thereon. The plat also shows the first phase of zoning change in 1964 and the impact thereof of the two petitions that are the subject of the present appeal.

up until additional parking spaces could be obtained?

A That was a recommendation embodied in our written comments under 2 (b), in the alternative, parking area should be guaranteed on some other property nearby. That was our comment."

It has been vigorously argued that the parking variance granted to the Maskets in 1964 should compel--in simple justice--the grant of the much less damaging variance now sought by the Gordons. There is a very strong emotional appeal in this suggestion, until the public interest comes into consideration. It seems to this Court that the grant of the initial 1964 Masket variance plainly did violence to the important need for off-street parking declared in the zoning ordinance. Pressures created by that variance will not be relieved by the grant of a further variance. On the contrary, the Director of Planning has made it clear that an answer to this serious parking problem is to seek other nearby properties for parking purposes. This Court does not possess the power to strike down the initial parking variance. It believes it does have the power to prevent its harmful extension. There being no evidence legally sufficient to support the Board's decision on the requested variance, that part of its decision is reversed. The decision of the Board in Cases 3933 and 4112 is reversed in part and affirmed in part and is remanded for the passage of an order not inconsistent with this opinion.

Original Tract: Outlined in black
Masket Fee Simple Ownership: Outlined in Red
Existing Buildings: Outlined in Green
Subject Special Parking: Outlined in Yellow



Case No. 4111

This is an appeal by Loch Raven Baptist Church, Inc. and John H. Masket and Estre R. Masket from an order denying a petition for a special hearing under section 500.7 of the Zoning Regulations of Baltimore County. The Petitioners sought, but were denied, five (5) parking spaces on property zoned R-6 and owned by the Church for the use and benefit of property zoned BL and used by the Maskets. The Zoning Board reversed the grant of the requested parking facility previously granted by the Zoning Commissioner.

In denying the requested relief the Board of Appeals did so upon the ground that the property of the Petitioners, the Maskets, was:

"... separated from the Church parking lot by two (2) intervening parcels, and he himself testified on the witness stand that 'this property does not adjoin the Church property'."

"Section 409.4 of the Baltimore County Zoning Regulations provides that a use permit may be issued for parking purposes, subject to certain conditions. Condition 'a' states: 'The land so used must adjoin or be across an alley or street from the business or industry involved.'"

The Board is forced of necessity to find as a fact that Mr. Masket's property does not so relate to the Church property, and therefore its application for the use permit must be denied."

Counsel for the Maskets and for the Appellee-Petitioners have stipulated and agreed that the respective rights of the Masket Petitioners and the Gordons in and to a 16' right-of-way bordering on the property of the Church arise under a Deed dated & filed 11, 1958 between the Gordons, as grantors, and the Maskets,

Cases 3933 and 4112 (Reclassification)

The Gordons now seek reclassification of the rear portion of their property from R-6 to BL which would bring conformity with the 1964 change of the Masket rear property. Error in original zoning and change in the area both are cited by the petitioners as grounds justifying reclassification. The Maskets oppose. The Maskets are in a somewhat incongruous position in that they now deny the error that they asserted--and the Zoning Commissioner found--justified reclassification of their own rear land in 1964.

The Court, while recognizing that the Maskets may be relying upon Emerson's premise that a foolish consistency is the hobgoblin of little minds, is forced to conclude that the record shows evidence both of error and of change. Those issues thus are beyond the scope of judicial review.

The decision of the Board to reclassify the Gordon property from R-6 to BL is affirmed.

Cases 3933 and 4112 (Variance)

The petition also sought a variance for sixteen parking spaces, instead of the required twenty under section 409.2. In connection with the variance portion of this petition, the case heretofore had been remanded to the Board for the finding of fact required by section 307 of the Zoning Law. (See: Misc. Case No. 3933) The finding of fact is found in the supplementary opinion and revised order, passed

as grantees (GLB No. 3332, folio 515) the pertinent parts of which read as follows:

"Together with the buildings * * * and all and every, the rights, alleys, ways * * * and advantages to the same belonging or in anywise appertaining."

4. All rights-of-way for ingress and egress to parking lot in rear to remain intact, including the right of the owners of the lot being hereby conveyed to use in common with others entitled thereto the 16 foot right-of-way along the south side of 8604 Loch Raven Boulevard and across the rear of 8604 Loch Raven Boulevard and 8605 Loch Raven Boulevard as a way of ingress and egress from Loch Raven Boulevard to the property being hereby conveyed. Maintenance of 16 foot right-of-way along south side of 8604 Loch Raven Boulevard to be shared equally between the owners of 8604 Loch Raven Boulevard, 8606 Loch Raven Boulevard and the lot being hereby conveyed.

5. Taxes on 16 foot right-of-way along south side of 8604 Loch Raven Boulevard to be shared equally between the owners of 8604 Loch Raven Boulevard, 8606 Loch Raven Boulevard and the lot being hereby conveyed.

6. Maintenance of said 16 foot paved portion of parking lot in rear of 8606 Loch Raven Boulevard and 8604 Loch Raven Boulevard to be shared equally between the owners of 8604 Loch Raven Boulevard, 8606 Loch Raven Boulevard and the lot being hereby conveyed."

Under the proposed plan shown on Petitioners' Exhibit 1, five (5) parking spaces each 8.5 feet in width and 18 feet in depth are shown with ingress and egress thereto achieved by entry from Loch Raven Boulevard. This Court concludes that the Maskets, by reason of their fee simple title to 8608 Loch Raven Boulevard, their ill-defined but clearly authorized right-of-way across the rear of 8604 and 8606 Loch Raven Boulevard, and their clearly fixed 16' right-of-way running along the boundary of the Church property, have standing to apply for parking areas in

an R-5 zone under section 409.1 of the zoning law of Baltimore County. The 16' right-of-way, established by the deed heretofore referred to, constitutes an alley within the meaning of section 101 of the Zoning Law, i. e. "Alley: a right-of-way 20' or less in width, designated as an alley on either an unrecorded or recorded plat, or dedicated as such by deed, which provides service access for vehicles to the side or rear of abutting property."

The Court concludes as a matter of law that the relationship of the Market property and the Church property falls within section 409.4 of the Zoning Law. The Court also finds as a fact that the proposed parking facility is necessary and desirable. (See: Tr. Case No. 4111, p. 12; Tr. Case No. 3939, p. 39).

For the reasons herein stated the decision of the County Board of Appeals in Case No. 4111 is reversed and remanded for further proceedings under section 409 not inconsistent with this opinion.

W. Albert Melchione
W. ALBERT MELCHIONE, Judge

11/28/67

2 signed

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9th Date of Posting 7/26/67

Posted for Hearing Aug. 9, 1967 P.M.

Petitioner: Vernon L. Gordon

Location of property: W/S Loch Raven Blvd. 247.17 S. of Yohanna Rd.

Location of Sign: Placed on the window of Gordon's Car Wash at 8600 Loch Raven Blvd.

Remarks: _____

Posted by: Robert J. Smith Date of return: 7/27/67

Not Signed

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY #18-33-R4
Towson, Maryland

District 9th Date of Posting Oct. 11, 1967

Posted for: _____

Petitioner: Vernon L. and Anna O. Gordon

Location of property: W/S Loch Raven Blvd. 247.17 S. of Yohanna Rd.

Location of Sign: Placed sign from window of store to parking lot in front of store

Remarks: _____

Posted by: Paul H. Voss Date of return: Oct. 19, 1967

Mr. Vernon L. Gordon
8124 Hillendale Road
Baltimore, Maryland 21234

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this
____ day of _____, 1967.

John H. Rose
Zoning Commissioner

Petitioner: Vernon L. Gordon
Petitioner's Attorney: _____ Reviewed by: James E. Hays
Chairman of Advisory Committee

TELEPHONE: 823-2000 EXT. 387

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

No. 48494
DATE: 8/22/67

REPORT TO ACCOUNT NO. 01-622

QUANTITY	DETAILS ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT
	Cost of appeal - Vernon L. Gordon, Pet.	\$70.00
	No. 68-33-RA	1 sign 5.00
		\$75.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204

TELEPHONE: 823-2000 EXT. 387

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

No. 49275
DATE: 12/20/68

REPORT TO ACCOUNT NO. 01-712

QUANTITY	DETAILS ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT
	Cost of certified documents - Case 48-33-RA Vernon L. and Anna O. Gordon W/S Loch Raven Blvd. 247.17 S. of Yohanna Road 9th District	\$2.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204

TELEPHONE: 823-2000 EXT. 387

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

No. 48407
DATE: 4/2/67

REPORT TO ACCOUNT NO. 01-622

QUANTITY	DETAILS ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT
	Advertising and posting of property 683-33-RA	73.75
		73.75

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204

MORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

No. 44265
DATE: July 17, 1967

REPORT TO ACCOUNT NO. 01-622

QUANTITY	DETAILS ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT
	Petition for Variance/Exception & Variance 683-33-RA	\$0.00
		\$0.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204

TELEPHONE: 823-2000 EXT. 387

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

No. 49253
DATE: 3/15/68

REPORT TO ACCOUNT NO. 01-712

QUANTITY	DETAILS ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT
	Cost of certified documents - File 68-33-RA Vernon L. and Anna O. Gordon W/S Loch Raven Blvd. 247.17 S. of Yohanna Road 9th District	7.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204

1 signed

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9th Date of Posting Oct. 5, 1967

Posted for: _____

Petitioner: Vernon L. and Anna O. Gordon

Location of property: W/S Loch Raven Blvd. 247.17 S. of Yohanna Rd.

Location of Sign: Placed in window of Gordon's Car Wash

Remarks: _____

Posted by: Paul H. Voss Date of return: Oct. 12, 1967

PETITION FOR RECLASSIFICATION AND VARIANCE
NO. DISTRICT
ZONING: From R-4 to R-L, Zone.

Petition for Variance for Parking.
LOCATION: West side of Loch Raven Boulevard 247.17 feet South of Yohanna Road.
DATE & TIME: PERIOD: DAY, AUGUST 9, 1967 at 10:00 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.
The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing.

Present Zoning R-4.
Proposed Zoning R-L.
Petition for Variance from the Zoning Regulations of Baltimore County to permit 16 Parking Spaces instead of the required 20 spaces.
The Zoning Regulations to be applied are as follows:
Section 409.3-a (5) - Building devoted to retail trade - 1 for each 200 square feet of total floor area.
All that parcel of land in the Ninth District of Baltimore County.
Referring for the same at a public hearing in the Division of Planning and Zoning, Baltimore County, on the 24th day of July, 1967, that is to say the same was inserted in the issues of July 30, 1967.

THE BALTIMORE COUNTIAN
OFFICE
THE BALTIMORE COUNTIAN
THE COMMUNITY NEWS
Baltimore, Md.
No. 1 Newburg Avenue
CATONSVILLE, MD.
July 24, 1967
THIS IS TO CERTIFY, that the annexed advertisement of John O. Rose, Zoning Commissioner of Baltimore County, was inserted in the BALTIMORE COUNTIAN, a group of weekly newspapers published in Baltimore County, Maryland, once a week for ONE WEEK before the 24th day of July, 1967, that is to say the same was inserted in the issues of July 30, 1967.

THE BALTIMORE COUNTIAN
By *Paul J. Morgan*
Editorial Manager

68-33

