

VALLEY LAND AND DEVELOPMENT
CO., INC., a body corporate

IN THE
CIRCUIT COURT

VS.

J. KEMP BARTLETT, JR.,
WILLIAM H. MAHANEY and
EDWARD L. MARTIN, con-
stituting the Board of
Zoning Appeals for Baltimore
County

BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Valley Land and Development Co., Inc.
respectfully shows unto your Honors:

1. That your Petitioner, a body corporate, duly incorporated
and existing under the laws of the State of Maryland, is the owner
of a tract of land lying on the east side of Park Heights Avenue,
approximately six hundred feet north of Blad Avenue, in the Third
Election District of Baltimore County, for which said property an
application for rezoning has been filed previous hereto with the
Zoning Commissioner of Baltimore County, the granting of which ap-
plication has been reversed by the Respondents herein; that con-
sequently your Petitioner is a party aggrieved within the meaning
and provisions of Chapter 247 of the Acts of the General Assembly
of 1941 and amendments thereto and regulations promulgated thereunder,
since the aforesaid decision and order of the Respondents denies to
your Petitioner the most valuable use of its property.

2. The Respondents, J. Kemp Bartlett, Jr., William H. Mahaney
and Edward L. Martin constitute and comprise the Board of Zoning
Appeals of Baltimore County, (hereinafter referred to collectively
as the "Board") having been appointed to said Board by the County
Commissioners of Baltimore County as provided by law.

4. That this Honorable Court reverse, set aside, annul
and declare void and of no effect the order and decision of
the Board of Zoning Appeals for Baltimore County, dated May 19,
1945, and attempting to affect the property of your Petitioner.

5. And for such other and further relief as the
exigencies of the cause may require.

James H. Murray
Attorney for Petitioner.

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, That on this _____ day of
June, 1945, personally appeared before me, the undersigned, a
Notary Public in and for Baltimore City, State of Maryland,
Edward A. Myerberg, President of Valley Land and Development
Co., Inc., a body corporate, the Petitioner named in the
aforesaid petition, and made oath in due form of law that the
matters and facts set forth in the foregoing petition
are true and correct and he further made oath in due form of
law that he is the duly authorized agent of said body
corporate to make this affidavit in its behalf.

Notary Public.

3. That the application for rezoning of the property owned
by your Petitioner requested a change from an A Residential area
to a C Residential area, as established by the Zoning regulations
adopted by the County Commissioners of Baltimore County under the
authority of Chapter 247 of the Acts of the General Assembly of
1941, which permit the erection of apartment houses in a C Resi-
dential area; that after the filing of the application and hearings
thereon, your Petitioner, after numerous discussions with the
County Commissioners of Baltimore County, entered into a written
agreement with said County Commissioners of Baltimore County on
the 9th day of November, 1944, which said agreement was recorded
on November 30th, 1944, among the Land Records of Baltimore County in
Liber R.F.S. 1370, folio 432.

4. That by the terms of the aforesaid agreement between
your Petitioner and the County Commissioners of Baltimore County,
said County Commissioners agreed that the property should be re-
classified to permit an apartment use in consideration of your
Petitioner's subjecting the land rezoned to certain binding restric-
tions not otherwise required by the zoning regulations in a C
residential area, and some of which could not be required, e.g.
a 125 foot set-back, in an A Residential area.

5. That acting pursuant to and in strict accordance with
the aforesaid agreement between the County Commissioners of
Baltimore County and your Petitioner, the Zoning Commissioner of
Baltimore County, as required by the aforesaid agreement of said
parties, passed an order on February 27th, 1945, reclassifying the
property.

6. That from the order of the Zoning Commissioner, an appeal
was entered to the Board which said Board, an appointive administra-
tive body, by its order on May 19th, 1945, in the attempted exercise
of an uncontrolled, unrestricted and unguided power, granted to it
and exercised by it under purported regulations in violation of and
contrary to the Constitution and laws of this State and the Con-

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ORDER

UPON the foregoing Petition and Affidavit, it is ORDERED by
the Circuit Court for Baltimore County this _____ day of June,
1945, that a writ of Certiorari issue directed to J. Kemp Bartlett,
Jr., William H. Mahaney and Edward L. Martin, constituting the
Board of Zoning Appeals for Baltimore County, to review the decision
and order of said Board of Zoning Appeals dated May 19th, 1945, and
requiring it to return to this Court all papers, records and pro-
ceedings in said matter, including the agreement between the County
Commissioners of Baltimore County and the Petitioner, a transcript
of all testimony presented before said Board in connection with said
proceedings, and a copy of any and all rules and regulations pursuant
to which said order was entered and said Board acted, to enable this
Court to review said order and decision of the Board; and that a
return to this petition shall be made and served upon relator's
attorney within _____ day from the date of this Order.

AND it is further ORDERED that said Board of Zoning Appeals for
Baltimore County shall return to this Court all the original papers
or certified or sworn copies to error and the return shall set forth
such other facts as may be pertinent to show the grounds of the
decision and order appealed from.

AND it is further ORDERED that said Board of Zoning Appeals
for Baltimore County show cause on or before the _____ day of
June, 1945, why the relief prayed in the foregoing petition should
not be granted, provided a copy of the within Petition, Affidavit
and this Order be served on J. Kemp Bartlett, Jr., William H.
Mahaney and Edward L. Martin, constituting the Board of Zoning
Appeals for Baltimore County on or before the _____ day of
June, 1945.

This Copy Test
Robert J. Spiller
Clerk

James H. Murray

stitution of the United States, reversed the order of the Zoning
Commissioner and without any legal right, power or authority so to
do, set aside the binding agreement of the County Commissioners
of Baltimore County entered into with your Petitioner, and the
agreed action of the Zoning Commissioner pursuant thereto, and in
consideration of what your Petitioner subjected its property to
permanently binding restrictions in some respects more onerous
than any restrictions imposed by the Zoning regulations of Balti-
more County.

That the aforesaid order and decision of the Board of
Zoning Appeals of Baltimore County, dated May 19th, 1945, and
affecting the property of your Petitioner, is void, unlawful,
without legal force and effect and should be reversed in whole,
set aside and annulled by this Honorable Court for the reasons
that:

(a) The Board of Zoning Appeals was without
jurisdiction or authority to enter said order of May 19th,
1945, since the order has no demonstrable, reasonable or
determinable relationship in fact or in law to the public
health, safety and welfare.

(b) The said order of the Board of Zoning
Appeals of May 19th, 1945, constitutes an arbitrary and
capricious act and gross abuse of administrative discretion.

(c) There was no substantial evidence before
the Board of Zoning Appeals, in the proceedings conducted
before it to justify or support its order of May 19th, 1945.

(d) The Board of Zoning Appeals, an administra-
tive agency, was entirely without legal right or legal
authority to pass any order respecting the premises of
the Petitioner.

(e) The order of the Board of Zoning Appeals
constitutes an attempted unlawful exercise of authority

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by said Board and deprive your Petitioner of property
without due process of law and without just compensation
therefor in violation of the United States Constitution
and the Constitution of the State of Maryland.

(f) There exists no valid and legal law, rule
or regulation under which the Board of Zoning Appeals
could exercise the power and authority which it attempted
to exercise in its order of May 19th, 1945.

(g) And for such other and further reasons as may
be shown at the hearing hereof.

Wherefore, your Petitioner prays:

1. That a writ of certiorari be granted by this
Honorable Court directed against the Respondents, constituting
the Board of Zoning Appeals for Baltimore County, to review
the decision and order of said Board of Zoning Appeals of
May 19th, 1945, in the within proceedings and prescribing
therein the time within which a return thereto shall be
made and served upon the relator's attorney.

2. That said Board of Zoning Appeals may be re-
quired to return to this Honorable Court the original papers
acted upon by it or certified or sworn copies thereof, to-
gether with a copy of all records in said proceedings includ-
ing the agreement between the County Commissioners of
Baltimore County and your Petitioner, a transcript of all
testimony presented before said Board in connection with
said proceedings, as well as copy of the order entered by
said Board of Zoning Appeals and a copy of any and all rules
and regulations pursuant to which said order was entered
and said Board purported to act.

3. That this Honorable Court permit your
Petitioner to take such other and further testimony as may
be necessary for the proper disposition of this matter.

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A transcript of the testimony presented before the Board
of Zoning Appeals is about to be filed herein by the stenog-
rapher who transcribed the same.

The rules and regulations pursuant to which said order
was entered and said Board acted are permanent records of the
Zoning Department of Baltimore County as are also the use dis-
trict maps and your Respondents respectively suggest that it
would be inconvenient and inappropriate to file the same in
this proceeding, but your Respondents will produce any and all
such rules and regulations together with its zoning use dis-
trict maps at the hearing on this petition or whenever directed
to do so by this Court.

Respectfully submitted,

Attorney for Board of Zoning
Appeals of Baltimore County.

VALLEY LAND AND DEVELOPMENT
CO., INC., a body corporate

IN THE
CIRCUIT COURT

VS.

J. KEMP BARTLETT, JR.,
WILLIAM H. MAHANEY and
EDWARD L. MARTIN, con-
stituting the Board of
Zoning Appeals of Baltimore
County

BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGES OF SAID COURT:

And now come J. Kemp Bartlett, Jr., William H. Mahaney
and Edward L. Martin, constituting the Board of Zoning Appeals
of Baltimore County, and in answer to the writ of certiorari
directed against them in this case, herewith submit the record
of proceedings had in the above entitled matter, consisting of
the following certified copies or original papers on file in the
office of the Zoning Department of Baltimore County:

1. Petition for reclassification and Order of Zoning
Commissioner and Board of Zoning Appeals thereon.
2. Letter from Safe Deposit & Trust Co., requesting that
petition for reclassification be considered as the
petition of the legal owners of the property.
3. Certificate of posting of property for hearing on re-
classification.
4. Certificate of Publication of public notice of hearing
on reclassification.
5. Agreement dated, November 2, 1944, between Valley Land
& Development Company, Incorporated, and the County
Commissioners of Baltimore County.
6. List and list of protestants in Dumbarton.
7. Petitions of protestants.
8. Opinion of Board of Zoning Appeals.
9. Copy of checker entries showing proceedings in Zoning
Department of Baltimore County.

COPY

JUN 18 1945

State of Maryland, Baltimore County, Md:

J. Kemp Bartlett, Jr., William H. Mahoney and Edward L. Martin
To -- constituting the Board of Zoning Appeals for Baltimore County.

YOU ARE COMMANDED that the record and proceedings in a certain case of

Board of Zoning Appeals for Baltimore County -- vs. -- Valley Land and
Development Co., Inc.

with all things touching the same, as fully and perfectly as they result before you, by whatever
name or names the parties aforesaid, or either of them, are called in the same, you read and certify to
the CIRCUIT COURT FOR BALTIMORE COUNTY, before the Honorable J. Toward Murray
Associate Judge of the Circuit Court for Baltimore County, presiding, together with this writ, truthfully
and after receipt of the same.

WITNESS the Honorable C. Gus Gibson, Chief Judge of the Circuit Court for Baltimore

County, this 21st day of May, 1945

Read this 20th day of June 1945

True Copy Test
Robert J. Spauld
Clerk

SEAL

PAID
MAY - 7 1947
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY *[Signature]*

May 7, 1947

\$22.00

RECEIVED of James C. L. Anderson, Esq., Attorney
Kearns, Necht, et al, being cost of appeal to the Board
of Zoning Appeals of Baltimore County from the decision
of the Zoning Commissioner granting the petition for
reclassification of the property on east side of Park
Heights Avenue, 3rd District.

Zoning Commissioner.

Valley Land and Development
Co., Inc., a body corporate
at the residence of
J. Kemp Bartlett, Jr.,
William H. Mahoney and
Edward L. Martin, some
attending the Board of
Zoning Appeals for Baltimore
County.

James J. Lindsay, Attorney

COPY
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VALLEY LAND AND DEVELOPMENT
Co., Inc., a body corporate
VS.
J. KEMP BARTLETT, JR.,
WILLIAM H. MAHONEY and
EDWARD L. MARTIN, some
attending the BOARD OF
ZONING APPEALS FOR BALTIMORE
COUNTY
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Valley Land and Development Co., Inc.
respectfully shows unto your Honors:

1. That your Petitioner, a body corporate, duly incorporated
and existing under the laws of the State of Maryland, is the owner
of a tract of land lying on the east side of Park Heights Avenue,
approximately six hundred feet north of Glade Avenue, in the Third
Election District of Baltimore County, for which said property an
application for rezoning has been filed previous hereto with the
Zoning Commissioner of Baltimore County, the granting of which ap-
plication has been reversed by the Respondents herein; that con-
sequently your Petitioner is a party aggrieved within the meaning
and provisions of Chapter 247 of the Acts of the General Assembly
of 1941 and amendments thereto and regulations promulgated thereunder,
since the aforesaid decision and order of the Respondents denies to
your Petitioner the most valuable use of its property.

2. The Respondents, J. Kemp Bartlett, Jr., William H. Mahoney
and Edward L. Martin constitute and comprise the Board of Zoning
Appeals of Baltimore County, (hereinafter referred to collectively
as the "Board") having been appointed to said Board by the County
Commissioners of Baltimore County as provided by law.

stitution of the United States, reversed the order of the Zoning
Commissioner and without any legal right, power or authority so to
do, set aside the binding agreement of the County Commissioners
of Baltimore County entered into with your Petitioner, and the
agreed action of the Zoning Commissioner pursuant thereto, and in
consideration of which your Petitioner subjected its property to
permanently binding restrictions in some respects more onerous
than any restrictions imposed by the Zoning regulations of Balti-
more County.

That the aforesaid order and decision of the Board of
Zoning Appeals of Baltimore County, dated May 19th, 1945, and
affecting the property of your Petitioner, is void, unlawful,
without legal force and effect and should be reversed in whole,
set aside and annulled by this Honorable Court for the reasons
that:

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jurisdiction or authority to enter said order of May 19th,
1945, since the order has no demonstrable, reasonable or
determinable relationship in fact or in law to the public
health, safety and welfare.
- (b) The said order of the Board of Zoning
Appeals of May 19th, 1945, constitutes an arbitrary and
capricious act and gross abuse of administrative discretion.
- (c) There was no substantial evidence before
the Board of Zoning Appeals, in the proceedings conducted
before it to justify or support its order of May 19th, 1945.
- (d) The Board of Zoning Appeals, an administra-
tive agency, was entirely without legal right or legal
authority to pass any order respecting the premises of
the Petitioner.
- (e) The order of the Board of Zoning Appeals
constitutes an attempted unlawful exercise of authority

by said Board and deprives your Petitioner of property
without due process of law and without just compensation
therefor in violation of the United States Constitution
and the Constitution of the State of Maryland.

(f) There exists no valid and legal law, rule
or regulation under which the Board of Zoning Appeals
could exercise the power and authority which it attempted
to exercise in its order of May 19th, 1945.

(g) And for such other and further reasons as may
be shown at the hearing hereof.

Wherefore, your Petitioner prays:

1. That a writ of certiorari be granted by this
Honorable Court directed against the Respondents, constituting
the Board of Zoning Appeals for Baltimore County, to review
the decision and order of said Board of Zoning Appeals of
May 19th, 1945, in the within proceedings and prescribing
therein the time within which a return thereto shall be
made and served upon the relator's attorney.
2. That said Board of Zoning Appeals may be re-
quired to return to this Honorable Court the original papers
acted upon by it or certified or sworn copies thereof, to-
gether with a copy of all records in said proceedings includ-
ing the agreement between the County Commissioners of
Baltimore County and your Petitioner, a transcript of all
testimony presented before said Board in connection with
said proceedings as well as copy of the order entered by
said Board of Zoning Appeals and a copy of any and all rules
and regulations pursuant to which said order was entered
and said Board purported to act.
3. That this Honorable Court permit your
Petitioner to take such other and further testimony as may
be necessary for the proper disposition of this matter.

4. That this Honorable Court reverse, set aside, annul
and declare void and of no effect the order and decision of
the Board of Zoning Appeals for Baltimore County, dated May 19,
1945, and attempting to affect the property of your Petitioner.
5. And for such other and further relief as the
exigencies of the cause may require.

James J. Lindsay
Attorney for Petitioner.

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this _____ day of
June, 1945, personally appeared before me, the subscriber, a
Notary Public in and for Baltimore City, State of Maryland,
Edward A. Myerberg, President of Valley Land and Development
Co., Inc., a body corporate, the Petitioner named in the
aforesaid petition, and made oath in due form of law that
the matters and facts set forth in the foregoing petition
are true and correct and he further made oath in due form of
law that he is the duly authorized agent of said body
corporate to make this affidavit in its behalf.

Notary Public.

3. That the application for rezoning of the property owned
by your Petitioner requested a change from an A residential area
to a C residential area, as established by the Zoning regulations
adopted by the County Commissioners of Baltimore County under the
authority of Chapter 247 of the Acts of the General Assembly of
1941, which permit the erection of apartment houses in a C resi-
dential area; that after the filing of the application and hearings
thereon, your Petitioner, after numerous discussions with the
County Commissioners of Baltimore County, entered into a written
agreement with said County Commissioners of Baltimore County on
the 9th day of November, 1944, which said agreement was recorded
on November 30th, 1944, among the Land Records of Baltimore County in
Liber R.T.S. 1370, folio 435.
4. That by the terms of the aforesaid agreement between
your Petitioner and the County Commissioners of Baltimore County,
said County Commissioners agreed that the property should be re-
classified to permit an apartment use in consideration of your
Petitioner's subjecting the land resumed to certain binding restric-
tions not otherwise required by the zoning regulations in a C re-
sidential area, and some of which could not be required, e.g.
a 125 foot set-back, in an A residential area.
5. That acting pursuant to and in strict accordance with
the aforesaid agreement between the County Commissioners of
Baltimore County and your Petitioner, the Zoning Commissioner of
Baltimore County, as required by the aforesaid agreement of said
parties, passed an order on February 27th, 1945, reclassifying the
property.
6. That from the order of the Zoning Commissioner, an appeal
was entered to the Board which said Board, an appointive administra-
tive body, by its order on May 19th, 1945, in the attempted exercise
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and exercised by it under purported regulations in violation of and
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J. Howard Murray