

GARY HOFFMEISTER T/A PINE GROVE GARAGE
Caves Road
Owings Mills, Maryland

Plaintiff

VS.

BALTIMORE COUNTY, MARYLAND
Towson, Maryland 21204

and

JOHN G. ROSE, Zoning Commissioner of Baltimore County, Maryland
Towson, Maryland 21204

Defendants

BILL OF COMPLAINT

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Bill of Complaint of Gary Hoffmeister T/A Pine Grove Garage, by his attorneys, H. Kemp MacDaniel, MacDaniel and Payne, respectfully shows unto Your Honor:

1. That he is the proprietor of the Pine Grove Garage which is his place of business and which is located on Caves Road in Baltimore County, Maryland.
2. That the particular business carried on is that known as a "Junk Yard" and "Automobile Repair Shop" which involves the storing of old automobiles, dismantled automobiles, automobile parts, as well as the business of repairing automobiles with respect to both mechanical as well as body and fender damage.
3. That this Complainant and his brother, Marion H. Hoffmeister, have built up a substantial and lucrative business in the County of Baltimore and have performed and are performing a necessary and beneficial service to the residents of their general area as well as to the County of Baltimore.
4. That your Complainant purchased the interest of

- his brother, Marion H. Hoffmeister, on October 15, 1964 and is now the sole owner.
5. That your Complainant has placed into use approximately twelve (12) acres, owned by him, for the purpose of carrying on the said business of Pine Grove Garage.
 6. That the aforesaid business has constituted the full-time occupation of your Complainant and has been your Complainant's sole source of income and financial security.
 7. That your Complainant has in his employ two (2) employees who earn their living from the business of your Complainant.
 8. That your Complainant's business is located in a remote section of Baltimore County, is limited to property owned by your Complainant, and has been operated in such a manner so as not to affect the health, welfare or general well being of any of the residents in the immediate vicinity or anyone else in Baltimore County.
 9. That your Complainant has, upon the premises of the said business, approximately nine hundred (900) automobile units in which he has invested a considerable sum of money.
 10. That the chief value of the automobile units now in the possession of the Complainant is derived from the use of parts therefrom which are used in the repairing of automobiles as well as for sale to the general public.
 11. That the market for Junk automobiles is, and has been, for several years, extremely low, so that the sale of such automobiles as Junk would result in great financial loss to your Complainant.
 12. That your Complainant's real property, used for the purposes of said business, has been improved by a garage, approximately 80' x 70' in dimensions with a present value of

approximately Twenty Thousand Dollars (\$20,000.00), which building is fully equipped for repairing, storing and stripping of automobiles and great financial loss and damage would be sustained by your Complainant should he be required to discontinue the use of the premises as a Junk Yard.

13. That the premises upon which the Pine Grove Garage is being operated are Zoned R40 (Residential), but your Complainant has operated said business continuously since 1930 without change, interruption, reduction or abandonment thereof and, therefore, had established a legal nonconforming use in 1945 when the Zoning Laws of Baltimore County were placed in effect, which legal nonconforming use still exists.

14. That the business of your Complainant is entitled to protection as a nonconforming use by virtue of Section 104 of the Baltimore County Zoning Regulations which provides: "A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) per cent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

15. That while your Complainant was carrying on his business as set forth in a lawful, orderly and peaceful manner, an Ordinance, designated as Bill No. 140, was signed by the Bal-

timore County Executive on the Third day of October, 1962, whereby the County Executive and County Council of Baltimore County unlawfully and without legal warrant provided, inter alia, that:

Section 200.16 - Junk Yards and Open Dumps as defined in Section 101

"Any existing Junk Yards in this or any other residential zone, and any existing Open Dumps in any zone shall be completely eliminated not later than two (2) years after the date of effectuation of this amendment.

I hereby certify that Bill No. 140 is true and correct and will take effect on November 17, 1962. Signed Dale Anderson, Chairman, County Council."

A copy of which Ordinance is herewith filed, marked "Complainant's Exhibit No. 1", and forms a part hereof.

16. That the said Ordinance does not by its intent and wording apply to a Junk yard in Baltimore County which is being operated under a legal nonconforming use as provided in Section 104 of the Baltimore County Zoning Regulations and therefore, has no application and is of no effect as to your Complainant's business.

17. That the said Ordinance is void because it is so unreasonable and extravagant in its nature as it deprives this Complainant of his property without due process of law, and the property and personal rights of your Complainant are unnecessarily and arbitrarily interfered with and destroyed.

18. That said Ordinance is void because it makes an arbitrary distinction between Junk yards operated under a nonconforming use situated within the City Limits of Baltimore City and those situated in the Counties adjoining Baltimore County and there are such Junk Yards in operation in those favor this Ordinance creates an unfair and unlawful discrimination.

19. That the said Ordinance is a void attempt to exercise the police powers of the State in that it has no relation to any moral need of the County of Baltimore and the acts prohibited do not create or constitute or threaten any damage or danger to the health, morals or general welfare of the citizens of Baltimore County.
 20. That the Ordinance is void in that it imposes an undue hardship on your Complainant in allowing only two (2) years for the discontinuance of your Complainant's business, which period of time is completely unreasonable, arbitrary and capricious, and without a corresponding benefit to Baltimore County or its residents, which substantially outweighs resulting harm and damage to your Complainant.
 21. That your Complainant charges that said Ordinance is void and of no legal effect, and that said Ordinance being void, he should not be compelled by the threats of the Zoning Commissioner of Baltimore County, or Baltimore County, to abruptly discontinue the operation of his business in compliance with the terms of said Ordinance until his contesting the validity thereof has been finally determined by the Courts of this State, and as to this, he is without remedy except by the intervention of this Honorable Court.
- TO THE END THEREFORE:
- (a) That this Court will by its decree declare Bill No. 140 of the County Council of Baltimore County, Maryland and signed by the Baltimore County Executive on October 3, 1962, null and void and of no legal effect.
 - (b) That this Court will by its decree declare Bill No. 140 of the Baltimore County Council, by its intent and wording does not apply to and is of no effect as to the business of your Complainant.

(c) That this Court will by its Order prohibit and enjoin the Defendants, Baltimore County, Maryland and John G. Rose, Zoning Commissioner of Baltimore County, or any other officer or agent of Baltimore County, by whatever name they may be designated, from arresting or causing the arrest of your Complainant, or from imposing any fine or fines, or interfering in any manner with the lawful operation of your Complainant's business, or the employees and servants of your Complainant during the pending of this action until the same may be duly decided and the validity or invalidity of said Bill No. 140 shall be determined.

(d) And that this Court will grant to your Complainant such other and further relief as his case may require.

May it please Your Honor to grant unto your Complainant and the Writ of Subpoena directed to the Defendants, Baltimore County, Maryland and John G. Rose, commanding them to be and appear in this Honorable Court some day certain to be named therein and show cause, if any they may have, why the relief prayed shall not be granted.

AND AS IN DUTY BOUND, ETC.

H. Kemp MacDaniel
MacDaniel and Payne
412 Munsey Building
Baltimore, Maryland 21202
PL 2-2191. RD 5-1817
Attorneys for Plaintiff

GARY HOFFMEISTER T/A PINE GROVE GARAGE

STATE OF MARYLAND: County of Baltimore ss:
I HEREBY CERTIFY, that on this 24 day of November, 1964, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Gary Hoffmeister T/A Pine Grove Garage, the Complainant named herein, and made oath in due form of law that the matters

and facts set forth in the foregoing Bill of Complaint are true and bona fide as therein stated, to the best of his knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Dale Anderson
Notary Public

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ORDER

UPON the foregoing Petition and Affidavit, it is, thereupon, this 14 day of November, 1964, by the Circuit Court for Baltimore County, ORDERED that Baltimore County, Maryland, its agents, servants and employees and/or John G. Rose, Zoning Commissioner of Baltimore County, Maryland be and are hereby restrained and enjoined from enforcing any and all of the provisions of Baltimore County Bill No. 140 now known as Section 200.16 of the Baltimore County Code against Gary Hoffmeister T/A Pine Grove Garage or his agents, servants or employees unless order, to the contrary be shown on or before the 14 day of November, 1964, provided that a copy of said Bill of Complaint be served on the said Baltimore County, Maryland and John G. Rose, Zoning Commissioner of Baltimore County, Maryland, Defendants herein, on or before the 14 day of November, 1964, all subject to the further Order of the Court in the premises.

True Copy Test

DALE ANDERSON, CLERK

Dale Anderson

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