

IN THE MATTER OF : BEFORE THE HOWARD COUNTY  
ADNAN SONMEZ & GUNER : BOARD OF APPEALS  
SONMEZ, TRUSTEES  
Petitioners : BA Case No. 09-016N

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**DECISION AND ORDER**

The Howard County Board of Appeals (the "Board") convened on May 4, 2010, to hear the petition of Adnan and Guner Sonmez (the "Petitioners") for confirmation of a nonconforming use of a second detached dwelling unit on a lot located in an R-20 (Residential – Single) Zoning District, filed pursuant to Section 129.D of the Howard County Zoning Regulations (the "Zoning Regulations").

All five Board members were present at the May 4, 2010 hearing. Chairperson Albert Hayes presided at the hearing. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioners certified that notice of the hearing was advertised and the property was posted as required by the Howard County Code. The Board members indicated that they viewed the property as required by the Zoning Regulations.

The case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. Pursuant to that Section, the following were incorporated by reference into the record:

1. The Howard County Code;
2. The Howard County Charter;
3. The Howard County Zoning Regulations;
4. The Recommendation of the Department of Planning and Zoning dated November 30, 2009;

5. The General Plan for Howard County;
6. The General Plan of Highways, and
7. The Petition and Plat and materials submitted with it.

The Petitioners were represented by Patrick Malloy, Esquire. Guner Sonmez testified in support of the petition. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearings, the Board makes the following Findings of Fact:

1. The subject property is situated on the north side of US 40 (Baltimore National Pike), about 400 feet east of the Normandy Drive intersection with US 40 and is also known as 8356 Baltimore National Pike (the "Property"). The Property is located in the Second Election District and is identified on Tax Map 18, Block 19, as Parcel 195.

2. The Petitioners, the Property owners, reside on an adjoining parcel known as 8328 Baltimore National Pike.

3. The 2.1-acre diamond-shaped Property has 355 feet of frontage on westbound US 40. It is improved with a one and one-half-story principal dwelling located about 36 feet from US 40 and a two-story detached garage located about 40 feet to the rear of the house and seven feet from the western property line. The detached garage is equipped with its own separate electric meter and air-conditioning unit. Access to the Property is provided by an asphalt driveway from US 40. An asphalt parking area is located between the principal dwelling and the detached garage. A fenced swimming pool is located in the rear yard about 25 feet from the west property line. The Property itself is mostly lawn dotted by many tall deciduous trees.

4. The Petitioners request confirmation of a nonconforming use for a second dwelling unit on a single lot. The Property is improved with a single family detached dwelling and a detached garage with a second dwelling unit (the "Apartment") above the first floor. The Petitioners request confirmation that the Apartment is a legal nonconforming use.

5. Adjacent parcels on the north side of US 40 where the Property is located are generally zoned R-20 and are improved with single- family attached dwellings. Across US 40 to the south is the R-A-15 zoned Parcel 213, which is improved with an apartment development.

6. US 40 has two westbound travel lanes and wide shoulders along the Property within a 150-foot right-of-way. The posted speed limit is 45 miles per hour.

7. The Property lies within the Metropolitan District and the Existing and Under Construction Service Area of the Howard County Water and Sewerage Master Plan. The Property is served by private well and septic. The Howard County Health Department comments state that the department does not object to the non-conforming use petition subject to the condition that the Property be connected to public sewer utilities and that the existing well and septic system be properly abandoned and sealed.

8. The Property is designated as "Residential" on the 2000-2020 Policies Map of the 2000 General Plan. US 40 is depicted as an Intermediate Arterial on the General Plan's Transportation Map.

9. In this case, the petition describes the magnitude and extent of the alleged nonconforming use as follows: "An apartment exists above the garage. The garage is detached from the principal dwelling on the lot ...the second apartment unit was conforming when it was built in 1960."

10. The petition identifies the date the subject use became nonconforming to the use provisions of the Zoning Regulations as October 3, 1977, when the R-20 Zoning Regulations were changed to allow one single family dwelling per lot. DPZ agrees with this date.

11. The Petitioners submitted documentation indicating that the 840 square-foot apartment was constructed in 1960. Guner Sonmez testified that Mr. and Mrs. William King constructed the apartment over the garage for their daughter who lived there for a number of years and after she moved out, Mr. and Mrs. King continued to rent the apartment. Mrs. Sonmez's affidavit states that she and her husband bought the subject property from William King on October 19, 1995, and assert that they have been renting out the apartment since they purchased the Property until 2008.

12. On November 28, 2008, DPZ issued the Petitioners a zoning violation notice for having more than one single-family dwelling on R-20 zoned property.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Board concludes as follows:

#### **A. Confirmation of Nonconforming Uses (Section 129.D)**

1. A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, either on the effective date of those regulations or as a result of any subsequent amendment thereto.

Such use may be confirmed if it is shown by a preponderance of evidence that the use existed at the time of the zoning change and has continued uninterrupted since that date.

2. In this case, the Petitioners presented uncontroverted evidence in the form of an affidavit and testimony of Guner Sonmez as well as other supporting documentation which make it

reasonable to infer that the Property has operated with a second dwelling unit (the "Apartment") since at least October 3, 1977, the effective date when the R-20 Zoning Regulations were changed to allow one single family dwelling per lot.

**ORDER**

Based upon the foregoing, it is this 29<sup>th</sup> day of July, 2010, by the Howard County Board of Appeals, **ORDERED**:

1. That the Petition of Adnan and Guner Sonmez to confirm a nonconforming use for a second dwelling unit (the "Apartment") on a single lot in an R-20 (Residential: Single Family) Zoning District is hereby **GRANTED**.

**ATTEST:**

**HOWARD COUNTY BOARD OF APPEALS**

Ann Nicholson  
Ann Nicholson, Secretary

Albert Hayes  
Albert Hayes, Chairperson

James Walsh  
James Walsh, Vice Chairperson

PREPARED BY:  
HOWARD COUNTY OFFICE OF LAW  
Margaret Ann Nolan  
County Solicitor

Maurice M. Simpkins  
Maurice Simpkins

Barry M. Sanders  
Barry M. Sanders  
Assistant County Solicitor

Henry Eagles  
Henry Eagles

John Lederer  
John Lederer