I have lived in Dunloggin since 1967. My community was long considered one of the nicest neighborhoods in the county, and it is still a great place to live. Like other established communities, though, Dunloggin's character and quality of life are threatened by poor infill encroachments and other land uses, one of which is the two-family dwelling conditional use. I applaud my councilman, Jon Weinstein, for recognizing that it is time (perhaps past time) to review our land use practices and see if they are harming existing residents.

Two-family dwellings that require a conditional use permit have the potential for significant adverse effect on a neighborhood. For example, there is no limit on how many such dwellings can be in a neighborhood, which could cause density in a community to double. If it is a good idea to double the density in a neighborhood, the solution should be to rezone the area rather than let the higher density creep in by means like this. By definition, the two-family dwelling will NOT be owner-occupied (If it is, it is considered an accessory apartment.), which means that pride of ownership that leads people to keep their properties looking nice is more likely to be missing. This can be true in any rental property, but the probability is much higher if two families live in the house. Some conditional uses have specific special requirements to minimize adverse effects, but the two-family dwelling lacks any standards other than requiring that NEW structures or additions must be compatible with the neighborhood.

I do not believe two-family dwellings are compatible with a single-family neighborhood, period. If the area were appropriate for higher density, then presumably it would have been zoned that way. I suspect that the situation resulted from "usage creep". As a member of the Commission on Aging, I am very aware of the desirability of having housing options for seniors. Few people object to a mother-in-law apartment in a neighbor's home. But then Mom moves into a nursing home, and we are left with an empty small apartment. How about renting to that nice young HCC student? This is somewhat more controversial, but not too many people object, and accessory apartments seem relatively innocuous. When the student has a baby, it gets a bit more complicated.... Then when the homeowner decides to move, an investor sees the house, and it seems natural for a two-family rental. The conditional use is approved, and the neighborhood is adversely affected. The regulations need to guard more carefully against allowing small exceptions to grow into significant ones. We need to learn to say, "Stop here".

If this use is reviewed and it is decided it is compatible and should be continued, then I would recommend that all conditional uses, this one and others, should be reviewed in a broader context to see exactly where they should be allowed. If two-family dwellings are a good tool for wise land-use management, why are they not allowed in other zones, specifically NT? When I visit friends in Columbia, many of their neighborhoods do not look much different than mine. Why are two-family dwellings OK for my neighborhood but not for theirs? Do Columbia neighborhoods deserve more protection than mine?

In closing, I again want to thank Councilman Weinstein for his interest in protecting our older neighborhoods. I trust that the rest of the Council share his commitment to making ALL of Howard County a great place to live and that you will support this bill.

Angie Boyter angie@boyter.net

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TESTIMONY

Council Bill 56-2015

Two-Family Dwelling Conditional Use Interim Development Act

Jean Sedlacko, President, St. John's Community Association

December 21, 2015

Good evening. My name is Jean Sedlacko. My family and I live at 9114 Northfield Road, Ellicott City. I am President of the St. John's Community Association that serves the Dunloggin neighborhood. I speak on behalf of the Association which SUPPORTS the passage of Council Bill 56-2015.

The neighborhood served by the Association is in a single-family R-20 zone and is comprised of approximately 1,030 homes. The Association is currently one of the protestants against Conditional Use Application, BA-14-031C, which is a request to convert 4033 St. John's Lane into a two-family dwelling. I am not hear to argue the points of that matter but in the course of dealing with that matter, the Association has realized that the Conditional Use application standards and process for 2-family dwellings are problematic for at least 3 reasons. And because of those reasons, we support the legislation.

1) **Where two-family dwelling conditional uses are allowed needs to be assessed. When allowed in R-20 zones, such USES are INCONSISTENT with the character of the neighborhood**
2) **When you apply the Conditional Use standards, you can get a result that can be wholly INCONSISTENT with other County planning tools**
3) **When one considers the low burden for the applicant yet the heavy burden on the protestants, the process is INCONSISTENT with supporting neighborhoods and their residents.**

These inconsistencies should be STUDIED and RECTIFIED before any further conditional use applications for two-family dwellings should be accepted.

First, COMPATIBILITY....A threshold issue is "where should you allow two-family dwelling conditional use applications". Our neighborhood is a single-family, owner-occupied neighborhood. We are not zoned to have the density that results from two-family dwellings. And, if such uses are allowed at the discretion of a hearing examiner based on subjective standards and a process that favors the applicant (both of which I'll be discussing next), there's nothing stopping a developer from using the conditional use process to do an "END-RUN" around the zoning - house after house after house – effectively increasing density to line their financial pockets.

And where does that leave the residents who CHOSE that neighborhood specifically for its single family, owner-occupied CHARACTER? And where does that leave the residents who COUNT ON the market value of that character to remain STABLE and thereby SUSTAIN the equity for retirement, healthcare, education or other expenses? The first threshold of any conditional use should not be whether the use causes an ADVERSE IMPACT in the zone (as it stands now); the first criteria should be whether the conditional use is COMPATIBLE with the zone. At least the infill regulations strive for neighborhood compatibility (see Howard County Code, Section 16.127(c)(1)); conditional use standards should do the same. Apartment houses in R-20 zones are NOT COMPATIBLE.

Second, the County prides itself, as it should, on all its planning tools and relies on them. But the question is...how well do those tools work together? Does the right hand actually HURT or UNDERCUT the left hand? The 4033 St. John's Lane matter is a clear example of this problem.

Let's look at APFO and the SCHOOLS test. With 4033 St. John's Lane, the applicant wants to ADD a full blown unit – not as a homeowner who is accommodating an elderly parent or other circumstance – but just like any other commercial developer who wants to do infill development. However, if he was attempting to do this through infill development, his request would FAIL under

APFO because his unit would NOT pass the Schools Test. Dunloggin Middle School is over capacity and therefore our neighborhood is deemed "CLOSED" to further development. But, unfortunately, there is NO "Schools Test" in the Conditional Use regulations.

Well, you might say, *"come on, it's just one additional unit... what's the harm?"*...Well, let's look at the WHOLE PICTURE.

By allowing an additional unit where one would not be allowed otherwise, the owner developer essentially JUMPS THE QUEUE past all the other developers that are ON HOLD due to the Schools Test. There are currently 65 (!) units "IN THE BIN", specifically because Dunloggin Middle is over-subscribed. If conditional uses applications have no school capacity standard, what would stop ANY developer ANY where in the County from using the conditional use process to jump the queue and jam in units in CLOSED development areas? The next thing you know, one little extra unit becomes A LOT of little extra units and we have another "END RUN" around the planning system – just like the "end run" around zoning. And just like the zoning issue, where does that leave the residents and the school system? The purpose of planning tools is to PACE development with the schools, among other purposes. How can HCPSS plan adequately if there is LOOPHOLE in the development process that could lead to UNEXPECTED overcrowding? The school loophole should be closed and any other incompatibilities should be looked at carefully.

What exacerbates the problem is who has the burden to prove this point. Under Conditional Use standards, there are terms like "ADVERSE IMPACT", "IN HARMONY", "APPROPRIATE". The burden is on the PROTESTANTS to prove or dispute those subjective elements. Therefore, in this instance of the schools test, the residents have to be part of an EXPENSIVE, ADVERSARIAL process to prove something that the County has already decided - that adding units at this time is a BAD IDEA. In an infill situation, the developer and County have to show that the developer has abided by the rules and that the house passes APFO, is compatible with the neighborhood and will not create undue challenges for the neighbors – all pretty much on objective standards. But, in the conditional use situation, the applicant simply applies, draws a map which

can even be deficient, gives little to no information and then the NEIGHBORS have the burden to argue the OBVIOUS issues – i.e., it is not compatible with prescribed DENSITY and the area is CLOSED to development. If the right hand of the County is saying adding units to a neighborhood is a bad idea because it would have an ADVERSE IMPACT on the schools; how can the left hand of the County say it's OK to do so, forcing the residents to argue that point? The conditional use process leads to EXACTLY the ADVERSE IMPACT that the County is PURPOSEFULLY MITIGATING AGAINST in other ways. It just doesn't make sense. The standards should be tightened to be more CONSISTENT with other infill or other standards and the burden should be on the DEVELOPER to prove that he or she meets them.

Third, we have found that the PROCESS related to 4033 St. John's Lane has been surprising at best and gravely disappointing and downright ridiculous at worst. It is not the process we expected from a County that holds itself up as a model for the nation. This law is needed to analyze the process and make things better for the citizens. A few examples....

First, as noted above, the fact that we are spending money - lots and lots of our hard-earned money - to argue positions that should be already clear due to other County standards is frustrating. NO conditional uses should CHANGE DENSITY. And no application should get past "go" if the development area is CLOSED.

Moreover, we have spent nearly a year dealing with DEFICIENT TECHNICAL STAFF REPORTS, the first of which accepted a DEFICIENT site plan. We are in round 2 and now have a revised report. The revised report is barely better. It continues to base its conclusions on untested assumptions and not fact. For example, one of the tests is adequate site distance to exit the property, based on speed limit and site distance... the report DOESN'T EVEN USE THE CORRECT SPEED LIMIT. Another example...the staff concludes the property will provide affordable housing. There is NOTHING in the application that supports that...no

statement as such, no rent levels, no intended income levels of tenants. The law is needed to study WHAT THE HECK IS GOING ON WITH THESE STAFF REPORTS - a point even made very clear by the hearing examiner. Why should the burden rest on the PROTESTANTS to prove the reports are wrong, information is missing, etc.?

In addition, the burden is made unduly heavy because we are also UNFAIRLY HANDICAPPED in what we can present. For example, in this particular situation, the applicant is supporting his application with particular details about landscaping. A bush here and a tree there to screen an objectionable 4-car parking pad in the front yard. But when we try to mention the dead tree in the front yard and 2 foot grass, we're told we can't introduce that type of evidence because there is no County code for exterior maintenance. So we can see the DISASTER COMING yet we are SHUT OUT from declaring the fair warning.

Finally, the law is needed because the PROCESS IN THE INTERIM is not working. With 4033 St. John's Lane, there are CURRENT issues of non-compliance with zoning. But those issues are STALLED because the matter is "in process". Again, where does that leave the neighboring residents who, the longer the process is delayed, the longer they are living next door to a non-compliant house. Doesn't that REWARD the non-compliant owner developer and penalize the law-abiding citizens next door?

We applaud Councilman Jon Weinstein for introducing this legislation. Whether it directly affects 4033 St. John's Lane or not, that matter is a CASE STUDY for how things don't work together and what can and does goes wrong in this process. The whole thing needs a GOOD SCRUB and this legislation will allow that to happen.

Thank you very much.

Statement of Peter C. Green Before Howard County Council Regarding Council Bill 56-2015: Two-family Dwelling Conditional Use Interim Development Act

My name is Peter C. Green and I am speaking on behalf of myself. I have lived at 9117 Northfield Road with my wife Ann for 39 years.

The law and the zoning regulations exist for the benefit of everyone, not just those who are trying to maximize the return on their properties.

I support your passage of Bill 56-2015 (hereinafter the bill). What we have here in this conditional use is clear potential incompatibility representing a threat to health, safety and welfare of vicinal property owners, with nothing in the county regulations to address it. There are few specific conditions or requirements on two-family dwellings within R-20 districts; most of the applicable standards are to be found instead in the general standards required for approval of any conditional use. The case law requires that the conditional use, if granted at the location sought, must not have a greater adverse effect than if granted elsewhere in the zone. Hence, conditional uses, by their very existence and granting, are presumed to have adverse effects.

There is currently nothing in the county law or regulations to require or set a standard for exterior maintenance of two-family dwellings. So, while the owner-occupied homes within Dunloggin, where I live are and have been largely attractively maintained over the 50-plus years of the community's existence, there is nothing to require or set a standard for exterior maintenance of two-family dwellings if such were to be approved in our community. So we could have lawns not cut, shutters falling off, dead trees, falling-down fences, falling-off gutters, overflowing garbage cans out front, broken post lights, and other attributes of a neighborhood eyesore. Incidentally, we have one such in our neighborhood right now, for which a conditional use permit is being sought.

Owners who occupy their homes have every incentive to maintain them, out of pride of ownership, to maintain their property values, and to keep up the appearance of the neighborhood. Absentee owners of commercial two-family dwellings have no incentive whatever to maintain the exterior appearance of their commercial properties. And there are no county standards or regulations for such nor is there any authority or means of enforcement if there were such standards or regulations.

This extends to promises made in plans and applications for two family dwelling conditional uses which bear on screening and landscaping. Every homeowner who has ever planted a tree or shrub knows that these must be watered and maintained until root systems are established and the plantings are growing on their own. It is not possible to plant them and walk away. And yet, when a plan for a two-family dwelling includes plantings, there is nothing to compel their maintenance.

If you, the council, presume that it is OK to have commercial, non-owner-occupied two-family dwellings in the midst of owner-occupied homes (a very dubious proposition, in my view), at least create some standards and means of enforcement for maintenance of outside appearance of building and property. Otherwise, what happens is the potential creation of adverse impact greater at the two- family dwelling location than generally within the owner-occupied zone.

This is a situation and shortcoming that clearly needs to be fixed; hence the need for passage of this bill.

December 21, 2015

Honorable Council Members,

My name is Lorman Lykes and I have been a resident of Howard County since 2008. I purchased the house at 4033 St. Johns Lane where I lived with the intention of my elderly mother moving in eventually when she was ready for me to care for her.

This house was perfect because it had living quarters upstairs for my sons and I, and separate living quarters for my mother downstairs. Each living quarters had a separate entrance and utilities.

When I purchased the house it was rented out to two separate families. After the renters moved out, I moved in upstairs and rented the downstairs to a family friend. Their married son lived in the basement, which I had fixed up.

In 2011, I got married and decided to move in my wife's house. This was at the time that my daughter was moving home from college. I moved out and my daughter moved into my upstairs living quarters.

In 2013, she moved into her own house so I rented the upstairs out. At around that time, a friend of mine needed temporary housing so I let him move in the basement since the son of the downstairs family had moved out.

This same year I received a complaint from DPZ that I had illegal tenants in my house. I quickly remedied the situation. I was advised by DPZ to seek a conditional use petition if I wanted to have two renters.

This is a brief summary of the activity that led up to me seeking a conditional use petition. I am here today in objection to the proposed "Temporary Two-Family Dwelling condition use interim development Act" before this council.

I filed my conditional use petition application on September 17, 2014. It has been a long drawn out process which I started 15 months ago. I have had to retain an attorney and we have attended 3 hearings to date and listened to hours of testimonies. That is why I believe it is unfair to change the requirements for a conditional use petition for this application when I have

expended much time and money pursuing approval under the current regulations.

I love Howard County and sought it out for its quality schools and way of life. I ask the council not to approve this bill because it would make an unjust precedent for current and future residents on the high standard of law and jurisprudence In the County.

Thank you for your time and consideration.

TESTIMONY
LEGISLATIVE HEARING
COUNTY COUNCIL, HOWARD COUNTY
MONDAY, DECEMBER 21, 2015
RE: BILL #56-2015

Good evening members of the County Council, ladies and gentlemen. My name is Lorna Rudnikas. I live at 4029 St. Johns Lane, a property we purchased in 1978.

I am pleased to have the opportunity to briefly share with you that I am strongly in favor of the Bill # 56-2015 submitted by Councilman Jon Weinstein establishing the temporary Two-family Dwelling Conditional Use Interim Development Act. This conditional use issue is striking very close to home for our family (right next door 4033 St. Johns Lane Conditional Uses Case #BA 14-021C) as a matter of fact. I will hope that the folks at Zoning/Code Enforcement may find it pertinent to give pause to # BA 14-021C to give time for an in depth review as proposed in Bill #56-2015.

Indeed, it good to know that this very important Bill is being placed before the County Council. This dire Conditional Use situation screams for the Council's in depth attention as a whole, with this excellent Bill presenting an opportunity for sensible review and correction... in time to secure the R20, single family residence per half acre a rule very specific to choosing to invest in a homesite in the area. Strengthening the well being of investments by residents of St. Johns Lane, avoiding the vulnerability for lowering market values, and instead, promoting a secure tax revenue strongly supporting our county government, law enforcement, fire departments, schools, businesses, health care, etc....with a solid community base is very valid..... but also strongly addressingin ac any destructive processes nestled therein is valid as well..

A Shock and Awe technique (technically known as rapid dominance) ...to change out of the blue, an R20 one family residential per half acre zone, suddenly promoting 2 family dwellings per ½ acre...in actuality springs to life in the form of a BUSINESS venture next door to your home. It does not take a rocket scientist nor a CEO in the world of real estate to envision the slow, but steady "death by a thousand stings"...and steady snow ball effect through the community. Folks through the years innocently wonder...what the heck happened to that beautiful Dunloggin??? What the heck happened to our investment in the community? Where did it begin to slide downward into oblivion????...What powers that be allowed it to happen??? How can this be??? Wringing of hands and shaking of heads will not bring it back....ever! Bill #56-2015 submitted by Councilman Weinstein however can be the saving grace for survival. Thank you all so much for the opportunity to stress my concerns and to assure everyone that I concur completely with the testimony of Ms. Boyter, Ms. Sedlacko and Mr. Green.