

Eliminating Invasive Zoning: Family Definition Petition

Definition of Family (Schmidt et al.)

<http://bit.ly/crs-fam-slides>

Definition of Family In Zoning

Cambridge's zoning language defines a "family" as:

Family. One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit; provided that a group of four or more persons who are not within the second degree of kinship shall not be deemed to constitute a family.

Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, nonprofit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family in the first paragraph of this definition.

What does this mean?

- Everyone in a household has to be a single nonprofit houskeeping unit.
- But: Dwellings can not be occupied by more than 3 unrelated individuals: a pair of student couples can not share a 2-bedroom apartment.
- Puts limits on more distant relatives living together (e.g. cousins are not “within the second degree of kinship”)
- Language is unclear about how households which are partially within kinship and partially outside should be treated (can a fiancé move in with a family of 3?)
- The language explicitly excludes handicapped persons.

Why?

Historically, these guidelines were considered necessary to ‘address family needs’:

"A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs," according to the U.S. Supreme Court in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S Ct 1536, 39 L Ed 2d 797 (1974)

While an ideal perhaps well-suited to **some** communities, this clearly describes very little of what family life looks like in Cambridge, where the vast majority of families live in multi-family dwellings; fewer than 9% of homes are “single family”.



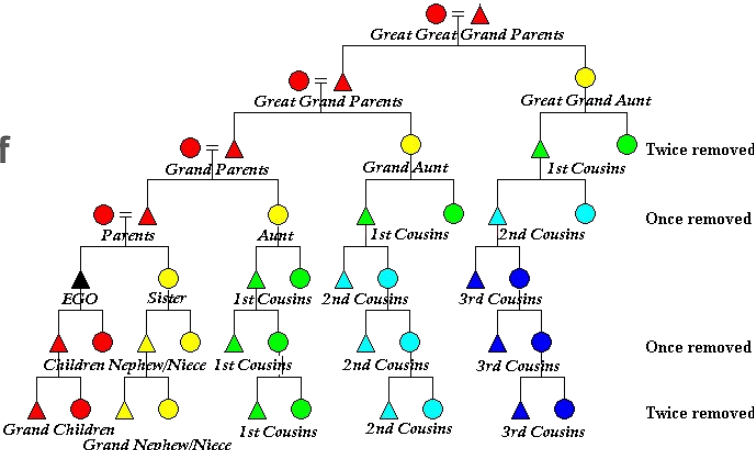
Legal Considerations

- These types of restrictions have taken many forms
- In many different cases, they have been struck down by courts (in the US Supreme Court as well as State Courts, and others)
- Legal concerns include:
 - Providing appropriate due process under the Constitution
 - Matching the definition of the language to the primary intent of zoning
 - Privacy concerns regarding requiring residents to identify their familial relationships
 - Any conflicts with state code

Degrees of Kinship

“Degree of Kinship” as a way to restrict families has been explicitly regarded as likely a violation of Due Process by the Supreme Court, and may mean Cambridge’s current “second degree of kinship” text is unconstitutional:

"The tradition of uncles, aunts, cousins, and especially grand-parents sharing a household along with parents and children has roots equally venerable and **equally deserving of constitutional recognition.**" 431 U.S. at 504. Due process, then, would seem to require that any such definition eliminate distinctions among familial degrees. (Moore v. City of East Cleveland, 431 U.S. 494 (1977))



Primary Considerations of Zoning

Many state court cases have attempted to narrow the role that definitions of family may take, e.g. McMinn v. Town of Oyster Bay in New York Supreme Court:

"Manifestly, restricting occupancy of single-family housing based generally on the biological or legal relationships between its inhabitants bears no reasonable relationship to the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance..."

- *66 N.Y.2d 544, 498 N.Y.S.2d 128 (1985)*

Privacy Concerns

In California, similar language to Cambridge's law was found to violate an expectation of privacy which is enshrined in California's State Constitution:

Defendants shared a ten-bedroom house owned by one of the defendants. The defendant's property was situated in a zoning district permitting only single-family use. The governing ordinance defined "family" as either persons related by blood, marriage or legal adoption, or a group of up to five persons living together as a single housekeeping unit. The California Supreme Court found that the ordinance **infringed upon the right of privacy** guaranteed by the state constitution. Adopting a "strict scrutiny" standard of review,' the Court concluded that the city failed to demonstrate a **compelling public interest** to justify the restriction.

Fair Housing Act: Handicapped Persons

- Cambridge's language calls out a distinction for handicapped persons
- This is to eliminate concerns of discrimination under a protected class under the Fair Housing Act
- When your law needs an explicit disclaimer in order to not discriminate against handicapped persons, this may be a sign it is having unintended side effects against non-handicapped persons

What should our goal be?

- Zoning should be used to “promote the health, safety, convenience, or general welfare of the part of the city affected” (Nectow vs. City of Cambridge (1928))
- Whether individuals living in a household are related by kinship does not, on its own, affect the general welfare
 - Any enforcement of family relationships is an unnecessary violation of privacy
- Protect households from risky housing situations
- Cambridge’s goal for families isn’t “A quiet place where yards are wide, people few...”
- **Our goal should be to provide safe, legal housing options for traditional and non-traditional households which meet their needs**

Some Types of Households

- Individuals living alone
- Traditional family: married or single parents with children
- Foster families: parents (with or without biological children) caring for foster children
- Long-term cohabitation: 2 or more unmarried individuals in a relationship, possibly including children
- Transitional living situations, such as group living supporting individuals recovering from alcohol or drug abuse.
- Communal living: unrelated group of individuals living as a single shared household, performing e.g. shared household duties like cooking and cleaning

Household/Home Size

- Best to have number of bedrooms scale to household size
 - This doesn't mean every household member needs a bedroom, but maximizing options to provide appropriate sized housing is important!
- No strict definition of number of individuals will match a given household
 - Every family unit from a single individual up to extended families of a dozen may all be appropriate in some homes in Cambridge
- Defining household size strictly would conflict with the general welfare
 - The homes built in Cambridge feature households of varying sizes that likely can not be filled by traditional family units alone

Example: Larger Apartments

- Cambridge is host to a large number of large apartments on the rental market: 5% of rental listings on Zillow have 5 or more bedrooms; 12% have 4 or more.
- Average family size in Cambridge is 2.8 individuals -- that is, an average family has only 1 child
 - Average household size is even smaller -- only 2.1 individuals/household
- With limited numbers of families with children, homes like this largely result in “over-housing” if used solely by families with children
- **Opening up larger housing to non-traditional living arrangements can better match large apartments to meet housing demands**

Example: Larger Homes

- More than 100 of Cambridge's Single Family Homes have greater than 6 bedrooms
- These homes are poorly suited to most Cambridge families
- Median property value for these homes is \$3.3M (2018 assessment data)
 - A two-income family would need two adults making \$320k/year *each* to make this affordable
- These homes are not a good fit to any but the wealthiest of traditional families but...
- These homes are a good fit for non-traditional households

Legal Protections

- Non-traditional households with no options not legally protected
 - Some landlords limit leases to 3 unrelated individuals
- Without being on the lease, tenants have limited legal recourse
- Risks of threatening inspection/reporting
- Arbitrary enforcement used as a threat against tenants

Responding to Concerns Around General Welfare

- Concern of turning apartments into lodging houses
 - Lodging houses are a positive for affordable housing in the community, but may deserve different treatment than single households
- Habitability Standards
- Overall housing supply

Lodging Houses

- Current definition includes “living as a single nonprofit housekeeping unit”
- This text would prevent lodging house situations -- situations where a set of renters all individually rent from a common landlord/have no property interest
 - These situations would not typically operate as a single, non-profit housekeeping unit

Habitability Standards

- Statewide building codes set habitation standards (105 CMR 410.400)
- Set minimum requirements on how much space is needed per person in shared dwellings
 - “Every dwelling unit shall contain at least 150 square feet of floor space for its first occupant, and at least 100 square feet of floor space for each additional occupant, the floor space to be calculated on the basis of total habitable room area.”
- These minimum standards are similar to existing micro-units
 - Studios in 88 Ames go down to 347 sqft
 - More aggressive microunit proposals nationwide go down to 200-250 sqft per unit



Housing Supply

- Overhoused students: unable to fill rooms without legal risk!
- Shared housing is most effective
- More appropriate use of larger homes may produce better match of individuals to homes
- Cambridge is drastically underproducing housing to meet the needs of a growing population

Definition of Family In Zoning

Cambridge's zoning language should define a "family" as:

Family. One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit. ; ~~provided that a group of four or more persons who are not within the second degree of kinship shall not be deemed to constitute a family.~~

~~Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, nonprofit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family in the first paragraph of this definition.~~

Comparison to Other Housing Types

- Cambridge Zoning code defines 3 types of housing:
 - Family housing
 - Group quarters (defined but not used): “A living arrangement for groups containing four or more persons not related to the person in charge.”
 - This orphaned definition seems largely irrelevant; while not directly addressed, removing this definition from the zoning code entirely is not out of the question.
 - Lodging house: “A dwelling where lodgings are let to four or more persons not within the second degree of kinship to the person conducting it, including fraternity housing but not including dormitories or charitable, educational or philanthropic institutions.”
 - Lodging houses differ from “family” households in that they are not a single non-profit entity.
 - The definition of lodging house in this way has been invalidated in court cases in MA in the past. (City of Worcester v. College Hill Properties, LLC, et al., 2013)

Responding to CDD Concerns

- While CDD expressed concerns from ISD of enforcement, existing enforcement seems almost non-existent, and can only be unfairly applied today
- CDD recommends legal review -- but existing standards for both Lodging House and Family conflict with State and US Supreme Court cases on the language: clearly legal review of this language has not been a high priority
 - While City Staff review of the language is welcome, it seems unlikely to identify that changing this language establishes significant new risk.
- Unclear distinctions between housing types already exist: this language does little to change that standard (other than overlapping with unused “group quarters” definition).