

# The latest on defining a “family”

The Bethlehem Gadfly Affordable Housing, Neighborhoods, Serious Issues, Southside July 29, 2019

*(Latest posts on such topics as Neighborhoods, Southside, Affordable Housing)*

*Big thanks to Tony Hanna!*

*Copied entire article instead of link because you might need a subscription.*

*Argues for widening definition of “family” but note the bolded section about rejecting students as such. Interesting.*

*Gadfly does not see 5 college students as committed to each other in the way a family should be, nor does he see them as a “functional family.”*

Sara Bronin, “The Golden Girls Would Violate Zoning Laws.” New York Times, July 28, 2019.

The housing plans released by the Democratic presidential candidates Cory Booker, Julián Castro and Elizabeth Warren rightly recognize that only bold federal intervention can fix a problem as entrenched as housing segregation. But by offering towns financial incentives to change their zoning codes — the most powerful force dictating where and how people live — and little else, the plans miss the mark.

In many communities, zoning codes prohibit apartments, require people to live on large lots or set minimum square footages for dwellings. These

rules have the effect of excluding low-income people, regardless of the intent of the people who wrote the laws.

But wealthy towns with the most exclusive rules do not need the money. Mr. Castro has offered a second idea, suggesting a commission to establish national guidelines for zoning. Guidelines, though, are just advisory. They will not actually force a change.

**Instead, their plans should target one of the most significant, insidious and legally vulnerable barriers to flexible and inclusive zoning codes: the definition of “family.”**

**Almost every zoning code across the country defines “family” in a traditional way: people who are legally related by blood, marriage or adoption. Sometimes, the definition allows a small number of unrelated people (say, two or three), who are functioning as a “housekeeping unit” to be considered a family.**

Such definitions exclude people just as committed to each other as members of “traditional” families, but who don’t satisfy legal conditions. These “families of choice” consist of unrelated adults who decide to share finances, child-rearing responsibilities, home repairs, chores and meals. They include groups of single moms, households that have merged and older adults forging new lives together after the deaths of their spouses.

The definition of family matters because zoning codes typically have a “one family per housing unit” policy. These policies are most strictly enforced in the neighborhoods with single-unit detached homes — 64 percent of neighborhoods, according to the 2013 American Housing Survey. It’s in these communities where housing affordability tends to be low, and racial segregation high.

Some cities, like Minneapolis, have started making plans to reduce or eliminate the amount of land devoted to single-unit zoning. But other cities, like Plano, Tex. — where more than 4,000 residents have mobilized to overturn similar plans — have taken steps backward. The amount of land devoted to single-unit, detached dwellings is not likely to change greatly in the places that need it the most. Other aspects of zoning, like lot size controls and minimum square footages, would also be hard to override.

But definitions of family appear to be more ripe for change. Four state supreme courts — California, Michigan, New Jersey and New York — have already struck down zoning ordinances that failed to allow “functional families.” They found that such ordinances violate rights to due process, privacy or both. They also found that communities can still achieve a “residential character” without delving into the specifics of the relationships among residents. And they said that traditional family definitions flunk the “rational basis test” courts use to determine whether a law is constitutional.

These decisions make sense. The 1950s, when nearly 70 percent of children were raised in married-couple, male-breadwinner households, are long gone. (Today, only 22 percent of children have the same arrangement.) Similarly, nonmarital cohabitation and high housing prices have resulted in an unprecedented fluidity of family structure and living arrangements.

Moreover, there is no evidence that a traditional family and a true functional family differ in land-use effects. The fact that zoning codes allow an unlimited number of related people to live together (while limiting unrelated people) is not rational, either.

Justice Thurgood Marshall raised this point in his dissent in a 1974 case, *Village of Belle Terre v. Boraas*, when he said that the definition of family

being upheld by the court would allow a family of 12 in a small bungalow, but that “three elderly and retired persons could not occupy the large manor house next door.” In other words, the communal living arrangement in “The Golden Girls” would be a zoning violation. (Dorothy and Sophia were related, but Blanche and Rose were not.)

**Four state courts are not 50 state courts, and federal courts have not definitively ruled on the matter. The Belle Terre case upheld a definition of family that excluded a group of six college students from living together, but that group of college students was not a functional family.** A 1977 Supreme Court case, *Moore v. City of East Cleveland*, struck down a zoning code that prohibited a grandmother and her grandsons from living together in their home. But that decision applied only to “related” people in traditional relationships.

Presidential candidates should loosen these restrictive definitions. They could propose thoughtful federal statutes that articulate how local governments can regulate the family. There’s precedent for that: The Civil Rights Act and the Fair Housing Act overrode local controls to improve access to wrongfully closed-off places. Candidates could also commit to appoint judges who understand this issue and take a broad view of family structure.

Championing this issue would promote progressive ideals. And it could unite both sides of the political aisle. Conservatives may come to realize that limited definitions of family erode property rights and freedom of association in the home.

As a zoning official, I’m usually the last person to advocate for federal intrusion into local decision-making. But the problems of housing inequality and segregation are too big for localities to tackle piecemeal.

Every presidential candidate should incorporate into their housing plans a definition of family that better reflects how we choose to live today.