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What Does 'Family' Mean in Connecticut Zoning?

Social changes lead to wide variety of living arrangements

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"Family isn't about whose blood you have. It's about who you care about."
— "South Park" television show episode, 1998.

That's fine for a TV show, but try telling it to a zoning enforcement officer.

The definition of "family" has been an issue in zoning law since before 1974 when the U.S. Supreme Court said, in *Belle Terre v. Boraas*, 416 U.S. 1 (1974), that economic and social legislation will be upheld if it is reasonable, not arbitrary and bears a rational relationship to a permissible state objective. *Belle Terre*'s legislation was the definition of family as one or more persons related by blood, marriage or adoption or not more than two unrelated persons living together as one housekeeping unit. Its objective was to restrict the use of single-family homes to use by one "family." Six college students from the State University of New York at Stony Brook did not fit the definition — and *Belle Terre*'s definition and right to define were upheld by the Supreme Court.

But *Belle Terre* did not end the debate. Though most towns have definitions of "family" in their regulations, people enter into an almost infinite number of living arrangements which challenge the definitions and the policy behind them. With no presumption that this article can give definitive answers to what "family" means in Connecticut zoning, what follows is a quick survey of how it has been interpreted and what, if any, conclusions can be reached.

Six Hockey Players

Conn. Gen. Stat. §8-2, originally enacted in 1949, permits Connecticut municipalities to regulate the "density of population and location and use of buildings." The authority to define "family" comes from that statute; without a definition of "family," the single-family residential zones in each town would have little meaning.

Even before the *Belle Terre* decision, the concept of the "single housekeeping unit" was important in deciding what was allowed in a single-family house. An interesting contrast is found in Connecticut between 16 members of one extended family spending summers together in a large house in New London and six unrelated hockey players in a large house in Milford. In *Neptune Park Association v. Steinberg*, 138 Conn. 357 (1951), the extended Steinberg family, consisting of four married sisters and their eight children, qualified as a "family" because they operated as a "single housekeeping unit," evidence of which largely consisted of the fact that there was one kitchen and the group was coordinated in performing household chores.

Not so with the six hockey players in Milford. In *Dimenstein v. Zoning Board of Appeals of Milford*, 1991 WL 172850 (Conn. Super., unpublished), the house had two kitchens, which by itself would probably have supported a decision adverse to the residents. But the court pointed out that the mere presence of two kitchens did not defeat the single- family concept (a position not generally accepted by most towns, which see two kitchens as clear evidence of two families). More relevant were the facts that each resident had a separate rental agreement and there were two separate entrances, three doorbells and two mailboxes. In the court's words, there was a "lack of cohesion" among the residents.


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The property owner's appeal actually succeeded, but only because part of the zoning enforcement officer's order was invalid. Eventually the New Haven Nighthawk hockey players lost this one, as they apparently also lost most of their games in the 1990-91 season — a fact the court took pains to include.

Separate Leases

Some of the difficulties inherent in this area of regulations are apparent in *Dinan v. ZBA of Stratford*, 220 Conn. 61 (1991), where the issue was a rooming house in a legally nonconforming residence in a single-family zone. The nonconformity is that the structure was actually a two-family house.

If occupied by two "families" there probably would have been no problem, but each floor was occupied by five unrelated persons, each of whom had a separate lease with the owners, who lived elsewhere. Stratford's definition of "family" was slightly more restrictive than many others. Instead of defining family in two ways – as either related persons *or* one house-

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keeping unit, Stratford combined the two concepts, so a family in Stratford was to be persons related by blood, marriage or adoption *and* living as a single unit.

The Connecticut Supreme Court found that definition to be invalid. Though the appeal was dismissed on *Belle Terre* grounds, the decision suggests that Stratford's restrictive definition could pose due process and equal protection problems. Decisions in this area could easily veer into extra-legal considerations, a fact apparent in the court's concern that the people in the Dinan house were unlikely to form friendly relationships with neighbors who probably will not call on them to borrow a cup of sugar. As a legal standard, it leaves a lot to be desired.

The definition of "family" as either related by blood, marriage or adoption *or* as a limited number of persons operating as one housekeeping unit appears to be fair enough and sufficiently elastic to withstand scrutiny. At some point it seems likely that there will be a challenge to the "one housekeeping unit" based on the number of people in the unit; a limited challenge along those lines is found in *Macare v. North Haven Planning & Zoning Commission*, 2003 WL 1477824 (Conn. Super., unpublished). There, North Haven proposed a change to its regulations, reducing the number of unrelated persons who may constitute a family from seven to three. The court found that the reasons given for the change, which included the prevention of "dormitory type" situations and traffic problems, were valid and the change was consistent with the plan of development, so the appeal was dismissed and the change upheld. It is not clear from the decision whether all possible substantive issues were raised in this appeal.

A more comprehensive appeal based on similar zoning changes seems possible, as does a different result. It is conceivable that a large group could operate as one unit but stretch the concept too far to be acceptable. If such a case arises, the challenge will probably have a better chance of success if the number of people causes some health or safety risk, such as too much traffic, inadequate parking facilities or strain to the water or sewer systems.

An entirely different challenge to the definition of "family" is posed by group homes for various sensitive populations. After struggling with this issue in individual municipalities, the legislature solved most of the problems via statute. Conn. Gen. Stat. §§8-3e, 3f and 3g permit certain group homes to be located in single family zones under certain conditions and with limits on the total populations of those homes per town as set by Conn. Gen. Stat. §19a-507b(a).

The concept of the American family has changed in many ways from the 1950s model. Many of the newer forms of "family" can fit seamlessly into traditional single-family zones. For example, many towns have adjusted to the realities of modern society by allowing "in-law" or accessory apartments in single-family zones where such uses were formerly prohibited.

Perhaps the only conclusions about "family" that can be (more or less) reliably drawn now are that definitions of "family" that are reasonable and supportive of permissible zoning goals will be upheld and if a reasonable number of unrelated persons live together, do not alter the single-family appearance of their residence, and appear to operate as a cohesive unit, they will never come to the attention of the zoning enforcement officer and there will be no problems. ■