CITY OF NORMAN, OKLAHOMA

CITY COUNCIL COMMUNITY PLANNING AND TRANSPORTATION COMMITTEE AGENDA

Municipal Building Conference Room
201 West Gray

Monday, December 16, 2013

5:30 P.M.

1. **CART RIDERSHIP REPORT INCLUDING SAFERIDE AND EXTENDED SERVICE FOR THE MONTHS OF SEPTEMBER, OCTOBER, AND NOVEMBER, 2013.**

2. **DISCUSSION REGARDING A REQUEST TO NAME THE NORMAN POLICE FIRING RANGE IN HONOR OF THE LATE NORMAN POLICE LIEUTENANT ROYCE WEDDLE.**

3. **DISCUSSION REGARDING ORDINANCE REQUIREMENTS ASSOCIATED TO THREE UNRELATED PERSONS RESIDING IN A SINGLE FAMILY RESIDENCE.**

4. **MISCELLANEOUS DISCUSSION.**

ITEM #1

FARES INCREASE JAN. 6

FARE TYPE	CURRENT	PROPOSED	ACTUAL
Local Fixed-Route Bus Fare			
Regular: Norman (Single Trip)	$0.50	$0.75	$0.75
Unlimited Monthly Norman	$20.00	$25.00	$25.00
Sooner Express Route Bus Fare			
Sooner Express Ride (Single Trip)	$2.25	$3.00	$3.00
Unlimited 30-day (Sooner Express)	$50.00	$50.00	$50.00
Special Patron (Reduced Fare)			
Available for youths 7-17, seniors 60 and older, persons with disabilities, and Medicare cardholders.			
Regular: Norman (Single Trip)	$0.25	$0.35	$0.35
Unlimited Monthly Norman	$10.00	$12.50	$12.50
Sooner Express Ride (Single Trip)	$1.10	$1.50	$1.50
Unlimited 30-day (Sooner Express)	$25.00	$25.00	$25.00
CARTaccess			
Zone 1	$1.00	$1.50	$1.50
Zone 2	$2.50	$3.75	$3.50
One-Way Trip (Same-day Urgent)	$2.50	$3.75	$3.50

Other Area Transit Agencies

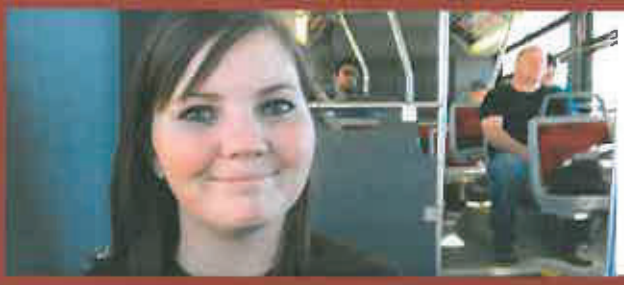
	FIXED ROUTE	HALF FARE	PARATRANSIT
Tulsa Transit	$1.50	$0.75	$3.00
METRO Transit	$1.50	$0.75	$3.00 (Zone 1) $6.00 (Zone 2)
Lawton (LATS)	$1.25	$0.60	$2.50
Central Ark. (CAT)	$1.35	$0.65	$2.70
Kiwanis Kruiser	NA	NA	$1.25
Taxi Service	NA	NA	$10.00

CART. We connect you.

WARD 2

"I've been riding the bus for almost six years now. I ride because I cannot drive or afford a car. I really like the heating and air conditioning that is offered on the buses. I also like the bus drivers. It feels good to get on the bus and know the driver. The bus drivers are my friends and I have even quit smoking because of the encouragement from the bus drivers. They have really changed my life."

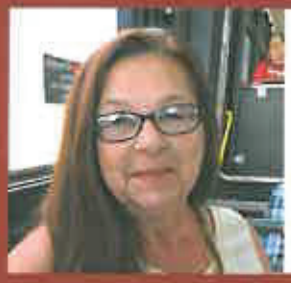
— Violena Rice, Alameda/East Norman passenger



"I've been riding CART for two months. I don't have a car so the bus system is very helpful. One of the things I like most about CART is that there are so many options. The bus will take you everywhere you want to go. Overall my bus experience has been very good."

— Skyler Stanley, Lindsey East passenger

WARD 1



"I've been riding about five years, and I don't know what I would do without it. I can get anywhere I need to go, pretty much. I have a hip problem, so it's easier to use the bus. The drivers are always comforting and nice. I wouldn't be able to survive without the bus."

— Rena Wilson, Main Street passenger

WARD 2

WARD 1

"I've been riding about a month. It's been a great experience so far. It's very convenient. I'm always able to get where I'm going on time. The drivers always seem very courteous. I use the bus to get to campus. They're reliable.

— Rachel Wheeler, Lindsey East passenger

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(405) 325-2278

"I have been riding the bus for two years. I ride the bus because I don't have a car, but I am saving for one. I know almost all of the drivers. All of the drivers are very friendly and make the bus ride interesting. They also treat you like you are their friend, not just a passenger. I think they should add more shelters ... to help people, especially when it is cold."

— James Parson, Lindsey East passenger

WARD 5

WARD 6

"I've been riding the bus for three years. I like the bus because I have time to study before class. The bus is also like a contingency plan if I have a problem with my car. I enjoy meeting people on the bus and having conversations."

— Isaac Lauer, Lindsey East passenger

ITEM #2

Brenda Hall

From: Chad Williams
Sent: Monday, November 25, 2013 6:58 PM
To: Cindy Rosenthal; Greg Jungman
Cc: Brenda Hall; Steve Lewis; Keith Humphrey
Subject: Request to name NPD range after Lieutenant Royce Oland Weddle

I would like to forward the following request to the Community Planning and Transportation Committee for consideration. This request is for the NPD range to be named after the late Lieutenant Royce Oland Weddle.

Lieutenant Weddle served on the NPD for 20 years and won 2 national titles in pistol shooting (1975 and 1977). He won the Oklahoma NRA police revolver championship 14 out of 20 years as well. To say he was a good shot with a rifle or pistol was an understatement, because he was literally unreal with a firearm. He was also a very loyal and good police officer with his 20 years of service, and highly respected among all the police officers. The most important characteristic about Royce was his character and heart. He would literally give the shirt off his back if someone needed it. Royce ran the police range for the police department for a good number of years as well as doing gunsmithing and ammunition loading work for them. He was a key cog in the Norman pistol team (if not the founder) and was the best at what he did. No one can be more deserving of this tribute than him.

I am doing in this format because per Brenda the following are the basic steps:

1) Request should be in writing to the Mayor's Office.

2) The request will be forwarded to the Council Planning and Transportation Committee for review and recommendation

3) Final approval by Council will be by resolution at a regular Council meeting

Also, I thought the following was very fitting as a "endorsement" for Lieutenant Weddle:

9-12-13 I am Captain (Ret.) Leonard Judy of NPD. I met Royce when I was a cadet in the 13th Police Training Academy and he was the Lieutenant in charge of training there, supervising Sgt. Tom Linn, who was the Academy boss.

I have always admired Royce, both for his unbelievable skills and abilities as a marksman and as a gunsmith, but as well for his warm smile and sense of humor. I regret that I had very little interaction with him after he retired, but will always remember him.
We pray that the Lord will comfort and console the family at this time as Royce takes his rightful place with him.

Thank you,

Chad Williams

Resolution

R-0809-60

A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, ADOPTING A CITIZENS RECOGNITION POLICY FOR THE CITY OF NORMAN.

§ 1. WHEREAS, City Council desires to provide a policy for formal recognition of individuals, groups, and organizations whose outstanding service and contributions have enriched the Norman community; and

§ 2. WHEREAS, the City Council Planning Committee in its meetings of December 17, 2007, January 14, 2008, March 10, 2008, April 7, 2008, and May 12, 2008, discussed and reviewed the Citizens Recognition Policy and recommends adoption of the policy; and

§ 3. WHEREAS, the Citizens Recognition Policy incorporates guidelines for Awards and Recognitions, Naming of Public Facilities, and Street Renaming Designations; and

§ 4. WHEREAS, the Citizen Honor Roll of Service is intended to honor an individual whose work benefits or has benefited the quality of life in Norman and the Human Rights Award recognizes a citizen for outstanding contributions to the struggle of human rights; and

§ 5. WHEREAS, the Honorary Street Names gives consideration of an important community event, organization, or well-known person meeting the criteria outlined in the Citizens Recognition Policy to automatically sunset in ten years and the Permanent Street Name Changes guidelines will be utilized by those persons wishing to propose a permanent change in a current street name; and

§ 6. WHEREAS, the Citizens Recognition Policy provides for an annual volunteer appreciation ceremony to recognize those citizens who volunteer to serve the Norman community.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

§ 7. That the Citizen Recognition Policy, attached hereto and made a part hereof, is hereby adopted to provide a policy for formal recognition of individuals, groups, and organizations whose outstanding service and contributions have enriched the Norman community.

PASSED AND ADOPTED this 28th day of October, 2008.

Mayor

ATTEST:

Brenda Hall
City Clerk

CITIZENS RECOGNITION POLICY

It is the desire of City Council to provide a policy for formal recognition of individuals, groups, and organizations whose outstanding service and contributions have enriched the Norman community. Norman's Citizen Recognition Policy will provide an avenue for showcasing the people, programs, and events that make Norman unique.

Annual Volunteer Appreciation Ceremony

At least once a year, a volunteer appreciation ceremony will be held to recognize those citizens who volunteer to serve countless hours on the City's Boards and Commissions and by doing so, enhance and improve the quality of life for the citizens of Norman.

AWARDS AND RECOGNITIONS

Citizen Honor Roll of Service

This recognition is intended to honor an individual whose work benefits or has benefited the quality of life in Norman by building on and making the efforts of government richer and more successful. Award recipients will be recognized for their specific deeds, actions or contributions to the Norman community through Community Involvement, Community Leadership, and/or Noteworthy Citizen Actions.

1. **COMMUNITY INVOLVEMENT** – In recognition of volunteer service on City boards, commissions, and/or ad hoc committees or activities which promote the welfare of the citizens of Norman and a sustained commitment that has an enduring impact on the community.
2. **COMMUNITY LEADERSHIP** – In recognition of those individuals who have assumed a positive leadership role in the community and whose leadership activities have resulted in the advancement of the goals of the community, the enhancement of the community's quality of life, economic vitality and/or livability.
3. **NOTEWORTHY CITIZEN ACTIONS** – In recognition of actions by a citizen which are above and beyond the normal responsibilities of citizens and that result in a positive event or outcome of benefit to the community. Such actions include acts of heroism, significant donations of financial resources to fund community programs or projects and other humanitarian acts.

Each recipient will be recognized and presented a certificate and plaque at a City Council meeting as well as an engraved nameplate for each Citizen Honor Roll of Service recipient to be displayed on a plaque in City Hall.

Human Rights Award

The Norman Human Rights Commission seeks to promote and encourage fair treatment and mutual understanding among all citizens and to combat all prejudice, bigotry, and discrimination that prevent individuals from reaching their full potential as human beings.

The Norman Human Rights Commission annually recognizes a citizen for outstanding contributions to the struggle of human rights. Each recipient will be recognized and presented a resolution and plaque at a City Council meeting as well as an engraved nameplate for each Human Rights Award recipient to be displayed on a plaque in City Hall.

NAMING OF PUBLIC FACILITIES

Public facilities are dedicated to the service and enjoyment of all citizens and shall carry designations befitting their intended function and use, origin, and/or location. Exceptional circumstances may prompt the City to consider naming a facility in honor of an individual's service and leadership to the community. Any such consideration will be pursuant to the following:

Policy

The City Council shall designate the names of city buildings, public places, facilities and natural features by resolution. The City Council shall consider a name or the consideration of a name change for a specific building, public place, facility, or natural feature at a regularly scheduled and advertised meeting.

Procedure

1. The Mayor, a City Councilmember, the City Manager, or any citizen or interested group may request the naming or renaming of a public building, place, facility, or natural feature. Requests should be made in writing to the Office of the Mayor.

2. Suggestions for names may be solicited from organizations, individuals, and the media. All suggestions, solicited or not, shall be acknowledged and recorded for consideration by the City Clerk's Office.

3. If a contest or competition is to be held, the City Clerk's Office shall provide guidelines and rules for the contest.

4. The City Clerk's Office will make every effort to contact and solicit comments from surrounding property owners, residents, and affected parties before taking action on any naming or renaming of a public building, place, facility, or natural feature.

5. The Mayor, in consultation with the City Council, will forward requests for naming or name changes to the City Council Planning Committee for review and recommendation at a regular scheduled public meeting. Any proposal regarding a City owned park or natural park feature, ballfield, sports complex, and/or recreation facility must be submitted to the Board of Parks Commissioners for consideration and recommendation prior to consideration by the City Council.

Principles and Priorities

The election of names for public facilities shall conform to the following principles and priorities:

1. As a general policy, names which commemorate the culture and history of Norman shall be given first priority.

2. The name of an individual shall be considered to honor many years of service and leadership to the general public interest or the interests of the City. Except in extraordinary circumstances, naming shall be done posthumously. Outstanding service shall be performed in one or more of the following categories:

(A) Involvement in a leadership role in civic organizations which are devoted to community improvement.

(B) An active leadership role in developing and implementing programs directed to the improvement of the visual aesthetic appearance of the community at the commercial, public, or residential level.

(C) An active leadership role in developing programs and/or facilities for collecting, promoting, and retaining the many aspects of the natural or historical heritage of the community.

(D) An active leadership role in developing programs and the facilities directed toward the improvement of community, social, and health needs as well as programs directed toward humanitarian purposes.

3. Preference may be given to names of long established local usage and names that lend dignity to the facility to be named.

4. Names selected shall be of enduring, honorable fame, not notoriety, and shall be commensurate with the significance of the facility.

5. Names with connotations which, by contemporary community standards, are derogatory or offensive shall not be considered.

6. Names must be tasteful and non-controversial. The name should be no more than three words preceding the designation (i.e., Park, Building, Room, Field, Complex, etc.).

Contribution Dedication Guidelines

1. Displays of public recognition in the name of an individual shall be considered for interior features or a portion or special section of a building, facility, or park area as a condition of a gift of cash or property or to honor meritorious service and leadership over a period of time.

2. The following are guidelines for which a dedication opportunity may be extended:

   (A) There shall be a $50,000 contribution or 10% of total cost, whichever is greater, in either cash or property.

   (B) Projects not budgeted and for which other funding is not designated may require a 100% contribution in order to be implemented and a naming opportunity considered.

   (C) For major capital projects, a specifically tailored plan of donor recognition and dedication may be submitted to the City Council Planning Committee for review and recommendation to City Council.

3. Displays of public recognition for such minor items as benches, trees, refuse cans, flagpoles, water fountains, or similar items are encouraged and are not subject to these guidelines or procedures. Current and appropriate signage guidelines will apply.

4. Nothing in this policy shall preclude the City from entering into a contractual agreement with other governmental, non-profit, and private entities to undertake a significant public-private venture that depends upon the participation of multiple funding sources and may include the

stipulation of naming rights in the financing agreement. (A local example of such an arrangement would be the Sam Noble Museum of Natural History.)

Change of Name

Once established, a name shall not be changed unless, after investigation by the City of Norman, the name is found to be inappropriate or otherwise scheduled to terminate.

Recommendations of Community Organizations or Citizen Groups

1. In the selection of names for City owned facilities the suggestions, comments, and recommendations of community organizations or citizen groups shall be duly considered; provided that such suggestions, comments and recommendations meet all the provisions of this policy.

2. Any community organization or citizen group may propose the naming of a City owned facility by submitting to the City Manager a request for such action and setting forth the proposed name, a description of the facility, and a statement evidencing that the proposed name meets all the provisions of this policy.

STREET RENAMING DESIGNATIONS

Honorary Street Names

Persons wishing to request an honorary street name designation shall meet the following criteria.

1. The designation shall not be on an arterial roadway.

2. There shall be only one honorary designation per right-of-way.

3. Names of living persons should be used only in exceptional circumstances.

4. Consideration should be given to an important community event, organization or well-known person defined as follows:
   - A person or entity who has made a sustained contribution above and beyond the call of duty and demonstrated leadership relating to governance, human relations and development, or neighborhood development.
   - A person who has made specific and sustained contributions to an organization located in or in proximity to the facility.
   - A person or entity who has demonstrated vigilance in changing the nature and characteristics of the specific neighborhood, community or city.
   - An important community event that commemorates local history, places, or culture.
   - An important community event that strengthens neighborhood identity.
   - Environmental contribution.

5. Consideration should be given to a local area or historic significance.

6. The important community event, organization or well-known person shall be directly related to the public facility or the public right-of-way, i.e., lived, worked, went to school, etc., at the location specified. Only one honorary designation shall be permitted for each person or community event. Preference shall be given to intersections and other limited locations.

7. An application form and process shall be established as promulgated by the City Manager. To advance the honorary street name designation proposal, the proponent must demonstrate input was received from 75% of the official addresses, with 75% in favor (total 56%). Additionally, a majority of all registered neighborhood and/or business organizations must provide written support for the honorary street name designation.

8. The City Clerk shall forward a resolution to establish the Honorary Street Name Designation to the City Council to hold a public hearing on the proposal. The designation will automatically sunset in ten (10) years which is the estimated life of the street name signs.

9. Each sign contemplated by any honorary naming request must have a financial sponsor whose name and contact information shall be identified in the request. An application fee in the amount of $200, plus the charge for the sign(s), which will cover the cost of design, fabrication, installation and maintenance over the ten-year expected life of the sign, shall be payable to the City of Norman and will be deposited in the City's General Fund.

10. Upon approval of the request and receipt of the fee for the sign(s) the Public Works Department will prepare and install the appropriate signage.

Permanent Street Name Changes

1. Persons wishing to propose a change in a current street name should contact the Public Works Department to determine if the proposed name is acceptable. Staff will verify the name is not a duplicate, vulgar, nor will cause confusion with another street name by Emergency Services and meets current U.S. Postal addressing criteria.

2. Property owners should present a petition to the Public Works Department requesting the name change. The petition must contain at least 75% of the property owners adjacent to the street being changed. At this time the property owners will pay the application fee of $200.00. The petition and payment are delivered to the Public Works Department.

3. Staff will verify property ownership records against the petition.

4. A resolution requesting the name change is submitted for City Council's consideration. If approved, the resolution must be filed in the Cleveland County Clerk's Office.

5. The petitioner is required to pay the full cost to manufacture the new street sign.

NPD Firing Range

December 11, 2013

Map Produced by the City of Norman
Geographic Information System.
(405) 366-5316
The City of Norman assumes no
responsibility for errors or omissions
in the information presented.

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ITEM #3

office memorandum

TO: Community Planning & Transportation Committee

FROM: Susan F. Connors, AICP SFC
Director, Planning & Community Development

DATE: December 12, 2013

RE: Information Regarding Three Unrelated Persons Residing in a Single Family Dwelling

Staff was asked to prepare a comparison among several cities regarding their regulations on three unrelated people living in a single-family home. It was suggested that we talk to staff in Tuscaloosa, Alabama and Oxford, Mississippi about how they conduct their process of compliance and compare that to Norman's regulations and processes. We spoke to Philip O'Leary, Deputy Director City of Planning & Development Services and Cecil Lancaster, Zoning Officer in Tuscaloosa, Alabama and to Jamie King, Police Officer in Oxford Mississippi.

BACKGROUND

The City of Norman zoning ordinances limit single family dwellings to residents that are family members, either by blood, marriage or adoption, or not more than three unrelated persons living together and sharing the common areas like the kitchen and living areas. This includes apartments, condominiums, and town homes. This restriction has been part of the zoning ordinance since 1954 and over the years, the City has explored various avenues of enforcement to protect City residents from the issues that arise when multiple unrelated persons live in single family homes. Complaints generally revolve around traffic, noise, and parking.

Since 1954, the City of Norman has limited, via ordinances, occupancy in single-family dwellings to families and no more than 3-unrelated persons. The City addresses occupancy to help ensure health and safety of residents, and to help protect the quality and character of neighborhoods. This ordinance helps to reduce traffic, noise, and parking problems that can occur when multiple unrelated people are dwelling in a single-family home.

The U.S. Supreme Court dealt with this very issue in a landmark zoning case, Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) (See attached). In that case, Belle Terre had an ordinance that restricted land use to one-family dwellings. The word "family" was defined as "[o]ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family". Id. at 2. The village alleged that a property owner violated the restriction on land

use to one-family dwellings by allowing six unrelated college students to live in his home at once.

The Court recognized that boarding houses, fraternity houses and the like present urban problems. Id. at 9. When more people occupy a given space, there are parking issues, traffic issues, and noise issues. Id. The Court found that 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". Id. The Court further opined that the restriction was a proper exercise of the municipality's police power, saying "the police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." Id. This case has been upheld by the courts time and again.

CITY OF NORMAN

The City of Norman Zoning Ordinance limits the number of people who can live in single family dwellings through its definition of "single-family". Norman Code, 22 §450(38). "Single family" is defined as:

> An individual, or two or more persons related by blood, marriage, or legal adoption living together as a single housekeeping unit in a dwelling unit, including foster children, domestic servants, and not more than two roomers; OR
> Three unrelated persons living together in a quasi-unit quarter; OR
> A group home as defined by 60 O.S. §862.

This definition in Chapter 22 is the only regulatory language in the City Code which limits the number of unrelated people who can reside in a single family home.

Based on the definitions provided in our zoning ordinances, it would be a violation to have more than three (3) unrelated persons living together in a single family dwelling in areas designated as R-1. In the past, the question has always been whether our ordinance is sufficient to *prove* violations of the restriction against multiple unrelated persons living together in single family housing.

In order for the City to prove residency in violation of the ordinance, we would have to rely on the cooperation of the homeowner, utility bills, and other indicators of multiple non-related residents in a single family dwelling home. Other cities have tried various approaches to aide in proving violations. These approaches range from requiring landlords to file statements that a certain property is rented to requiring annual inspections via the Planning Department to ensure the property is up to current code standards.

Complaints are handled in the following manner:

- Upon receipt of a complaint, staff will begin an investigation and a Code Compliance Officer will be assigned to process the complaint.

- The owner/property manager of the property in question will be contacted as part of the investigation. Identifiable tenants may be contacted as well.

- If the investigation produces probable cause to suspect the property is in violation of the zoning restriction, the Code Compliance Inspector will give notice to all tenants, the landlord, the property manager, and the owner setting forth a specific time frame in which voluntary compliance with the restriction may be achieved.

- Correcting the situation within the given time frame will result in no citation being issued.

- If a citation is issued, correcting the situation will not relieve any of the parties of the potential fine (up to $500 per day in violation).

- After being cited, the charged party will be required to set a court date with the Norman Municipal Court and appear in court to enter a plea and face possible sentencing of up to $500 per day for each day in which the property is in violation.

- If the charged party pleads Not Guilty to the violation, any person who filed the complaint or witnessed pertinent evidence may receive a subpoena to testify as a witness for the City at trial.

One of the things the City asks neighboring homeowners to do is to document the vehicles (make, model and tag number) that are seen at the house on a regular basis. While this information can be helpful, our Code Compliance officers are unable to access the Oklahoma Law Enforcement Telecommunications System (OLETS). This system allows law enforcement officers to have access to a variety of information, including who owns a vehicle according to the tag number. Code enforcement officers are not considered to be members of law enforcement and therefore, cannot have access to OLETS. Additionally, law enforcement officers cannot divulge the information found on OLETS to people who are not considered to be members of law enforcement.

TUSCALOOSA, ALABAMA (Home to the University of Alabama)

The City of Tuscaloosa, Alabama is a city of approximately 93,000 people covering an area of 66 square miles. They have an ordinance that restricts occupancy in different zoning districts to between 2 and 5 persons per dwelling unit. A copy of their regulations is attached at Exhibit A. Examples of their restrictions include the following.

The Historic District (HD) lies between the University District and downtown. Due to people buying property in the Historic District and converting these properties to student housing, HD now has a limit of two occupants. This has encouraged new owners in the HD and it has become mainly an owner-occupied area.

The University District (UD) was created to help with occupancy levels among other issues. The occupancy levels in the UD are no more than 3 unrelated. This is the same occupancy limit for the entire city. In this District there is no grandfathering. If someone in the UD wants to maintain or convert to having five occupants they have to redevelop the property. This means that pre-existing homes that long ago were converted to apartment units can no longer rent to more than three occupants without redeveloping the property.

They have one Zoning Inspector who is charged with all enforcement issues regarding the Zoning Code. Approximately 1/3 of his time is spent solely on occupancy violations. The Zoning Inspector investigates by first observing the property for two to three weeks. The officer goes by the residence at least two or three times a week early in the morning and then again during the day. The officer then documents the vehicles that are on the property at these times. If the officer feels that there is enough evidence to investigate further then the Zoning Inspector contacts the residents of the property. The residents are asked to sign an affidavit concerning the number of residents. If residents state that only 3 people reside there and the other cars that were consistently there belong to non-residents then those non-residents have to provide documentation of their address such as a lease or a utility bill.

After this the property owner is contacted and asked to produce a lease to verify only three people are on the lease. Property owners a lot of time will have only three people on the lease because they know of this restriction. If the problem is not abated the officer can file charges on the tenants, the owner, or both. The ordinance states that they may charge anyone who benefits from the over occupancy.

Their Zoning Officer is able to run car tags to determine ownership of a vehicle. They have Code Officers in the Police Department who enforce all other complaints except the Zoning Code.

OXFORD, MISSISSIPPI (Home to the University of Mississippi)

The City of Oxford, Mississippi is a city of approximately 19,000 people covering an area of 17 square miles. Their Ordinance restricts occupancy to 3 unrelated people in a dwelling unit. A copy of their regulations is attached as Exhibit B.

The definition of a "family" is the following:

> "One or more persons who are related by blood, adoption, marriage, or foster are living together and occupying a single housekeeping unit with single culinary facilities, or a group of not more than three persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost sharing basis. Any household employees residing on the premises shall not be considered as a separate family for purposes of this definition."

There are no special zoning districts that allow additional more than three unrelated people to inhabit a dwelling unit.

They have on Code Officer who is employed in the Police Department. He has held this job since October, 2013 and indicated that the City has not had a Code Officer at least three years prior to him filling the position.

Prima facie proof of occupancy of a dwelling unit by more than three unrelated persons is established in any prosecution for violation of the code if it is shown that the same four or more vehicles with registration to persons having different surnames or addresses were parked overnight at the dwelling unit a majority of nights in any 14-day period. This establishment of a prima facie level of proof does not preclude a showing of "occupancy" of a dwelling unit by a person in any other manner.

It is also be a violation of their code for any owner, occupant, or lessee of any dwelling unit to permit or fail to prohibit the occupancy of such dwelling unit by more than three unrelated persons.

When a complaint is received by the building official, the code enforcement officer shall initiate an investigation to determine if a violation may exist. This investigation shall be completed within 90 days of the complaint. The code official goes out every evening and early morning to take down tag numbers from vehicles to determine if there is a violation during the 14-day period.

If the code enforcement officer determines there are more than three unrelated people residing in any dwelling unit, the code enforcement officer shall contact all identifiable property owners and occupants by certified mail and request voluntary compliance.

If compliance is not achieved in a reasonable amount of time, the code enforcement officer shall again contact all identifiable property owners and occupants by certified mail and inform all such parties that they have 30 days from the date of the certified letter to comply with the restrictions or municipal court citations may be issued.

No municipal court citation shall be issued unless and until the procedures described above have been followed.

For each violation, each owner, occupant, or lessee of a single-family dwelling is subject to a fine not to exceed $300.00 for each violation. Each day during which any violation continues constitutes a separate offense.

The Code Officer can run car tags to determine ownership of a vehicle.

94 S.Ct. 1536
Supreme Court of the United States

VILLAGE OF BELLE TERRE et al., Appellants,
v.
Bruce BORAAS et al.

No. 73-191. | Argued Feb. 19, 20, 1974. | Decided April 1, 1974.

Civil rights action challenging constitutionality of village zoning ordinance limiting, with certain exceptions, the occupancy of one-family dwellings to traditional families or to groups of not more than two unrelated persons. The United States District Court for the Eastern District of New York, 367 F.Supp. 136, held the ordinance to be constitutional. The Court of Appeals, Second Circuit, 476 F.2d 806, reversed, and an appeal was taken. The Supreme Court, Mr. Justice Douglas, held that the ordinance is not aimed at transients, involves no procedural disparity inflicted on some but not on others, involves no deprivation of any 'fundamental' right, bears a rational relationship to a permissible state objective, and must be upheld as valid land-use legislation addressed to family needs, notwithstanding claims that the ordinance is unconstitutional as violative of equal protection and rights of association, travel and privacy.

Reversed.

Mr. Justice Brennan dissented with opinion.

Mr. Justice Marshall dissented with opinion.

**1537 Syllabus *

*1 A New York village ordinance restricted land use to one-family dwellings, defining the word 'family' to mean one or more persons related by blood, adoption, or marriage, or not more than two unrelated persons, living and cooking together as a single housekeeping unit and expressly excluding from the term lodging, boarding, fraternity, or multiple-dwelling houses. After the owners of a house in the village, who had leased it to six unrelated college students, were cited for violating the ordinance, this action was brought to have the ordinance declared unconstitutional as violative of equal protection and the rights of association, travel, and privacy. The District Court held the ordinance constitutional, and the Court of Appeals reversed. Held:

1. Economic and social legislation with respect to which the legislature has drawn lines in the exercise of its discretion, will be upheld if it is 'reasonable, not arbitrary,' and bears 'a rational relationship to a (permissible) state objective,' Reed v. Reed, 404 U.S. 71, 76, 92 S.Ct. 251, 254, 30 L.Ed.2d 225 and here the ordinance-which is not aimed at transients and involves no procedural disparity inflicted on some but not on others or deprivation of any 'fundamental' right-meets that constitutional standard and must be upheld as valid land-use legislation addressed to family needs. Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27. Pp. 1540-1541.

2. The fact that the named tenant appellees have vacated the house does not moot this case as the challenged ordinance continues to affect the value of the property. P. 1541.

2 Cir., 476 F.2d 806, reversed.

Attorneys and Law Firms

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Opinion

Mr. Justice DOUGLAS delivered the opinion of the Court.

Belle Terre is a village on Long Island's north shore of about 220 homes inhabited by 700 people. Its total land area is less than one square mile. It has restricted land use to one-family dwellings excluding lodging houses, boarding houses, fraternity houses, or multiple-dwelling houses. The word 'family' as used in the ordinance means, '(o)ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living **1538 and cooking together as a single housekeeping unit through not related by blood, adoption, or marriage shall be deemed to constitute a family.'

Appellees, the Dickmans, are owners of a house in the village and leased it in December 1971 for a term of 18 months to Michael Truman. Later Bruce Boraas became a colessee. Then Anne Parish moved into the house along with three others. These six are students at nearby State University at Stony Brook and none is *3 related to the other by blood, adoption, or marriage. When the village served the Dickmans with an 'Order to Remedy Violations' of the ordinance,[1] the owners plus three tenants[2] thereupon brought this action under 42 U.S.C. s 1983 for an injunction and a judgment declaring the ordinance unconstitutional. The District Court held the ordinance constitutional, 367 F.Supp. 136, and the Court of Appeals reversed, one judge dissenting. 2 Cir., 476 F.2d 806. The case is here by appeal, 28 U.S.C. s 1254(2); and we noted probable jurisdiction, 414 U.S. 907, 94 S.Ct. 234, 38 L.Ed.2d 145.

This case brings to this Court a different phase of local zoning regulations from those we have previously reviewed. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114,71 L.Ed. 303, involved a zoning ordinance classifying land use in a given area into six categories. The Dickmans' tracts fell under three classifications: U-2, which included two-family dwellings; U-3, which included apartments, hotels, churches, schools, private clubs, hospitals, city hall and the like; and U-6, which included sewage disposal plants, incinerators, scrap storage, cemeteries, oil and gas storage and so on. Heights of buildings were prescribed for each zone; also, the size of land areas required for each kind of use was specified. The land in litigation was vacant and being held for industrial development; and evidence was introduced showing that under the restricted-use *4 ordinance the land would be greatly reduced in value. The claim was that the landowner was being deprived of liberty and property without due process within the meaning of the Fourteenth Amendment.

The Court sustained the zoning ordinance under the police power of the State, saying that the line 'which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions.' Id., at 387, 47 S.Ct., at 118. And the Court added: 'A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.' Id., at 388, 47 S.Ct., at 118. The Court listed as considerations bearing on the constitutionality of zoning ordinances the danger of fire or collapse of buildings, the evils of overcrowding people, and the possibility that 'offensive trades, industries, and structures' might 'create nuisance' to residential sections. Ibid. But even those historic police power problems need not loom large or actually be existent in a given case. For the exclusion of 'all industrial establishments' does not mean that 'only offensive or dangerous industries will be excluded.' Ibid. That fact does not invalidate the ordinance; the Court held:
'The inclusion of a reasonable margin to insure effective enforcement, will not put upon a law, otherwise valid, **1539 the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation.' Id., at 388-389, 47 S.Ct., at 118.

***5** The main thrust of the case in the mind of the Court was in the exclusion of industries and apartments, and as respects that it commented on the desire to keep residential areas free of 'disturbing noises'; 'increased traffic'; the hazard of 'moving and parked automobiles'; the 'depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities.' Id., at 394, 47 S.Ct., at 120. The ordinance was sanctioned because the validity of the legislative classification was 'fairly debatable' and therefore could not be said to be wholly arbitrary. Id., at 388, 47 S.Ct., at 118.

Our decision in Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27, sustained a land use project in the District of Columbia against a landowner's claim that the taking violated the Due Process Clause and the Just Compensation Clause of the Fifth Amendment. The essence of the argument against the law was, while taking property for ridding an area of slums was permissible, taking it 'merely to develop a better balanced, more attractive community' was not, id., at 31, 75 S.Ct., at 102. We refused to limit the concept of public welfare that may be enhanced by zoning regulations.[3] We said:
'Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. ***6** They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.
'We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.' Id., at 32-33, 75 S.Ct., at 102.

If the ordinance segregated one area only for one race, it would immediately be suspect under the reasoning of Buchanan v. Warley, 245 U.S. 60, 38 S.Ct. 16, 62 L.Ed. 149 where the Court invalidated a city ordinance barring a black from acquiring real property in a white residential area by reason of an 1866 Act of Congress, 14 Stat. 27, now 42 U.S.C. s 1982, and an 1870 Act, s 17, 16 Stat. 144, now 42 U.S.C. s 1981, both enforcing the Fourteenth Amendment. 245 U.S., at 78-82, 38 S.Ct. at 19-21. See Jones v. Alfred H. Mayer Co., 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189.

In Seattle Title Trust Co. v. Roberge, 278 U.S. 116, 49 S.Ct. 50, 73 L.Ed. 210, Seattle had a zoning ordinance that permitted a "philanthropic home for children or for old people" in a particular district "when the written consent shall have been obtained of the owners of two-thirds of the property within four hundred ****1540** (400) feet of the proposed building." Id., at 118, 49 S.Ct., at 50. The Court held that provision of the ordinance unconstitutional, saying that the existing owners could 'withhold consent for selfish reasons or arbitrarily and ***7** may subject the trustee (owner) to their will or caprice.' Id., at 122, 49 S.Ct., at 52. Unlike the billboard cases (e.g., Cusack Co. v. City of Chicago, 242 U.S. 526, 37 S.Ct. 190, 61 L.Ed. 472), the Court concluded that the Seattle ordinance was invalid since the proposed home for the aged poor was not shown by its maintenance and construction 'to work any injury, inconvenience or annoyance to the community, the district or any person.' 278 U.S., at 122, 49 S.Ct., at 52.

The present ordinance is challenged on several grounds: that it interferes with a person's right to travel; that it interferes with the right to migrate to and settle within a State; that it bars people who are uncongenial to the present residents; that it expresses the social preferences of the residents for groups that will be congenial to them; that social homogeneity is not a legitimate interest of government; that the restriction of those whom the neighbors do not like trenches on the newcomers' rights of privacy; that it is of no rightful concern to villagers whether the residents are married or unmarried; that the ordinance is antithetical to the Nation's experience, ideology, and self-perception as an open, egalitarian, and integrated society.[4]
[1] **[2]** We find none of these reasons in the record before us. It is not aimed at transients. Cf. Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600. It involves no procedural disparity inflicted on some but not on others such as was presented by Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891. It involves no 'fundamental' right guaranteed by the Constitution, such as voting, Harper v. Virginia State Board, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169; the right of

association, NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488; the right of access to the courts, NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405; or any rights of privacy, cf. ***8** Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510; Eisenstadt v. Baird, 405 U.S. 438, 453-454, 92 S.Ct. 1029, 1038-1039, 31 L.Ed.2d 349. We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be "reasonable, not arbitrary" (quoting F. S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L.Ed. 989) and bears 'a rational relationship to a (permissible) state objective.' Reed v. Reed, 404 U.S. 71, 76, 92 S.Ct. 251, 254, 30 L.Ed.2d 225.

[3] It is said, however, that if two unmarried people can constitute a 'family,' there is no reason why three or four may not. But every line drawn by a legislature leaves some out that might well have been included. [5] That exercise of discretion, however, is a legislative, not a judicial, function.

****1541** It is said that the Belle Terre ordinance reeks with an animosity to unmarried couples who live together. [6] There is no evidence so support it; and the provision of the ordinance bringing within the definition of a 'family' two unmarried people belies the charge.

***9** The ordinance places no ban on other forms of association, for a 'family' may, so far as the ordinance is concerned, entertain whomever it likes.

The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.

[4] [5] 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. This goal is a permissible one within Berman v. Parker, supra. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

[6] The suggestion that the case may be moot need not detain us. A zoning ordinance usually has an impact on the value of the property which it regulates. But in spite of the fact that the precise impact of the ordinance sustained in Euclid on a given piece of property was not known, 272 U.S., at 397, 47 S.Ct., at 121, the Court, considering the matter a controversy in the realm of city planning, sustained the ordinance. Here we are a step closer to the impact of the ordinance on the value of the lessor's property. He has not only lost six tenants and acquired only two in their place; it is obvious that the scale of rental values rides on what we decide today. When Berman reached us it was not certain whether an entire tract would be taken or only the buildings on it and a scenic easement. 348 U.S., at 36, 75 S.Ct., at 104. But that did not make the case any the less a controversy in the constitutional sense. When Mr. Justice Holmes said for the Court in Block v. Hirsh, 256 U.S. 135, 155, 41 S.Ct. 458, 459, 65 L.Ed. 865, 'property rights may be cut down, and to that extent taken, without ***10** pay,' he stated the issue here. As is true in most zoning cases, the precise impact on value may, at the threshold of litigation over validity, not yet be known.

Reversed.

Mr. Justice BRENNAN, dissenting.

The constitutional challenge to the village ordinance is premised solely on alleged infringement of associational and other constitutional rights of tenants. But the named tenant appellees have quit the house, thus raising a serious question whether there now exists a cognizable 'case or controversy' that satisfies that indispensable requisite of Art. III of the Constitution. Existence of a case or controversy must, of course, appear at every stage of review, see, e.g., Roe v. Wade, 410 U.S. 113, 125, 93 S.Ct. 705, 712, 35 L.Ed.2d 147 (1973); Steffel v. Thompson, 415 U.S. 452, 459 n. 10, 94 S.Ct. 1209, 1216, 39 L.Ed.2d 505 (1974). In my view it does not appear at this stage of this case.

Plainly there is no case or controversy as to the named tenant appellees since, having moved out, they no longer have an interest, associational, economic or otherwise, to be vindicated by invalidation of the ordinance. Whether there is a cognizable case or controversy must therefore turn on whether the lessor appellees may attack the ordinance on the basis of the constitutional rights of their tenants.

The general 'weighty' rule of practice is 'that a litigant may only assert **1542 his own constitutional rights or immunities,' United States v. Raines, 362 U.S. 17, 22, 80 S.Ct. 519, 523, 4 L.Ed.2d 524 (1960). A pertinent exception, however, ordinarily limits a litigant to the assertion of the alleged denial of another's constitutional rights to situations in which there is: (1) evidence that as a direct consequence of the denial of constitutional rights of the others, the litigant faces substantial economic injury, *11 Pierce v. Society of Sisters, 268 U.S. 510, 535-536, 45 S.Ct. 571, 573-574, 69 L.Ed. 1070 (1925); Barrows v. Jackson, 346 U.S. 249, 255-256, 73 S.Ct. 1031, 1034-1035, 97 L.Ed. 1586 (1953), or criminal prosecution, Griswold v. Connecticut, 381 U.S. 479, 481, 85 S.Ct. 1678, 1679, 14 L.Ed.2d 510 (1965); Eisenstadt v. Baird, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972), and (2) a showing that the litigant's and the others' interests intertwine and unless the litigant may assert the constitutional rights of the others, those rights cannot effectively be vindicated. Griswold v. Connecticut, supra; Eisenstadt v. Baird, supra; see also NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958).

In my view, lessor appellees do not, on the present record, satisfy either requirement of the exception. Their own brief negates any claim that they face economic loss. The brief states that 'there is nothing in the record to support the contention that in a middle class, suburban residential community like Belle Terre, traditional families are willing to pay more or less than students with limited means like the Appellees.' Brief for Appellees 54-55. And whether they face criminal prosecution for violations of the ordinance is at least unclear. The criminal summons served on them on July 19, 1972, was withdrawn because not preceded, as required by the village's procedure, by an order requiring discontinuance of violations within 48 hours. An order to discontinue violation was served thereafter on July 31, but was not followed by service of a criminal summons when the violation was not discontinued within 48 hours. *

The Court argues that, because a zoning ordinance 'has an impact on the value of the property which it regulates,' there is a cognizable case or controversy. But *12 even if lessor appellees for that reason have a personal stake, and we were to concede that landlord and tenant interests intertwine in respect of the ordinance, I cannot see, on the present record, how it can be concluded that 'it would be difficult if not impossible,' Barrows v. Jackson, supra, 346 U.S., at 257, 73 S.Ct., at 1035, for present or prospective unrelated tenant groups of more than two to assert their own rights before the courts, since the departed tenant appellees had no difficulty in doing so. Thus, the second requirement of the exception would not presently appear to be satisfied. Accordingly it is irrelevant that the house was let, as we are now informed, to other unrelated tenants on a month-to-month basis after the tenant appellees moved out. None of the new tenants has sought to intervene in this suit. Indeed, for all that appears, they too may have moved out and the house may be vacant.

I dissent and would vacate the judgment of the Court of Appeals and remand to the District Court for further proceedings. If the District Court determines that a cognizable case or controversy no longer exists, the complaint should be dismissed. Golden v. Zwickler, 394 U.S. 103, 89 S.Ct. 956, 22 L.Ed.2d 113 (1969).

Mr. Justice MARSHALL, dissenting.

This case draws into question the constitutionality of a zoning ordinance of **1543 the incorporated village of Belle Terre, New York, which prohibits groups of more than two unrelated persons, as distinguished from groups consisting of any number of persons related by blood, adoption, or marriage, from occupying a residence within the confines of the township. [1] Lessor-appellees, the two owners of a Belle Terre residence, and three unrelated student tenants challenged the ordinance on the ground that it establishes a classification between households of *13 related and unrelated individuals, which deprives them of equal protection of the laws. In my view, the disputed classification burdens the students' fundamental rights of association and privacy guaranteed by the First and Fourteenth Amendments. Because the application of strict equal protection scrutiny is therefore required, I am at odds with my Brethren's conclusion that the ordinance may be sustained on a showing that it bears a rational relationship to the accomplishment of legitimate governmental objectives.

I am in full agreement with the majority that zoning is a complex and important function of the State. It may indeed be the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life. I therefore continue to adhere to the principle of Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926), that deference should be given to governmental judgments concerning proper land-use allocation. That deference is a principle which has served this Court well and which is necessary for the continued development of effective zoning and land-use control mechanisms. Had the owners alone brought this suit alleging that the restrictive ordinance deprived them of their property or was an irrational legislative classification, I would agree that the ordinance would have to be sustained. Our role is not and should not be to sit as a zoning board of appeals.

I would also agree with the majority that local zoning authorities may properly act in furtherance of the objectives asserted to be served by the ordinance at issue here: restricting uncontrolled growth, solving traffic problems, keeping rental costs at a reasonable level, and making the community attractive to families. The police power which provides the justification for zoning is not narrowly *14 confined. See Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954). And, it is appropriate that we afford zoning authorities considerable latitude in choosing the means by which to implement such purposes. But deference does not mean abdication. This Court has an obligation to ensure that zoning ordinances, even when adopted in furtherance of such legitimate aims, do not infringe upon fundamental constitutional rights.

When separate but equal was still accepted constitutional dogma, this Court struck down a racially restrictive zoning ordinance. Buchanan v. Warley, 245 U.S. 60, 38 S.Ct. 16, 62 L.Ed. 149 (1917). I am sure the Court would not be hesitant to invalidate that ordinance today. The lower federal courts have considered procedural aspects of zoning,[2] and acted to insure that land-use controls are not used as means of confining minorities and the poor to the ghettos of our central cities.[3] These are limited but necessary **1544 intrusions on the discretion of zoning authorities. By the same token, I think it clear that the First Amendment provides some limitation on zoning laws. It is inconceivable to me that we would allow the exercise of the zoning power to burden First Amendment freedoms, as by ordinances that restrict occupancy to individuals adhering to particular religious, political, or scientific beliefs. Zoning officials properly concern *15 themselves with the uses of land-with, for example, the number and kind of dwellings to be constructed in a certain neighborhood or the number of persons who can reside in those dwellings. But zoning authorities cannot validly consider who those persons are, what they believe, or how they choose to live, whether they are Negro or white, Catholic or Jew, Republican or Democrat, married or unmarried.

My disagreement with the Court today is based upon my view that the ordinance in this case unnecessarily burdens appellees' First Amendment freedom of association and their constitutionally guaranteed right to privacy. Our decisions establish that the First and Fourteenth Amendments protect the freedom to choose one's associates. NAACP v. Button, 371 U.S. 415, 430, 83 S.Ct. 328, 336, 9 L.Ed.2d 405 (1963). Constitutional protection is extended, not only to modes of association that are political in the usual sense, but also to those that pertain to the social and economic benefit of the members. Id., at 430-431, 83 S.Ct., at 336-337; Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1, 84 S.Ct. 1113, 12 L.Ed.2d 89 (1964). See United Transportation Union v. State Bar of Michigan, 401 U.S. 576, 91 S.Ct. 1076, 28 L.Ed.2d 339 (1971); United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n, 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967). The selection of one's living companions involves similar choices as to the emotional, social, or economic benefits to be derived from alternative living arrangements.

The freedom of association is often inextricably entwined with the constitutionally guaranteed right of privacy. The right to 'establish a home' is an essential part of the liberty guaranteed by the Fourteenth Amendment. Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923); Griswold v. Connecticut, 381 U.S. 479, 495, 85 S.Ct. 1678, 1687, 14 L.Ed.2d 510 (1965) (Goldberg, J., concurring). And the Constitution secures to an individual a freedom 'to satisfy his intellectual and emotional needs in the privacy of his own home.' *16 Stanley v. Georgia, 394 U.S. 557, 565, 89 S.Ct. 1243, 1248, 22 L.Ed.2d 542 (1969); see Paris Adult Theatre I v. Slaton, 413 U.S. 49, 66-67, 93 S.Ct. 2628, 2640-2641, 37 L.Ed.2d 446 (1973). Constitutionally protected privacy is, in Mr. Justice Brandeis' words, 'as against the Government, the right to be let alone . . . the right most valued by civilized man.' Olmstead v. United States, 277 U.S. 438, 478, 48 S.Ct. 564, 572, 72 L.Ed. 944 (1928) (dissenting opinion). The choice of household companions-of whether a person's 'intellectual and emotional needs' are best

met by living with family, friends, professional associates, or others-involves deeply personal considerations as to the kind and quality of intimate relationships within the home. That decision surely falls within the ambit of the right to privacy protected by the Constitution. See Roe v. Wade, 410 U.S. 113, 153, 93 S.Ct. 705, 727, 35 L.Ed.2d 147 (1973); Eisenstadt v. Baird, 405 U.S. 438, 453, 92 S.Ct. 1029, 1038, 31 L.Ed.2d 349 (1972); Stanley v. Georgia, supra, 394 U.S., at 564-565, 89 S.Ct., at 1247-1248; Griswold v. Connecticut, supra, 381 U.S., at 483, 486, 85 S.Ct., at 1682; Olmstead v. United States, supra, 277 U.S., at 478, 48 S.Ct., at 572 (Brandeis, J., dissenting); ****1545** Moreno v. Department of Agriculture, 345 F.Supp. 310, 315 (D.C.1972), aff'd, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973).

The instant ordinance discriminates on the basis of just such a personal lifestyle choice as to household companions. It permits any number of persons related by blood or marriage, be it two or twenty, to live in a single household, but it limits to two the number of unrelated persons bound by profession, love, friendship, religious or political affiliation, or mere economics who can occupy a single home. Belle Terre imposes upon those who deviate from the community norm in their choice of living companions significantly greater restrictions than are applied to residential groups who are related by blood or marriage, and compose the established order within the community.[4] The village has, in ***17** effect, acted to fence out those individuals whose choice of lifestyle differs from that of its current residents.[5]

This is not a case where the Court is being asked to nullify a township's sincere efforts to maintain its residential character by preventing the operation of rooming houses, fraternity houses, or other commercial or high-density residential uses. Unquestionably, a town is free to restrict such uses. Moreover, as a general proposition, I see no constitutional infirmity in a town's limiting the density of use in residential areas by zoning regulations which do not discriminate on the basis of constitutionally suspect criteria.[6] This ordinance, however, limits the density of occupancy of only those homes occupied by unrelated persons. It thus reaches beyond control of the use of land or the density of population, and undertakes to regulate the way people choose to associate with each other within the privacy of their own homes.

It is no answer to say, as does the majority that associational interests are not infringed because Belle Terre residents may entertain whomever they choose. Only last Term Mr. Justice Douglas indicated in concurrence that he saw the right of association protected by the First Amendment as involving far more than the right to entertain visitors. He found that right infringed by a restriction on food stamp assistance, penalizing ***18** households of 'unrelated persons.' As Mr. Justice Douglas there said, freedom of association encompasses the 'right to invite the stranger into one's home' not only for 'entertainment' but to join the household as well. United States Department of Agriculture v. Moreno, 413 U.S. 528, 538-545, 93 S.Ct. 2821, 2828-2831 (1973) (concurring opinion). I am still persuaded that the choice of those who will form one's household implicates constitutionally protected rights.

Because I believe that this zoning ordinance creates a classification which impinges upon fundamental personal rights, it can withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest, Shapiro v. Thompson, 394 U.S. 618, 634, 89 S.Ct. 1322, 1331, 22 L.Ed.2d 600 (1969). And, once it be determined that a burden has been placed upon a constitutional right, the onus of demonstrating that no less intrusive means will adequately protect the compelling state interest and that the challenged statute is sufficiently narrowly drawn, is upon the party seeking to justify the burden. See Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974); ****1546** Speiser v. Randall, 357 U.S. 513, 525-526, 78 S.Ct. 1332, 1341-1342, 2 L.Ed.2d 1460 (1958).

A variety of justifications have been proffered in support of the village's ordinance. It is claimed that the ordinance controls population density, prevents noise, traffic and parking problems, and preserves the rent structure of the community and its attractiveness to families. As I noted earlier, these are all legitimate and substantial interests of government. But I think it clear that the means chosen to accomplish these purposes are both overinclusive and underinclusive, and that the asserted goals could be as effectively achieved by means of an ordinance that did not discriminate on the basis of constitutionally protected choices of lifestyle. The ordinance imposes no restriction whatsoever on the number ***19** of persons who may live in a house, as long as they are related by marital or sanguinary bonds-presumably no matter how distant their relationship. Nor does the ordinance restrict the number of income earners who may contribute to rent in such a household, or the number of automobiles that may be maintained by its occupants. In that sense the ordinance is underinclusive. On the other hand, the statute restricts the number

of unrelated persons who may live in a home to no more than two. It would therefore prevent three unrelated people from occupying a dwelling even if among them they had but one income and no vehicles. While an extended family of a dozen or more might live in a small bungalow, three elderly and retired persons could not occupy the large manor house next door. Thus the statute is also grossly overinclusive to accomplish its intended purposes.

There are some 220 residences in Belle Terre occupied by about 700 persons. The density is therefore just above three per household. The village is justifiably concerned with density of population and the related problems of noise, traffic, and the like. It could deal with those problems by limiting each household to a specified number of adults, two or three perhaps, without limitation on the number of dependent children. [7] The burden of such an ordinance would fall equally upon all segments of the community. It would surely be better tailored to the goals asserted by the village than the ordinance before us today, for it would more realistically ***20** restrict population density and growth and their attendant environmental costs. Various other statutory mechanisms also suggest themselves as solutions to Belle Terre's problems-rent control, limits on the number of vehicles per household, and so forth, but, of course, such schemes are matters of legislative judgment and not for this Court. Appellants also refer to the necessity of maintaining the family character of the village. There is not a shred of evidence in the record indicating that if Belle Terre permitted a limited number of unrelated persons to live together, the residential, familial character of the community would be fundamentally affected.

By limiting unrelated households to two persons while placing no limitation on households of related individuals, the village has embarked upon its commendable course in a constitutionally faulty vessel. Cf. Marshall v. United States, 414 U.S. 417, 94 S.Ct. 700, 38 L.Ed.2d 618 (1974) (dissenting opinion). I would find the challenged ordinance unconstitutional. But I would not ask the village to abandon its goal of providing quiet streets, little traffic, and a pleasant and reasonably priced environment in which families might raise their children. Rather, I would commend the village to continue to pursue those purposes but by means of more carefully drawn and even-handed legislation.

I respectfully dissent.

Parallel Citations

94 S.Ct. 1536, 6 ERC 1417, 39 L.Ed.2d 797, 4 Envtl. L. Rep. 20,302

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 is not involved here, as on August 2, 1972, when this federal suit was initiated, no state case had been started. The effect of the 'Order to Remedy Violations' was to subject the occupants to liability commencing August 3, 1972. During the litigation the lease expired and it was extended. Anne Parish moved out. Thereafter the other five students left and the owners now hold the home out for sale or rent, including to student groups.

2 Truman, Boraas, and Parish became appellees but not the other three.

3 Vermont has enacted comprehensive statewide land-use controls which direct local boards to develop plans ordering the uses of local land, inter alia, to 'create conditions favorable to transportation, health, safety, civic activities and educational and cultural opportunities, (and) reduce the wastes of financial and human resources which result from either excessive congestion or excessive scattering of population . . ..' Vt.Stat.Ann., Tit. 10, s 6042 (1973). Federal legislation has been proposed designed to assist States and localities in developing such broad objective land-use guidelines. See Senate Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act, S.Rep.No.93-197 (1973).

4 Many references in the development of this thesis are made to F. Turner, The Frontier in American History (1920), with emphasis on his theory that 'democracy (is) born of free land.' Id., at 32.

5 Mr. Justice Holmes made the point a half century ago.
'When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical

or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.' Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 41, 48 S.Ct. 423, 426, 72 L.Ed. 770 (dissenting opinion).

6 Department of Agriculture v. Moreno, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782, is therefore inapt as there a household containing anyone unrelated to the rest was denied food stamps.

* In these circumstances, I agree with the Court that no criminal action was 'pending' when this suit was brought and that therefore the District Court correctly declined to apply the principles of Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971).

1 The text of the ordinance is reprinted in part, ante, at 1537.

2 See Citizens Ass'n of Georgetown v. Zoning Comm'n, 155 U.S.App.D.C. 233, 477 F.2d 402 (1973).

3 See Kennedy Park Homes Ass'n v. City of Lackawanna, 436 F.2d 108 (CA2 1970); Dailey v. City of Lawton, 425 F.2d 1037 (CA10 1970); cf. Gautreaux v. City of Chicago, 480 F.2d 210 (CA7 1973); Crow v. Brown, 457 F.2d 788 (CA5 (1972); Southern Alameda Spanish Speaking Organization v. Union City, 424 F.2d 291 (CA9 1970). See generally Sager, Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent, 21 Stan.L.Rev. 767 (1969); Note, Exclusionary Zoning and Equal Protection, 84 Harv.L.Rev. 1645 (1971); Note, The Responsibility of Local Zoning Authorities to Nonresident Indigents, 23 Stan.L.Rev. 774 (1971).

4 'Perhaps in an ideal world, planning and zoning would be done on a regional basis, so that a given community would have apartments, while an adjoining community would not. But as long as we allow zoning to be done community by community, it is intolerable to allow one municipality (or many municipalities) to close its doors at the expense of surrounding communities and the central city.' Appeal of Girsh, 437 Pa. 237, 245 n. 4, 263 A.2d 395, 399 n. 4 (1970).

5 See generally Note, On Privacy: Constitutional Protection for Personal Liberty, 48 N.Y.U.L.Rev. 670, 740-750 (1973).

6 See Palo Alto Tenants' Union v. Morgan, 487 F.2d 883 (C.A.9 1973).

7 By providing an exception for dependent children, the village would avoid any doubts that might otherwise be posed by the constitutional protection afforded the choice of whether to bear a child. See Molino v. Mayor & Council of Glassboro, 116 N.J.Super. 195, 281 A.2d 401 (1971); cf. Cleveland Board of Education v. LaFleur, 414 U.S. 632, 94 S.Ct. 791, 39 L.Ed.2d 52 (1974).

End of Document

EXHIBIT A

Tuscaloosa Occupancy Ordinance

Sec. 24-43. Residential occupancy restrictions.

(a)

It shall be unlawful for more than the specified number of unrelated persons to live together in a dwelling unit in the corresponding district, as follows:

(1)

Generally. Unless otherwise specified herein for a greater or lesser occupancy limit in certain districts no more than three (3) unrelated persons may live together in a dwelling unit in any zoning district.

(2)

Historic districts. No more than two (2) unrelated persons may live together in a dwelling unit in any zoning district that is in a historic district designated as such in accordance with chapter 20, article II of the Code of Tuscaloosa.

Provided; however,

(i)

On property zoned RMF-2 or RMF-2H in a historic district, as of the effective date of this section, no more than three (3) unrelated persons may live together in a dwelling unit.

(ii)

In a dwelling unit on property in a historic district which has been certified pursuant to the provisions of this section as legal nonconforming use no more than three (3) unrelated persons may live together.

(3)

R-4S zoning district. No more than four (4) unrelated persons may live together in a dwelling unit in any zoning district that is zoned as an R-4S district, provided however.

up to five (5) unrelated persons may live together in a five-bedroom dwelling unit subject to provisions of subsection 24-31(5).

(4)

"U" (University) district. In a "U" (University) district designated as such pursuant to chapter 24, article XVI of the Code of Tuscaloosa no more than three (3) unrelated persons may live together in a dwelling unit. Provided; however, no more than five (5) unrelated persons may live in a dwelling located in a "U" (University) district which has been certified in accordance with said article for such occupancy.

Each of the unrelated persons residing together in a dwelling unit in violation of the foregoing restrictions shall be deemed to be in violation of this subsection.

(5)

Mixed use districts. No more than four (4) unrelated persons may live together in a dwelling in an apartment building or mixed use building located in an MX-5 district. Provided; however, that the total number of persons living together per dwelling unit shall not exceed the number of approved bedrooms for said dwelling unit.

(b)

[Violations unlawful.] It shall be unlawful for any person, firm, or corporation having charge of any residential premises to lease, or permit occupancy of any dwelling unit in violation of subsection (a) above.

(c)

Designation of legal nonconforming uses in historic districts. Notwithstanding the provisions of (a)(2) and (b) above, a dwelling unit in a historic district may be leased or occupied by more than two (2) but no more than three (3) unrelated persons and deemed a legal nonconforming use if it is certified in accordance with the following terms and conditions:

(1)

Application. The owner of a dwelling unit in such a historic district must file an application and an affidavit within one hundred eighty (180) consecutive calendar days from the effective date of this section with the city department of community planning and development (department) requesting certification of legal nonconforming use status for the dwelling unit. The application shall at a minimum contain the parcel identification number and street address of the property, and the mailing address and name of the owner and owner's agent.

The affidavit shall meet the requirements herein and the application shall provide any other information that the department determines is relevant to the claimed use and/or for verification of the information contained in it or the affidavit.

(2)

Affidavit. The affidavit required herein shall be in a form suitable to the department and shall state the address of the dwelling unit and the name, address and telephone number of the current owner. The affidavit shall also state that, as of the effective date of this ordinance, the property is either;

a.

Currently rented to three (3) unrelated persons; or

b.

Has been used as a rental property in the past to three (3) unrelated persons but is currently leased to a family or to less than three (3) unrelated persons; or

c.

Is currently vacant due to remodeling, construction or renovation, in accordance with a valid building permit if required, or other similar reason but has been previously available to rent to three (3) unrelated persons; or

d.

Temporarily owner-occupied due to remodeling, construction, renovation or other similar reason but has been previously available to rent to three (3) unrelated persons; or

e.

Is currently vacant but has received preliminary plat approval from the city in 2004 or 2005, prior to the effective date of this section, and is intended for development of dwelling units for occupancy by no more than three (3) unrelated persons.

An owner of multiple dwelling units on one parcel may file one application and affidavit which identifies more than one dwelling unit for certification.

(3)

Certification. The planning department shall review the application and the affidavit for completeness and verify the contents thereof. If the department determines that the same is complete and verified then it shall issue a written certificate to the owner of the subject dwelling unit certifying that the same may be leased to no more than three (3) unrelated persons and is deemed a legal nonconforming use and may continue to be occupied by no more than three (3) unrelated persons so long as the conditions of the certification, application and the affidavit remain correct and in compliance with and the provisions of this section.

(4)

Owner occupancy. Should any dwelling unit so certified become owner-occupied for one hundred eighty (180) consecutive calendar days or more, then the dwelling unit automatically shall lose its status as a legal nonconforming use and shall be subject to the requirement herein that it not be leased or occupied by more than two (2) unrelated persons.

(5)

Subsequently designated historic districts. If any future historic district is created, then the owner of any dwelling unit located therein shall have the same right to apply for a legal nonconforming use exception in accordance with the provisions of this section.

(6)

Failure to apply for designation of legal nonconforming use in an historic district. Any owner of a dwelling unit in violation of [subsections] (a)(2) or (b) of this section that fails to make application as required herein within one hundred eighty (180) consecutive calendar days from the effective date of this section or an ordinance creating a subsequent historic district shall be deemed to have waived any right to claim the benefits of the legal nonconforming use status as provided for herein after the termination of the term of any lease in existence at the time of the effective date of this section. Such owner shall not be entitled to claim or assert a general nonconforming use status in accordance with the provisions of article XI of this chapter for the purpose of occupancy by three (3) unrelated persons.

(7)

Appeals. Appeals in regard to the application of the provisions of this section shall be to the board of adjustment in accordance with article XIV of this chapter.

(Ord. No. 1754, § 35-313, 10-3-72; Ord. No. 6762, § 1, 5-19-05; Ord. No. 7056, § 4, 5-1-07; Ord. No. 7260, §§ 4, 5, 6-3-08; Ord. No. 7842, § 3, 7-24-12)

Sec. 24-220. Establishment of "U" (University) designation within district.

(a)

Purpose.

(1)

The purpose of this section is to protect the public welfare and the value of property in the vicinity of the University of Alabama campus by securing appropriate development that is in harmony with the objectives of the specific plan for the university area. In order that uses and development of said land, buildings and structures will be harmonious and compatible with and not have an undesirable or detrimental impact on surrounding development, the "U" University designation provides incentives for approved significant reinvestment and redevelopment by allowing properties that are issued a "final certificate of approval" as provided herein to permit up to five (5) unrelated persons to live in a single dwelling unit.

(2)

It is hereby established that the "U" (University) designation for zones listed in subsection (b) below includes the area described as follows:

Start at the intersection of Jack Warner Parkway and Hackberry Lane; thence south along Hackberry Lane to the south boundary of the railroad right-of-way which lies immediately north of the Cloverdale subdivision as recorded in Plat Book 5 at Page 132 in the Probate Records of Tuscaloosa County, Alabama; thence east along the south boundary of said railroad right-of-way to the west boundary of the subdivision recorded as Lots 6, 7, and 8 Baker Property as recorded in Plat Book 18 at Page 22 in the Probate Records of Tuscaloosa County, Alabama; thence south along the west boundary of said subdivision and the west boundary of the subdivision recorded as Lot 5 Baker Property as recorded in Plat Book 17 at Page 156 in the Probate Records of Tuscaloosa County, Alabama, to 15th Street; thence west along 15th Street to Queen City Avenue; thence north along Queen City Avenue to Jack Warner Parkway; thence east along Jack Warner Parkway to its intersection with Hackberry Lane and as shown on the university area neighborhood plan adopted by the planning commission on December 21, 2004 as amended, and incorporated herein by reference.

(b)

Zoning districts that may be considered for "U" (University) designation. A "U" (University) designation shall only be used in combination with zones R-4, RMF-2, and BN zones as described in [subsection] (a) above and shall be designated as follows: R-4U; RMF-2U; and BNU. A "U" (University) designation may not be created which is not so combined with these applicable districts.

A "U" (University) designation can only be imposed by the city council with a recommendation of the planning commission in accordance with a specific plan adopted by the planning commission;

(d)

Parking. Minimum requirements for off-street parking shall be as follows:

• Single-family, two-family and townhouse dwellings in the R-4U district shall be one parking space per bedroom.

• Single-family, two-family, townhomes, and apartments in the RMF-2U district shall be as specified in subsection 24-122(a) for such uses within an RMF-2 district; provided, however, that a special exception may granted by the zoning board of adjustment for properties issued a "final certificate of approval" to reduce the parking requirement to one parking space per bedroom.

• No minimum off-street parking requirement is prescribed in the BNU district located on the north side of University Boulevard and east of Reed Street and on the south side of University Boulevard and east of 14th Avenue except for off-street parking which may be required by the zoning board of adjustment as a condition for granting a special exception. Property owners are encouraged to provide as near as possible the amount of off-street parking specified in article IX, section 24-122(a) of this chapter. All other areas zoned BNU shall provide off-street parking as specified in article IX, section 24-122(a) of this chapter.

• It shall be unlawful to park in the front yard, as defined in this chapter, of properties issued a "final certificate of approval" to permit up to five (5) unrelated persons to live in a single dwelling unit.

(e)

Height limitations in R-4U, RMF-2U, and BNU districts. The maximum building height for apartment dwellings in an R-4U district is three (3) stories or forty-five (45) feet. The maximum building height for apartment dwellings in an RMF-2U district is four (4) stories or sixty (60) feet. The height of other permitted structures within the R-4U and

RMF-2U districts shall be as prescribed in section 24-37. The maximum building height in a BNU district is three (3) stories or forty-five (45) feet; provided however, that in a BNU PUD the maximum permitted building height shall be as follows:

1)

One hundred fifty (150) feet in the area bounded on the north by 6th Street, bounded on the east by Wallace Wade Avenue, bounded on the south by Paul W. Bryant Drive and bounded on the west by 12th Avenue.

2)

Eighty (80) feet in the area bounded on the north by 6th street; bounded on the east by 12th Avenue; bounded on the south by Paul W. Bryant Drive and bounded on the west by 13th Avenue.

In addition, building height in a BNU PUD must be gradually reduced to sixty (60) feet at 6th Street and Paul W. Bryant Drive.

(f)

Floor area ratio in BNU district. The maximum floor area ratio in a BNU district shall be 0.8, provided that the board of adjustment may, as a special exception, authorize an increase in cases where the increase would not jeopardize the public health, safety, and welfare of the surrounding area and would be compatible with surrounding land use.

(g)

Yards in BNU district.

(1)

Front. Zero feet

(2)

Side and rear yards. In a BNU district, no side or rear yard is required except in the following two (2) cases:

a.

Side or rear yards shall be provided when required by the zoning board of adjustment as a condition for granting a special exception, and

b.

An eight-foot side or rear yard shall be provided along any lot line abutting property in a residential district.

(h)

Eligibility for certification to permit up to five unrelated persons to live in a single dwelling unit.

(1)

Applications for certification to permit up to five (5) unrelated persons to live in a single dwelling unit must offer significant reinvestment and redevelopment and be in conformity with the intent and purpose of the specific plan for the university area neighborhood. Eligible development activities in a "U" University designation that may qualify for eligibility for consideration for certification to permit up to five (5) unrelated persons to reside in a single dwelling unit include, but are not limited to, the following:

a.

Adding parking to the rear of the parcel to allow more complete utilization of a dwelling unit;

b.

Adding baths to make a dwelling unit more desirable as a rental;

c.

Dividing a large structure to create one or more additional dwelling units;

d.

Adding bedrooms to a small structure to make more complete use of a parcel;

e.

Combining driveways and parking areas of adjacent dwelling units to make more efficient use of the parcels and better public advantage of street frontage;

f.

Adding one or more attached or detached dwelling units in the rear of a relatively small structure on a relatively large parcel;

g.

Resubdividing a large parcel to create the opportunity for development of one or more separate parcels;

h.

Assembly and resubdivision of small parcels to create the opportunity for coordinated redevelopment;

i.

New construction of one or more dwelling units

j.

Reserved.

k.

Any other development activity that, in the opinion of the zoning official is consistent with the above may also be deemed eligible.

(i)

Application for certification to permit up to five unrelated persons to live in a single dwelling unit. Applications for certification to permit up to five (5) unrelated persons to live in a single dwelling unit shall be submitted on forms provided by the community planning and development department and shall include a site plan defining the areas wherein buildings may be constructed; the locations and extent of parking and the proportionate amount thereof; the location of all roads, driveways and walks and the points of ingress and egress, including access to streets where required; the location, height and character of walls, fencing or other forms of screening; the location, size and character of exterior lighting; and the character and extent of landscaping, planting and other treatment for protection of adjoining properties.

(j)

Standards required for certification to permit up to five unrelated persons to live in a single dwelling unit. The zoning official shall apply the following standards during the review, approval and/or certification process and each applicant must meet all applicable standards.

a.

All buildings adjacent to a collector or arterial street shall provide a main entrance on the facade of the building nearest to and facing that street.

b.

Building facades shall provide a visually interesting environment and avoid uniform styles.

c.

Buildings shall be oriented toward the pedestrian by providing a direct link between the building and the sidewalk.

d.

No building facing a public street shall have any blank, windowless wall wider than twenty (20) feet at ground level.

e.

Sidewalks shall be installed along all street frontages as needed for pedestrian mobility or safety and appropriate to the location.

f.

There shall be at least one form of sidewalk buffer between the street and sidewalk, e.g., a five-foot-wide lawn strip, native shade trees of a caliper no less than two (2) inches, or other approved plantings appropriately spaced.

g.

Exterior light fixtures shall be no greater in height than twelve (12) feet.

h.

Within the R-4U district, standards for area, width, and yards shall be provided in accordance with R-4 standards set forth in article III of this chapter, provided however, a ten-foot minimum rear setback shall be allowed in the R-4U district.

i.

Within the RMF-2U district, standards for area, width, yards, and usable open space shall be provided in accordance with RMF-2 standards set forth in article III of this chapter.

j.

Parking shall be in accordance with [subsection] (d) of this section.

k.

Parking shall be in the rear yard in an R-4U district. If there is a detached dwelling unit on the same lot, then parking shall be behind the front dwelling unit. Screens or other appropriate structures must be included to hide the parking area from the street in such an instance unless the front dwelling unit completely hides the parking area.

l.

Parking lots shall not dominate the development site, and shall be placed alongside or behind buildings rather than between the front of the building and adjacent streets in an RMF-2U and BNU districts.

m.

Parking lots shall be designed to provide through pedestrian paths from street to building clearly identifiable through changes in material or elevation.

n.

Open, surface parking lots containing fifty (50) or more spaces shall be divided into smaller areas separated by landscaped areas at least ten (10) feet wide or by a building or a group of buildings.

o.

Surface parking lots containing fifty (50) or more spaces shall include at least ten (10) per cent of the total surface area devoted to landscaping distributed and designed in accord with an overall landscaping plan.

p.

Parking lots and structures shall include clearly marked and continuous pedestrian walkways and connections to the buildings and public sidewalk system.

q.

Parking structures shall be architecturally integrated or designed with an architectural theme similar to that of the main building(s).

r.

Proposed location and height of all structures and site improvements shall be shown on the site plan.

s.

Proposed location of solid waste container access and screening of solid waste container shall be shown on the site plan.

t.

Finished site topographic contours (at not greater than two-foot intervals) and a stormwater drainage plan shall be provided when required by the city engineer.

(k)

Issuance of "preliminary certificate of approval" and "final certificate of approval" to permit up to five unrelated persons to live in a single dwelling unit.

(1)

Once the zoning official has completed his/her review of the proposed development and finds that it meets development standards, the zoning official shall issue the applicant a "preliminary certificate of approval" stating that the application meets the requirements of this article. The "preliminary certificate of approval" shall be presented to the building official at the time of application for a building permit. A "preliminary certificate of approval" does not permit up to five (5) unrelated persons to live in a single dwelling unit.

(2)

When all permitted work is complete and has passed final inspection from the building inspection department, the applicant shall apply to the zoning official for "final certificate of approval" Prior to issuance of "final certificate of approval," the zoning official shall

inspect the subject property for compliance with the application. No "final certificate of approval" shall be issued by the zoning official until he/she is satisfied of full compliance with the application's site plan.

(3)

The "final certificate of approval" shall permit the owner to allow up to five (5) unrelated persons to live in a single dwelling unit on the approved property. A copy of "preliminary certificate of approval" and "final certificate of approval" shall remain on file in the community planning and development department and shall be made available to other departments of the city as necessary.

(4)

Decisions of the zoning official granting or denying an application for "preliminary certificate of approval" or "final certificate of approval" are subject to appeal to the zoning board of adjustment as provided for in section 11-52-80(c), Code of Alabama, 1975.

(l)

Approval of new development in historic district buffer zone. Planning commission approval for compatibility with this article is required for new construction in historic district buffer zones as established in section 24-222. The planning commission shall approve the construction only if the façade of the new structure is compatible with the façade of buildings located in adjacent historic districts. Any party aggrieved by this decision may within fifteen (15) days thereafter appeal de novo therefrom to the city council by filing with the city clerk a written notice of appeal specifying the decision from which the appeal is taken. Any approval by the planning commission pursuant to this subsection shall be stayed pending a decision by the city council. Buffer zones are subject to change if the boundaries of the existing historic districts are changed or if new historic districts are created.

(Ord. No. 6761, § 1, 5-19-05; Ord. No. 6782, 7-28-05; Ord. No. 6866, § 4, 2-16-06; Ord. No. 6882, §§ 1, 2, 4-13-06; Ord. No. 7137, § 1, 9-11-07; Ord. No. 7146, 9-25-07; Ord. No. 7164, §§ 2, 3, 10-30-07; Ord. No. 7850, § 1, 8-7-12)

EXHIBIT B

Oxford Occupancy Regulations

Sec. 74-11. Unrelated persons occupancy restrictions.

Homes in certain zoning districts of the City of Oxford are designated for occupancy by a single family. However, this section does not preclude enforcement of any occupancy regulations in zoning districts other than those listed in (b) below.

(a)

Definitions.

(1)

For purposes of this section, the definition of a "family" is the same as the definition of that term contained in the City of Oxford Land Development Code (see Section 117.66), that is, one or more persons who are related by blood, adoption, marriage, or foster care living together and occupying a single housekeeping unit with single culinary facilities, or a group of not more than three persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost sharing basis. Any household employees residing on the premises shall not be considered as a separate family for purposes of this definition.

(2)

The terms "occupancy" or "occupy" shall mean the use of a dwelling unit or portion thereof for living, sleeping, and cooking or eating purposes.

(3)

To the extent necessary, this section adopts all definitions set forth in the City of Oxford Land Development Code.

(b)

Limited number of unrelated individuals. All dwelling units located in (A) Agricultural District, (C-E) Country Estate District, (R-E) Residential Estate District, (R-A) Single-Family Residential District, (R-1A) Single Family Residential District, and areas of Planned Unit Developments (PUDs) developed as single-family residential subdivisions shall be restricted to occupancy by a family as defined, in subsection (a) above. No person who is not part of such a family may occupy any such dwelling unit.

(c)

[Violation; prima facie proof of occupancy.] Prima facie proof of occupancy of a dwelling unit by more than three unrelated persons is established in any prosecution for violation of this section if it is shown that the same four or more vehicles with registration to persons having different surnames or addresses were parked overnight at the dwelling unit a majority of nights in any 14-day period. This establishment of a prima facie level of proof in this subsection does not preclude a showing of "occupancy" of a dwelling unit by a person in any other manner.

(d)

[Violation by owner, occupant or lessee.] It shall also be a violation of this section for any owner, occupant, or lessee of any dwelling unit described in subsection (b) above to permit or fail to prohibit the occupancy of such dwelling unit by more than three unrelated persons.

(e)

[Enforcement.] The City of Oxford's Code Enforcement Officer shall enforce this section as follows:

(1)

When a complaint is received by the building official, the code enforcement officer shall initiate an investigation to determine if a violation may exist. This investigation shall be completed within 90 days of the complaint.

(2)

If the code enforcement officer determines there are more than three unrelated people residing in any dwelling unit described in subsection (b) above, the code enforcement officer shall contact all identifiable property owners and occupants by certified mail and request voluntary compliance.

(3)

If compliance is not achieved in a reasonable amount of time, the code enforcement officer shall again contact all identifiable property owners and occupants by certified mail and inform all such parties that they have 30 days from the date of the certified letter to comply with the restrictions or municipal court citations may be issued.

(4)

No municipal court citation shall be issued unless and until the procedures described above have been followed.

(f)

Penalties. For each violation of this section, each owner, occupant, or lessee of a single-family dwelling shall be subject to a fine not to exceed $300.00 for each violation. Each day during which any violation of this section shall continue shall constitute a separate offense.

(Ord. No. 2009-7, § I, 7-21-2009)