
Testimony for Hearing July 20, 2015 on disparate effects of municipal ordinances on student housing

I am Bradley Dornish, Pittsburgh real estate attorney and real estate investor. I am a director of Pittsburgh based ACRE, the American Congress of Real Estate, an organization of over 400 Pittsburgh area landlords. I am Chairman of the Board of Directors of the Pennsylvania Residential Owners' Association, and an officer of the Real Estate Section of the Allegheny County Bar Association. I have represented owners' groups from Pittsburgh to Erie to Wilkes Barre/Scranton area and the Realtors' Association of Metropolitan Pittsburgh in fighting against unjust and overreaching municipal ordinances affecting real estate. I regularly teach real estate law classes for the Realtors' Educational Institute in Pittsburgh, and have taught Real Estate Law at Duquesne University.

My first experience with the unfair application of Pittsburgh's zoning ordinance against students was in the early 1980s as a student at Duquesne University. I rented with two other law students a two bedroom, two bath apartment at Cricklewood Towers, an upscale 24 floor private apartment building containing 314 units on the bluff in Pittsburgh, right between Duquesne University's law school building and gymnasium at the time. Despite having two comfortable bedrooms, two baths, an indoor parking garage in the building and a two deck parking lot adjacent to the building, we were not allowed to have four law students legally share the apartment. Three of us on the lease invited a "guest" to stay with us and contribute to our expenses, as was the common practice at the time. The Pittsburgh Zoning Code at the time allowed only a family to live in a single family home or any single rental unit, defined as follows:

- (a) An individual, or two or more persons related by blood or marriage or adoption, living together in a dwelling unit; or
- (b) A group of not more than three persons who need not be related by blood or marriage or adoption, living together as a single housekeeping unit in a dwelling unit, and sharing common facilities as considered reasonably appropriate for a family related by blood, marriage or adoption; in either case exclusive of usual servants. (125 Pa. Cmwlth Ct. 656, 1989).

Shortly after my matriculation at Duquesne, the owners of that very building sought a variance from the definition of a family to allow those two bedroom two bath units, of which there were close to 100 in the building, to be rented legally to four unrelated persons. The case, *Cricklewood Hill Realty Associates v. Zoning Board of Adjustment of the City of Pittsburgh* (125 PA. Cmwlth 653, 558 A.2d 178, 1989). resulted in the Zoning Board upholding the limitation to three unrelated persons, the Court of Common Pleas reversing and granting the variance, and the Commonwealth Court reversing the lower court, finding only evidence of economic hardship to the owners and (97% student) tenants not to justify a variance, making it a legislative, not a judicial issue.

The private owners eventually sold the building to Duquesne University, so it is no longer on the City's property tax rolls, and can now be classified as a dormitory, not subject to the same zoning restrictions on maximum occupancy.

The Pittsburgh Zoning Code definition of a family has changed slightly over the years, but has never waived from a maximum of three unrelated persons in occupancy of a single dwelling unit, regardless of size. A five bedroom, three bath house is still limited to a maximum of three unrelated tenants, unless used as a group home for disabled persons:

- **Family means:**
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(a) An individual, or two (2) or more persons related by blood or marriage or adoption, living together in a dwelling unit; or

(b) A group of not more than three (3) persons who need not be related by blood or marriage or adoption, living together as a single housekeeping unit in a dwelling unit, and shared common facilities as considered reasonably appropriate for a family related by blood, marriage or adoption; in either case exclusive of usual servants; or

(c) A group of not more than eight (8) unrelated disabled people living together as a single housekeeping unit in a dwelling unit and sharing common facilities as considered reasonably appropriate for a family related by blood, marriage or adoption. If appropriate, one (1) staff person may reside on the premises and will not be included in the total number of occupants. Any additional staff shall be included in the total number of occupants. A Family may not be a Multi-Suite Residential facility as defined in Sec. 911.02 or an Assisted Living facility as defined in Sec. 911.02, Pittsburgh City Code, Chapter 926, Definitions, Number 76, as of March, 2015.

Community groups in various sections of the city, including "Oakwatch" in the Oakland section, have aggressively pushed for enforcement of maximum fines for landlords who rent to or tolerate occupancy by more than three unrelated persons, specifically to prevent their neighborhoods from being used for student housing.

I appeared last Summer in front of Magisterial District Judge McGough in the Squirrel Hill area, on a case requested to be brought against an out of state owner of a four bedroom house in that district. It had been rented to four students before the landlord knew of the ordinance restriction, and he had been previously prosecuted. This time, three tenants appeared on the lease, but the inspector found four names on the mailbox, and a neighbor testified that four students occupied the unit.

Because members of the community group, a representative of the district council person and neighbors were present, the judge was pressured to award a maximum fine of one thousand dollars per day for each day of over-occupancy. on the justification that each day of over-occupancy was a separate offense. The judge awarded only \$5,000.00 against the husband owner and \$5,000.00 against the wife owner, because he was not convinced that they knowingly planned a deceptive lease to allow over-occupancy.

Had I been in front of Magisterial District Judge Ricciardi in Oakland, my clients would have fared much worse. In another case by the City alleging over-occupancy around the same time, Judge Ricciardi fined Shaun Cusick, owner of a single family home rented to four students the \$300,000.00 maximum fine allowed for such a continuing violation. That fine was thrown out on appeal to the Court of Common Pleas, but not without considerable expense to the landlord.

The definition of family on its face does not appear to be targeted as an anti- student housing measure, but its practical operation has been just that. The only cases of which I am aware over the last 30 years have involved students, or before the amendment of the definition, group homes.

This ordinance has harmed students in restricting their occupancy of units with two or more bedrooms to below reasonable housing density, and has prevented landlords in the City from realizing the value of the highest and best use of their properties without any other than anecdotal evidence that "student housing is bad for neighborhoods". I urge the legislature to act to prevent this blatant discrimination against all students, from undergraduate to trade, to professional degree candidates from continuing throughout the Commonwealth.