

Aven, Heather M.

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Sent: Saturday, November 28, 2020 4:45 PM
To: Grp.PL.Planning And Development Commission
Cc: Pool, Lisa A.; Aven, Heather M.
Subject: Changing Bellingham's Definition Of "Family"

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Members of the Planning Commission,

Since you have just taken up the issue of changing, modifying, or eliminating the definition of "family" under the city's zoning codes and completed your first work session on September 17th, I would like to point out that a search of the municipal code for the word "family" results in 199 hits. As one might guess, most of those code mentions come under [Title 20](#), Land Use Development. But there are also many hits on the word "family" outside Title 20 having to do with impact fees, health and sanitation, garbage collection, business taxes, water hook-ups, affordable home ownership, access to immigrant services, or even public authorities where the expression "[immediate family](#)" comes into play.

Yet in spite of all these references, an adequate definition of the term "family" throughout the code remains elusive. The term seems to be used differently from one code title to the next. But how are we supposed to know that? Maybe it is simply a convenient word depending on the topic? Keeping track of these various definitions seems a lot to ask of the public and, for me anyway, is an exquisite producer of cognitive dissonance. Perhaps our city attorney might provide some enlightenment? As I recall, when this topic of the definition of family arose ten years ago, [See Agenda Bill under **Files below**] one of the principal reasons for dropping the discussion at that time was the realization that the entire code would have to be scrubbed in order to weed out all the problems inherent in redefining that term - [deconfliction](#) comes to mind.

Defining "family" is tremendously important because changing the definition has the potential to eliminate, for all intents and purposes, differences between Residential Multiple and Single Family (SF) zoning, while making any single family home into a potential rooming house for rental purposes. If this is some kind of secret goal, then let's make it public and stop beating about the bush.

At your 17 September work session on "family" definition, Commissioner Mike Estes expressed concern about the creation of oversized homes in single family neighborhoods, structures built exclusively to house large groups of single-room rentals. [At **Related Links** below are examples.] This land-use change by means of redefining "family" has all the possibility in the world to become a profit windfall for landlords who already control half our housing resources. We need look no farther for examples than the [megaplexes](#) on Iron and Humbolt Streets, which were built in violation of their building permits as well as city codes, and about which there were complaints even before they were occupied, and again as soon as they were filled. [See York Neighborhood Letter on Planned Megaplex below under **Files**] The city's response was to "monitor" the situation. The result? Bupkis. Why? **Because having done so for decades, the city flat out refuses to enforce its own zoning code.**

The basic modus operandi of these landlord/developers is to buy an existing home in a SF neighborhood and raze it in order to build a six, seven, eight bedroom "single family home." In reality, these tend to be enormous boxes with a Potemkin-inspired front porch or a set of shutters to give a wink and a nod to neighborhood character. In the case of the homes on Jersey Street that were replaced by megaplexes, (see last link below) a fire in one dump of a rental destroyed it and another equally slummy rental next door, paving the way for a couple of megaplexes which are operating illegally to this day.

This bait-and-switch developer scheme illustrates one of many issues arising with any definition of “family” in regard to the rental of single family homes by room rather than by house, and how that situation might change when the definition of family is changed. Rooms-rented-separately does not even hint at adhering to current code that a “family” lives there. It’s just blatant, in your face, “Bellingham, I will build what I want and you can take a hike.” Take a look at the building permit for the megaplexes on Iron Street. Those permits were granted only on the stipulation that the “homes” would not be used for renting to large groups, in violation of code. Here, for example, is one condition the city set for the megaplex at 1623 Iron St.

“Condition: 7/23/2015 2:05:09 PM The residential building and use approved under permit # CMB 2015-00119 was applied for and reviewed as a single family residence as regulated under the International Residential Code and Bellingham Municipal Code (BMC) Title 20 - Land Use Development. Use of the building as a boarding or rooming house or congregate living facility as defined by the International Building Code and Land Use Code shall be prohibited. The use of the property shall be restricted to one single family dwelling unit and at no time may more than three unrelated persons reside in the single family dwelling unit as defined under BMC 20.08.020. Violation of this condition shall be subject to enforcement action as allowed under City of Bellingham adopted building and land use codes...”

The owner is still chuckling.

The landlord/owner, having filled 1623 Iron St. to the rafters, has been operating with impunity. Because this is an issue across the country, and references to court cases concerning the definition of “family” are flying about like confetti during a parade, I offer this perspective from [Stegeman v. City of Ann Arbor](#), wherein the judge issued this statement. ***“To say that a family is so equivalent to a ragtag collection of college roommates as to require identical treatment in zoning decisions defies the reality of the place of the family in American society, despite any changes that institution has undergone in recent years. Only the most cynical among us would say that the American family has devolved to the point of no greater importance or consideration in governmental decision making than a group of college roommates.”***

If we are going to alter the definition, it makes sense, beforehand or concurrent with, to change the enforcement of rule infractions, such as illegal boarding houses, to civil infractions. This would ease enforcement since civil law burdens-of-proof are less strict and the infractions are not criminal in nature. We have been talking about this issue for years. And finally settling this enforcement issue may also influence how we think about the definition of “family” and those attendant enforcement issues. (Note: I recently learned that the Planning Department is now, at long last, working on the criminal-to-civil code change and that it is being reviewed internally. Changing the offense and penalties to the the civil realm should help with all zoning violations. I have been told that we can look for this code amendment to come before council by the end of this year.)

Will there be a component to adopted changes that new rules will (must) produce more affordable housing in the private sector? Or is this, as I called it above, a move to give gifts to landlords and developers while the public is quarantined? As Planning Commissioner Scott Jones asked at the first work-session, what is driving this move to change the code? His analysis was that there were concerns regarding privacy and current court decisions that may bear on our code, as well as, problems enforcing the current codes. He also spoke to **the issue of “intimate association” among household members that may inform the process of deciding on a definition.** [See also above reference to Stegeman v. City of Ann Arbor]

Nota Bene: And just when are we going to start treating rentals as businesses requiring B&O taxes and licensing? How can it be that you need a license to cut hair here, but providing a basic human need, such as shelter, gets a pass?

All of that aside for the moment: Given the perspective of reality with the current economic and health crisis we are in, **is this really the time to be acting on such a substantive issue?** Public participation was difficult even before switching to video conferencing, which is increasingly unbearable as it is impossible to recreate the normal face-to-face process.

Nobody but the hosts know who is the “room.” You speak to a blank wall. This is not participatory government. **So again, what is the rush?** The administration merely says we must move on. Ita fiet! And on we do march.

Nevertheless, one has to ask why we are tripping over ourselves to give this to a planning commission whose composition will change drastically in mid-consideration of issues of such far ranging consequence. Do we really want to hand this Gordian Knot over to a commission whose membership on January 1st, 2021 may have only **ONE member** with more than a year of commission experience? [See [Planning Commission to Have Four Vacancies](#)] What might be the effects of five rookie members on the PC when the planning process is already heavily staff-driven? I understand that city hall is asking “retiring” members to stay on for a while after the end of the year so the commission has some stability. We shall see. Has this yet taken place?

I have been writing about these issues for over a decade. City hall has consistently shrugged. So here we all are, with the results of four decades of our city’s laissez-faire policy in the realm of rentals. You can squeeze the water balloon of the definition of family all you want, but without a basic overhaul of the systemic abuse in Landlordia, the water in that balloon will just move from one end to the other depending on who is doing the squeezing, the landlord, city hall or the tenants.

Related Links

- [Hansen-Iron Street Rental Megaplex Planned for York Neighborhood](#)
- [Family Home For Rent: \\$44,000/year](#)
- [The Hansen’s Giant Rental Megaplex - Part 2](#)
- [Single Family Home Rental - Got \\$40,000 per Year to Spend?](#)
- [Megaplex Infection Spreads to Sehome](#)

Attached Files

- [Staff Update on Single Family Residential Policy](#)
- [York Neighborhood Letter on Planned Megaplex](#)