

A Law Limiting Unrelated Persons In Housing Is Overturned in Jersey

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TRENTON, July 30 — The New Jersey Supreme Court today declared unconstitutional zoning ordinances that limit the number of unrelated persons who may share a single housing unit.

The court, in a 5-to-2 opinion, said regulations based on biological or legal relationships of individuals "in many cases do not reflect the real world." The decision said that such restrictions violated the due-process and right-of-privacy guarantees of the State Constitution and that communities could take other steps to preserve their character.

The decision struck down a section of a long-standing Plainfield zoning ordinance that prohibited more than four persons who were "not related by blood, marriage or adoption" from occupying a

single-family unit. The court said the ordinance would prevent five widows from living together, but would allow 10 distant cousins to occupy a single unit.

The majority opinion, written by Justice Morris Pashman, held that as long as a group bore the "generic character of a family unit as a relatively permanent household," it should be equally as entitled to occupy a single family dwelling as its biologically related neighbors.

The issue of group use of homes has drawn increased attention in recent years both in residential communities and in resort areas, particularly on the eastern end of Long Island, where neighbors have complained that "groupies" have upset the character of the area.

The opinion was called "quite historic" by Paul Davidoff, director of the Suburban Action Institute, a New York-based organization that has monitored zoning trends in the metropolitan area for a number of years. "The decision is so timely," he said, "in terms of what has been happening with new life styles and with the increased demand for shared liv-

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ing space brought on by energy concerns."

"The type of restriction addressed by the New Jersey court is contained in ordinances throughout New York and on Long Island," Mr. Davidoff said. "We just completed a survey of all 169 ordinances in Connecticut and found that kind of restriction in virtually all of them. The decision very strongly counters a national trend toward more regulation and toward unacceptable encumbrances upon human choices."

The decision also runs counter to a 1974 opinion of the United States Supreme Court upholding an ordinance in Belle Terre village in California that limited to two the number of unrelated individuals who could reside in a single family dwelling.

Writing for the majority, Justice Pashman said that "we, of course, remain free to interpret our Constitution and statutes more stringently."

The court said it found the reasoning of the Federal opinion "to be both unpersuasive and inconsistent" with results reached by the state court in two prior decisions and "hence we do not choose to follow it."

The court concluded: "Today we hold that municipalities may not condition residence upon the number of unrelated

persons present within the household. Given the availability of less restrictive alternatives, such regulations are insufficiently related to the perceived social ills which they were intended to ameliorate."

In a dissenting opinion, Justice Worrall F. Mountain, with Chief Justice Richard J. Hughes in agreement, said the decision stripped one-family homeowners of protection against the possibility that neighboring homes might be converted to multifamily use or occupancy by unrestricted numbers of unrelated persons.

Justice Mountain also complained about the majority's "cavalier treatment" of the Belle Terre decision. "It is said not to be persuasive, but we are not told why or wherein its inadequacies lie," he said.

The majority held that Plainfield could meet its legitimate goals of preserving the "family" character of its neighborhoods and preventing overcrowding by requiring "families" to consist of "single nonprofit housekeeping units" and by excluding noncompatible residential uses, such as boarding homes and commercial residences.

The court also endorsed zoning or housing-code provisions "limiting the number of occupants in reasonable relation to available sleeping and bathroom facilities or requiring a minimum amount of habitable floor area per occupant."

The court noted that Plainfield had a

minimum space-per-occupant requirement but did not apply it to the case at hand, which arose in 1976 out of the conviction and fining of the Rev. Dennis Baker, an ordained Presbyterian minister. The minister's household consisted of his wife, three daughters and another family, the Conatas, that included the mother and her three children. Mr. Baker testified that the group constituted an "extended family" and that the living arrangement arose out of their religious beliefs.

The municipal court conviction was upheld at the county court level but overturned by the Appellate Division of Superior Court, which found the restriction based on legal or biological relationships that were too narrow. The majority opinion today affirms the appellate court's finding.