

Minutes: Russell Township Zoning Commission
Russell Fire-Rescue Station
June 22, 2011

Present: Richard E. Snyder, Chairman
Bruce Murphy
Donna Weiss Carson
Ben Kotowski
Justin Madden
Diana Steffen, Secretary

Also in attendance: Ric Machnics, Zoning Inspector.

The Chairman called the meeting to order at 7:40 p.m.

MINUTES OF MAY 25, 2011 – *Mr. Murphy made the motion to accept the minutes as written, Mr. Kotowski seconded and the motion passed unanimously.*

DEFINITION OF FAMILY, DWELLING AND IN-LAW SUITE – Mr. Madden discussed the revised definition of family that he had emailed to the Commission. He had tried to allow for both related and unrelated people while keeping to the framework of the current definition. He explained that a U.S. Supreme Court ruling, Moore v. City of East Cleveland, stated that extended family members cannot be excluded, and therefore in-law suites are permitted. Similarly, foster children may not be excluded, so he had changed 'adoption' to 'legal action.' (Note: The various court rulings used by the Zoning Commission can be found in the New York Department of State, Office of General Counsel, Legal Memorandum LU05.) *

To be constitutionally permissible, there must be alternative definitions of family to allow for traditional and non-traditional family groups. To allow for the non-traditional group, Mr. Madden suggested the Commission regulate just the number of unrelated people allowed to live together in a dwelling. A New York Court of Appeals case, City of White Plains v. Ferraioli, provides some guidance on this. If there is more than the permitted number of unrelated people in a dwelling, the burden of proof is on that group to meet the test of a functionally equivalent family. Whatever limit on the number of unrelated people the Township uses will not matter as appeals will each be considered on a case by case basis. Criteria for the functionally equivalent family may include sharing the entire house, living and cooking together as a functional unit, sharing household costs, and being permanent and stable. The Township has the legal right under its zoning authority to keep residential zones as close to 'family' as possible. Some situations, such as a large number of college students living together in one house, would not fit the definition. Mr. Madden suggested allowing a limit of two unrelated people and requiring any more than that to provide proof of fitting the criteria of a functionally equivalent family. Mr. Snyder said that 'five' is commonly used, and if they limit an unrelated group to two there will be a greater number of non-compliant 'families.' He cited different permutations of a family group. One example was a six-member related family that might allow one unrelated person to live with them. This group would then not be considered a family by the zoning. He also asked how two unrelated women, each with two children, living together in a dwelling, would fit into the definition. He felt that the Commission should keep the number 'five' as the minimum number, which would be less intrusive for the zoning to enforce than a lower number.

Since there may be many permutations of a family group, Mr. Madden advised that they perhaps should not try to draft a definition to cover them all, but rather provide guidance to the public and to the Township when making a decision on a particular case. However, any occupancy restrictions must not conflict with the Fair Housing Act, or be based on the fire or building code. Mr. Madden said he would like to keep the definition of family as concise as possible, and just add a separate definition for 'functionally equivalent family.' Mr. Murphy suggested adding wording at the end of the definition, such as, "...and shall be living as a domestic economic unit." The definition of family would include, "...living as a functionally equivalent family."

