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Meeting and Beating the Challenge of Off-Campus Student Housing

By Dwight Merriam, FAICP

One way to start a spirited discussion of the problems of off-campus college housing is to offer that it always seems to come in a fixed ratio of eight guys/four cars/two kegs. But the glib purported "ratio" of guys-cars-kegs says too much and too little at the same time. Indeed, while speaking on the issues in Utah I was told: "Here in Utah, you can pretty much skip the 'two kegs' part." It also says too little because, of course, it is not just young men, but women who choose off-campus housing. And most of the students living off-campus conduct themselves responsibly and make good neighbors.

Off-campus private student housing can be a real positive in maintaining and enhancing the attractiveness of an educational institution and meeting the demand for housing when colleges might not have the wherewithal to provide it.

Problems inevitably ensue when no one plans for private-market housing. Colleges fail to partner with their host communities or, even worse, neglect their responsibility to provide housing, and college towns do nothing to meet the housing demand. Off-campus student housing is good for all stakeholders, if it is done properly in the right place. Though the challenges are great, off-campus student housing problems can be eliminated and prevented with the right planning, carefully thought-out regulation, effective enforcement, and continuing cooperation and coordination between town and gown.

THE DEMAND FOR HOUSING

There are nearly 5,000 two- and four-year colleges in the United States and more than 20 million students (U.S. Department of Education 2017). Most college students commute to campus (Snyder and Dillow 2015, Table 311.10). Many live off campus to save money (Gordon 2015).

A dozen schools do not have an off-campus housing problem because 100 percent of their students live on campus. Among them are the service academies. Many others, such as Harvard and Bennington, have nearly all their students living on campus.

At the other end of the spectrum, there are over 30 colleges with no on-campus housing, including Cooper Union in New York, Louisiana State University-Shreveport, and the University of Michigan-Dearborn (*U.S. News & World Report* 2017). Everyone there lives off-campus, commuting from home or living in private-market housing.

THE ECONOMIC IMPERATIVE

Room and board now averages about $12,000 (College Board 2017). That is more than $1,300 a month, often for a shared room (raise your hand if you shared an on-campus room with at least one other person), common bathroom, and a fabulous, gourmet dining experience in a relaxing communal setting.

Now take eight students and combine their room and board money—you have more than $10,000 a month to bid against the local economy for housing and food. Medians, means, all manner of statistics mean little given that many of these off-campus housing markets are geographically small, but Zillow reports that the average rent for a four-bedroom house ranges from $1,195 in Missouri to $4,000 in New York, which includes New York City. Even if our students only paid half of their pooled room and board money for housing, they could still easily outbid the highest average.

These are averages. Boston University charges $15,270 per academic year for a shared room with the required meal plan (2017). Get eight BU students together and you unleash $122,000 of rent-bidding and food-buying power on the community. Take half of that for housing, and you have $61,000 to spend, more than $5,000 a month. What "normal" household can compete with that?

Wikimedia (CCo)

Student homes and on-street parking in the South Student Neighborhood near the University of Dayton in Dayton, Ohio.

The plain fact is that college students can almost always outbid more traditional households for an apartment or house. Even in Boston, with its red-hot real estate market, the students win. The *Boston Globe* Spotlight Team, the same people portrayed in the 2015 biographical crime drama film *Spotlight,* which won Oscars for Best Picture and Best Original Screenplay, published a "Shadow Campus" series describing the takeover of a single-family neighborhood by college students (2013).

The reporters describe one house with on-file building plans showing six bedrooms, yet it had 14 people living in 12 bedrooms, including three in an illegal basement apartment. A Boston University senior, Binland Lee, was killed in a fire in that house when she was trapped in her illegal attic room. A year earlier, right across the street, another student escaped a fire by jumping from an attic window, suffering permanent traumatic brain injury.

Economics are the driver here: from the landlords seeking the highest revenues, to the students struggling for affordability, to the colleges that admit more students than they can or will provide housing for. This is a life-safety issue, and more will die and others will be injured, some for life, if the off-campus student housing demand is not met and the problems are not aggressively addressed. If we assist the private market in building new, clean, safe, student-adapted moderate- and high-density housing close to campus, we will go far toward protecting our young people—and our single-family neighborhoods.

Dfscgt21, Wikimedia (CC BY-SA 3.0)

The Greek Village near the University of South Carolina's campus in Columbia is home to 20 purpose-built fraternity and sorority houses.

THE SAD STATE OF THE LAW

Exacerbating—maybe it is better described as aiding and abetting—the problem is the troubling precedent in the U.S. Supreme Court, the failure to address the issues at the state level, and the utter lack of effective local regulation that would help bring order to the chaos.

The U.S. Supreme Court in *Village of Belle Terre v. Borass* (1974) ruled for the village in a student off-campus housing case, thus validating as a matter of federal constitutional law a definition of family designed to keep the students out:

> [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.

The Court accepted the belief that:

> 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.

The *Belle Terre* decision is still good law. But it interprets the U.S. Constitution only, not the state constitutions. A half-dozen or more state courts have held similar definitions of family to be unconstitutional under their state constitutions. For example, New York courts in a series of decisions interpreting its state constitution have essentially reversed *Belle Terre*.

Where does *Belle Terre* and the law in most states leave us with regard to off-campus housing? To the extent that local zoning defines "family" or "household" in a similarly restrictive way, and most do, the result is a nation of willful violators—principally, the landlords who rent to households that do not qualify under zoning to live together and the tenants, and home owners, who intentionally and in knowing violation of the law choose to live together when they are not, by definition, a legal "family" or "household" (Durning 2012 and Olevri 2015). This turning a blind eye to the law can be avoided with good regulation, while at the same time protecting the so-called "family values" that are sometimes a pretext for exclusion, not the avoidance of nuisance.

A 'MONKEY WRENCH' INTO THE WORKS

The Fair Housing Amendments Act (FHAA) protects the rights of protected classes of people—physically disabled or developmentally challenged, for example—to live most places where any single family might. The FHAA trumps local zoning and is used most often to permit the location of sober houses for recovering alcoholics and substance abusers. About half of the federal circuits support a "rule of eight" limiting such houses to eight people. State statutes often mimic the federal law and provide their own level of protection. When considering the definition of family in the context of off-campus student housing regulation, it is essential to consider how you will handle group homes.

And it is not just the FHAA. Planners need to consider the needs of other "alternative household" types: extended families that share no relationship by blood, marriage, or adoption; cohousing; group homes

for those not protected by the FHAA, among them halfway houses and alternatives to incarceration; short-term rentals such as Airbnb; fraternities and sororities; group homes for abused and neglected youths and runaways; shelters for battered women; homes for teenage mothers and their children; homes for the elderly; foster care and short-term support homes; respite care; and many more. Over-inclusive regulation to stop off-campus housing can wipe out housing opportunities for other types of households. Under-inclusive regulation to avoid those unintended consequences can leave the door open to the off-campus housing you are trying to control. It is a hard line to draw.

PROVEN TECHNIQUES TO ADDRESS THE ISSUES

We have almost 40,000 counties, municipalities, and townships in the U.S. (U.S. Census 2012), and with a little digging we can find many good, workable approaches to the off-campus student housing problem.

Coordinate, Plan, and Measure to Meet Demand

Most important is creating and maintaining a working town and gown relationship. It isn't easy, but it is essential (Hamden 2015 and Kovner 2015). Good examples abound. Check out Chapel Hill, North Carolina, and its efforts to work together with the University of North Carolina (2017). Take a look at their guidance for off-campus living and their "Good Neighbors" brochure that applies a "gentle touch" to the issue of property maintenance and code enforcement (2013 and 2009).

Even with the town's best efforts, the economics of the demand for off-campus housing continues to put pressure on the affordable housing stock (Ball 2015). In response, the town has formed a partnership with the university and Self-Help, a local nonprofit community developer, to work with residents to create more affordable housing. The resulting Northside Neighborhood Initiative (NNI), steered by residents of the traditionally African American Northside neighborhood on the edge of downtown, invests funds from the partner organizations to acquire and build affordable units.

Chapel Hill's housing and community director Loryn Clark, AICP, notes that "already, after just two years, the NNI has helped to increase the stock of affordable housing available to families, in a way that empowers community members." Chapel Hill's planning and development services director, Ben Hitchings, AICP, adds, "pairing proactive outreach to students with creative community partnerships can help reduce the impacts of off-campus student housing and build the stock of affordable units available to local residents."

Exemplary regulations along the same lines of "if you can't beat 'em, accommodate 'em" abound.

College Station, Texas, has three Northgate overlay districts "characterized as a unique 'campus neighborhood' containing local businesses, churches, and off-campus housing in close proximity to the University" (§12-5.8.B). According to College Station's planning director, Lance Simms, AICP, these districts have "been instrumental in helping the city accommodate the ever-growing student population." Simms says that residents of the city's "established single-family neighborhoods often view student rentals as a threat and the Northgate districts help relieve the rental pressure by providing a place for students to live, work, eat, and recreate near the university."

Las Cruces, New Mexico, has similarly been proactive in meeting the demand with its University Overlay District, by which it intends to allow greater flexibility to developers and land owners while encouraging the development of a vibrant, mixed use University District (§38-44). The purpose "is to implement transportation, land use and urban design policies as established in the University District plan." The "walkable, mixed-use, higher density" district" supports sustainable development by providing an alternative to low-density development in peripheral areas." The city's community development director, David Weir, AICP, says that "the city and New Mexico State University have collaborated through the overlay district to plan, develop, and redevelop the University Avenue [area] for over 20 years." According to Weir, the overlay helps satisfy demand for student housing, while protecting older single-family neighborhoods from the negative effects of student encroachment. "The overlay has fostered improved aesthetics for the entire the corridor and the interface between the city and university," says Weir.

Zoning to meet demand and to reduce the impacts is not a cure-all, however. There can still be tensions. Ames, Iowa, has a high-density residential district as well as a Campustown Service Center mixed use district for certain areas adjacent to the Iowa State University campus (§29.704 & §29.809). According to the city's planning and housing director, Kelly Diekmann, "in the areas near campus we have had a lot of tension of balancing neighborhood livability issues with student housing demands." In response, the city is reviewing its parking regulations and occupancy rules to help mitigate some of the impacts of student housing in established single-family neighborhoods. Diekmann says the city permits up to five unrelated persons per dwelling unit in higher density areas, but has also typically required more off-street parking in those areas. The exception is the Campustown district, where off-street parking requirements are lower to encourage redevelopment.

According to Diekmann, Ames is also considering changes to its occupancy standards, rental concentration restrictions on the number of homes that can be licensed for rental in certain areas, additional property and building improvement requirements for rentals, provisions to manage teardowns and rebuilds or additions that could affect neighborhood character, and greater articulation of the differences between group living and household living.

REGULATE IN AREAS SUBJECT TO INVASION

The impacts of existing student housing on single-family neighborhoods can be addressed with zoning regulations that prevent or ameliorate these impacts. Ames, Iowa, uses an overlay district in "impacted" areas east and west of the campus to prevent the demolition of fraternities and sororities on the east side and to relieve off-campus student housing pressures on the west side (§§29.1110–1111).

The range of alternative approaches is illustrated by the other communities with overlay districts including St. Paul, Minnesota (§67.700); Columbia, Missouri (§29-21.1); East Lansing, Michigan (§50-772 et seq.); and Oxford, Mississippi (§A.2.148).

Some communities control development near campus with form-based codes. In 2014, Ithaca, New York, adopted six Collegetown Area Form Districts for an area near Cornell University to help implement the city's 2009 *Collegetown Urban Plan and Conceptual Design Guidelines* (§32-45.1 et seq.).

Jerameyjannene, Flickr (CC BY 2.0)

Purpose-built student housing in Minneapolis's Dinkytown neighborhood near the University of Minnesota.

According to Ithaca's director of planning and development, JoAnn Cornish, the melding of form-based codes with student housing zoning has "given the city the power to mandate certain design and aesthetic principles to developers who are snapping up real estate at about $3 million an acre in our Collegetown." The prescriptive standards in the form districts ensure that developers are clear about what the city expects. "They can't cheap out on design and materials just because they paid so much for the property," says Cornish. "That argument won't fly In Ithaca."

Similarly, Tallahassee, Florida's University Urban Village District is an overlay zone with a regulating plan (§10-205 & §10-280 et seq.). According to Tallahassee-Leon County principal planner Artie White, AICP, "The University Urban Village District has very successfully catalyzed the redevelopment of a largely vacant warehouse district located between two major universities, creating a walkable mixed use activity center that continues to attract significant private investment." White points out that, while the residential development is largely geared to students, the district's urban design guidelines have helped shape the district "into a distinctive place with commercial and retail uses that are supported not only by students, but by the entire community."

Define Student Housing

There is a lot of law to be found in the definitions. Types of households can be defined to include or exclude off-campus student housing arrangements in various housing types, among them private dormitories, purpose-built multifamily student housing, fraternity/sorority/cooperative living houses, and student rental homes. A "student residence" in Allentown, Pennsylvania, is a living arrangement where three or four full-time or part-time students live together. The definition applies only in the Student Residence Overlay District, while the traditional definition of family applies elsewhere (§1303). In Newark, Delaware, a "student home" is limited to three students and then, in somewhat unusual fashion, the definition lists 28 streets or street segments where student homes are not permitted (§32-4.123.1). The same term is defined in State College, Pennsylvania, and then linked to restrictive provisions in three residence districts (§19.B.201 & §19.D.501.1(6)).

A "student dwelling" in Williamsburg, Virginia, is imprecisely defined as "a building containing three or more dwelling units located in close proximity to the campus of the College of William & Mary and designed to be occupied by students at the college" (§21-2). The regulations limit them to no more than two students in efficiency/one-bedroom units and up to four students in two or more bedrooms, only in the Urban Business District by special permit §21-355.1 & §21-354). As a condition of approval, applicants must either demonstrate that the dwelling is managed by the college or submit a management plan for upkeep and maintenance.

You can find "student housing" defined so as to limit it to housing designed for student rental with a bathroom for each bedroom, and also in typical construction multifamily buildings with apartments of three or more bedrooms. In Orange County, Florida, there are also criteria for student housing developments that, among other things, require a 400-foot separation from single-family uses measured from the property line and a six-foot masonry wall when the student housing is along a right-of-way (§38-1259).

Out west in Pueblo, Colorado, you will find "student housing" to be defined broadly as "a residence for occupancy by groups of people not defined as a family, where such building is specifically designed for students of a college, university, trade school or nonprofit

organization for the purpose of providing rooms for sleeping and living purposes . . ." (§17-2-2). They are allowed only by special permit with 14 site, design, operation, and transportation considerations (§17-4-12). Minor changes to the site plan can be approved without a new special permit process.

Finally, a "private dormitory" is the term used in Auburn, Alabama's regulations to describe student-adapted private market apartments, typically with a bathroom provided for each bedroom (§203). The private dormitories are limited to the three Urban Neighborhood districts (§502.02.H).

GET RID OF THAT *BELLE TERRE* DEFINITION OF FAMILY

It does not work today and it probably did not when the case was decided. First, ease up on the definition of family to enable those who are a little different than the traditional family to live where they want without being in violation of the zoning. An extended straight, gay, or lesbian unmarried couple with foster children is just as good as any other family. They deserve to live where everyone else does.

Next, consider the government's responsibilities under the FHAA and analogous state laws, and fold into the regulatory strategy the siting of protected group homes. Then consider group homes that may not be directly protected by federal and state statute, such as a homeless shelter.

While you are blending all this together, think what to do about those pesky off-campus college students. Remember, you have already coordinated with the college, found out what housing it expects to provide, and determined what the demand is for student housing. In the process you have worked with private developers to learn more about what students want, including roommates or not, price points, amenities, and transportation options. You have provided zoning in appropriate locations for moderate- to high-density development specifically targeted to students to take the pressure off the rest of the town. Still, how do you break the eight guys/four cars/two kegs conundrum created by the students outbidding the private market for single-family houses and apartments all over town?

Define the 'Functional Family'

There is a definitional and procedural approach that can serve to protect the single-family residential district while allowing greater numbers of people who are unrelated yet share common bonds, that is, a "functional family," to live in single-family zoning districts. Remember, this definitional approach is an adjunct to zoning specifically for off-campus student housing and is intended to enable alternative households other than students to live in single-family areas.

Poughkeepsie, New York, has eased into this by allowing a "rebuttable presumption" that five unrelated people living together who are not related by blood, marriage is not a family. The household can rebut the presumption by providing evidence that it is the "functional equivalent of a family" (§210-9).

Painesville, Ohio, has collected examples of other functional family definitions (2013).

The Court of Appeals of Michigan in *Stegeman v. City of Ann Arbor* (1995) upheld the right of a functional family subject to a special use permit to occupy a single-family dwelling. In that case the regulations defined a functional family as "a group of no more than 6 people plus their offspring, having a relationship which is functionally equivalent to a family . . . ." It explicitly excluded groups of students or other individuals "where the common living arrangement or basis for the establishment of the housekeeping unit is temporary."

The use of the "functional family" is by no means without problems. Some argue there is too much discretion and too much opportunity for misuse. More importantly, when it is used for protected classes under the FHAA, it may stigmatize the potential residents. Is it right to require an adult with an intellectual disability or a clean and sober person in recovery from substance abuse or their representatives to be subjected to a public hearing and questioning in order to live like any other family? That is in part a legal issue in some jurisdictions, but everywhere it is a front-and-center public policy issue that needs to be talked through. Perhaps it is better to have an opportunity to accommodate the alternative household types through a special use permit process than not at all, especially when it will enable the exclusion of college students from a neighborhood.

Talk Softly and Carry a Big Stick

Most regulations are no good unless enforced. Enforcement of zoning and other local regulations needs to be swift, certain, and consistent in single-family neighborhoods where students have taken over detached houses and apartments. One of the keys to successful enforcement is to know where off-campus student housing is, and that the housing is appropriate and safe. Licensing and inspection requirements can help. Landlords in Gainesville, Florida (§14-5.1 et seq.); Lawrence, Kansas (§6-1301 et seq.); and West Lafayette, Indiana, (§117.01 et seq.) are required to get permits and submit to periodic inspections in order to rent. Colleges warn their students to check for required licenses before renting (Georgetown University n.d.).

The most interesting example of strict enforcement comes from Narragansett, Rhode Island, where students from the University of Rhode Island in nearby North Kingston have had a major impact on the housing market. The town of Narragansett got tough on enforcement. Party too hard and get busted for having an "unruly gathering." You are warned, and the police are required to post a 10" by 14" bright orange sticker by the front door entitled "Notice of Public Nuisance" that warns of the consequences of a second offense (§46-32).

Sound like the scarlet letter? Can they do that? Yes, the can, said the First Circuit Court of Appeals, acknowledging Nathaniel Hawthorne in its decision (*URI Student Senate* 2011, footnote 1).

Syracuse, New York, has a "Nuisance Party Ordinance" with a dozen types of nuisances that aptly describe the usual party house (§16-65 et seq.). The city defines a "nuisance party" as "a social gathering which is conducted on premises within the City of Syracuse and which, by reason of the conduct of the persons in attendance, results in any one (1) or more of the . . . [listed] conditions or events occurring at the site of the said social gathering, or on neighboring public or private property. . . ." The penalty? Up to $500 or 15 days of imprisonment.

Flagstaff, Arizona, has a noise control ordinance that includes a "Nuisance Parties" section defined similarly to that in Syracuse, but with escalating fines for repeat offenders (§6-08-001-0005). Note that these ordinances are not in the zoning law.

And in Bloomington, Indiana, the city goes after the problem from the traffic side, with an ordinance typical of many places requiring resident parking permits. In this case, it is one per vehicle per resident

(§15.37). The unintended consequence of such regulations can be cars parked on lawns.

SUMMING IT UP

The last thing you want to do is enforce regulations to stop nuisance parties. It is a losing game of Whac-A-Mole. Instead, town and gown need to coordinate and cooperate, and the housing demand must be met, preferably in optimal locations. There are better ways to protect family values than the *Belle Terre* definition of family, but it takes work. Some towns are winning the battle and winning the war. It can be done. Overarching the efforts to get the right use in the right place is the need to protect those households that federal and state laws require be afforded equal housing opportunity. Social equity demands the same for many other types of households. Zoning and other regulations can do this.

Remember what the U. S. Supreme Court said in the first zoning case, *Village of Euclid v. Ambler Realty* (1926): "A nuisance may be merely a right thing in the wrong place—like a pig in the parlor instead of the barnyard." We respect our college students and their need or desire to live off campus. We just need to get them in the right place.

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