

# The Supreme Court of Ohio

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Reed Havel,	)	Case No. 2025-0495
	)	
Appellant,	)	
	)	On appeal from the 11th District
v.	)	Court of Appeals, Portage County,
	)	Case No. 2024-P-0010
Board of Zoning Appeals,	)	
City of Kent,	)	
	)	
Appellee.	)	

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## MERIT BRIEF OF FRIEND OF THE COURT OHIO REALTORS® IN SUPPORT OF APPELLANT

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## TABLE OF CONTENTS

	Page
<b>STATEMENT OF INTEREST OF AMICUS CURIAE.....</b>	1
<b>STATEMENT OF THE CASE AND FACTS.....</b>	2
I.    The permitted-use table in Kent’s zoning code unconditionally permits “Single-Family Dwellings” in the R-3 zoning district where Havel’s property is situated.....	2
II.   The Eleventh District overlooked Kent’s density controls in its existing occupancy code, §1415.04—entitled “Occupancy Limitations”—which regulates occupancy through physical and numerical standards, such as square footage and the number and size of bedrooms.....	3
<b>ARGUMENT.....</b>	4
<b>CONCLUSION.....</b>	6
<b>CERTIFICATE OF SERVICE.....</b>	6

## TABLE OF AUTHORITIES

### Cases:

<i>Havel v. Bd. of Zoning Appeals Kent,</i> 2024-Ohio-4544, (11th Dist.).....	3
--	---

<i>Yoder v. City of Bowling Green,</i> 2019 WL 415254, (N.D. Ohio Feb. 1, 2019).....	1, 3, 4, 5
---	------------

### Ordinances:

Kent Zoning Code §1102.03(a)(75) (definition of “Dwelling Unit”)	4
--	---

Kent Zoning Code §1103.01(a)(234) (definition of “Use”)	2
---	---

Kent Zoning Code §1103.07 (Permitted Use Table)	2
---	---

Kent Licensing Code §1367.01(a)(1)(D)	5
---------------------------------------	---

Kent Occupancy Code §1409.01(f)(10) (definition of “Dwelling Unit” incorporated into occupancy code)	4
--	---

Kent Occupancy Code §1415.04 (Occupancy Limitations)	3, 4
--	------

- §1415.04(d)(1) (bedroom count limitations).....4
- §1415.04(d)(3) (bathroom accessibility requirements).....4
- §1415.04(e) (square footage per occupant).....4

### Appendix:

§1415.04 (Occupancy Code)
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## STATEMENT OF INTEREST OF FRIEND OF THE COURT OHIO REALTORS®

Ohio REALTORS® members have a strong interest in ensuring that local zoning and housing regulations respect property rights and preserve housing access through predictable enforcement of nondiscriminatory measures. The association is therefore especially interested in obtaining reversal of the Eleventh District's decision holding that municipalities may prohibit Ohio's housing providers from entering mutually beneficial arrangements with groups of tenants solely due to a group's lack of familial relationships.

The holding below contradicts the text of Kent's zoning code, which does *not* regulate based upon familial status. The court used an improper "interpretation" that imposed a relationship-based test by judicial fiat. Discrimination based on familial relationships can be avoided by acknowledging that the appellate court's interpretation was improper.

The impropriety was already fully explained in our jurisdictional memorandum.

But even if this court construes the zoning code like the appeals court did, it should still reverse. Regulating occupancy due to relationships offends Ohio's constitution. *Yoder v. City of Bowling Green, Ohio*, 2019 WL 415254, \*6 (N.D. Ohio Feb. 1, 2019), ("the City's dwelling limit, insofar as it limits the occupancy of homes to a number of unrelated individuals less than the number of bedrooms available to accommodate them, is unconstitutional.").

This does not mean that municipalities may never enact reasonable measures restricting occupancy. To be sure—the appeals court overlooked Kent's own preexisting occupancy code, which regulates based upon neutral considerations like square footage and number of bedrooms.

It is these types of nondiscriminatory measures that the Ohio constitution permits, whereas a code that regulates **users** instead of **uses** is forbidden.

## STATEMENT OF THE CASE AND FACTS

The trial court found that Havel's use is permitted. In reversing, the Eleventh District ruled that Kent's zoning code prohibits more than three unrelated people from living together in a single-family dwelling in an R-3 district. Its rationale hinged upon an *in pari materia* "interpretation" that Kent never advanced or briefed.

### I. The permitted-use table in Kent's zoning code unconditionally permits "Single-Family Dwellings" in the R-3 zoning district where Havel's property is situated.

Kent's zoning table is found at [§1103.07](#) of its zoning code. The table identifies the permitted, conditionally permitted, and specially permitted uses in each zoning district:

Land Use	O-R	R-1	R-2	R-3	R-3A	R-4	R-C	C-R	IC-R	C	C-D	N-C	U	R-T-O	I	Development Condition
																<a href="#">1105.57</a>
Single-Family Dwellings	P	P	P	P	P	P	P	C	C			P	C			Section <a href="#">1105.58</a>

The "P" at the intersection of the "Single-Family Dwellings" row and the "R-3 High Density Residential District" column signifies that a single-family dwelling is a permitted use in the R-3 district—without need for special or conditional zoning approval.<sup>1</sup>

Importantly, "Use" is a term of art defined at §1103.01(a)(234) as:

The purpose of which a building or premises is or may be occupied. In the classification of uses, a "use" may be a use as commonly understood or the name of an occupation, business, activity or operation carried on, or intended to be carried on in a building or on premises, or the name of a building, place or thing which name indicates the use or intended use.

The next question becomes: What qualifies as a "Single-Family Dwelling"? Kent's zoning code answers this [through a linked series of definitions](#):

- "Dwelling, Single Family" means: "A building consisting of a single **dwelling unit**."

<sup>1</sup> As stated in §1107.03(a): "P = Permitted Use C = Conditionally Permitted Use S = Specially Permitted Use [blank] = Use Prohibited that grids the permitted uses."

- “**Dwelling Unit**” means: “Any room or group of rooms located within a **dwelling** and forming a residential household unit with facilities that are used or intended to be used for living, sleeping, cooking and eating, with a restroom(s) and bathing facility(ies) to be utilized by a family, a household unit, as defined in this Chapter, or three (3) or more unrelated individuals.”
- And “**Dwelling**” is defined as: “Any building or portion thereof, which is designed or used primarily for residential purposes, including single family, a household unit, or three (3) or more unrelated individuals, but not including hotels, motels, and bed and breakfasts.”<sup>2</sup>

In contrast to the Bowling Green ordinance invalidated in *Yoder*, Kent’s definitional chain imposes no limitation based on familial status.<sup>3</sup> Indeed, its scheme broadly identifies “three or more unrelated individuals” as a *lawful*, standalone category of residential occupancy that is distinct from a “family” or a “household unit.” Therefore, living in a home designed or used for residential purposes by three “**or more**” unrelated individuals is a permissible use, which is precisely why the trial court ruled that Kent’s code permits three or more unrelated people to reside together in a Dwelling Unit—and thus in a Single-Family Dwelling—in the R-3 district.

This is the “Use” that the above table permits. Consequently, whether the residents of a Single-Family Dwelling constitute a traditional family is immaterial under Kent’s own zoning code.

**II. The Eleventh District overlooked Kent’s density controls in its existing occupancy code, §1415.04—entitled “Occupancy Limitations”—which regulates occupancy through physical and numerical standards, such as square footage and the number and size of bedrooms.**

Kent’s occupancy code is codified at [§1415.04](#). It limits the number of people who may lawfully reside in a dwelling unit based on measurable, property-specific criteria. It is this ordinance

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<sup>2</sup> The appellate court’s opinion materially redefined “Dwelling” as follows: “Any building or portion thereof, which is designed or used primarily for residential purposes, including single family, a household unit, or three (3) or more unrelated individuals, but not including hotels, motels, and bed and breakfasts dwelling units.” *Havel v. Bd. of Zoning Appeals Kent*, 2024-Ohio-4544, ¶23 (11th Dist.).

<sup>3</sup> In Bowling Green, the definition of single-family dwelling was “a building designed for occupancy by one (1) family for living purposes and **including not more than two (2) lodgers or boarders.**” *Yoder*, 2019 WL 415254, \*1.

that should be harmonized with the zoning code. For instance, the definition of “dwelling unit” as used in §1415.04 incorporates the definition from the zoning code. *See, §1409.01(f)(10)*, (“DWELLING UNIT: See Kent Zoning Code Definition.”) And as mentioned above, the ***zoning*** code’s definition of “dwelling unit” includes dwellings used or designed for three or more ***unrelated*** people. *§1102.03(a)(75)*. It is the city’s ***occupancy*** code that governs occupancy. Indeed, Kent’s occupancy code contains the following features that the appeals court overlooked:

- Square footage per occupant provisions ensuring that living space is adequate for the number of residents. §1415.04(e).
- Bedroom count limitations naturally cap occupancy because each bedroom must meet minimum size requirements and other building-code standards. §1415.04(d)(1).
- Regulations requiring accessible bathrooms. §1415.04(d)(3).

Unlike user-based restrictions, these regulations apply equally to all households, regardless of whether the residents are related and achieve legitimate government objectives.

In Kent, occupancy limits hinge on square footage and bedrooms—not family trees.

## **ARGUMENT**

The Eleventh District’s interpretation unnecessarily invites constitutional conflict.

Kent’s neutral, property-based standards in its occupancy code are tailored to the physical realities of residential use and legitimately regulate safety without intruding into household composition. The Eleventh District’s insertion of additional restrictions based on whether residents are related was impermissible judicial lawmaking.

Regardless, relationship-based occupancy limits have no rational connection to legitimate zoning goals, particularly when objective, property-based limits already exist. *Yoder, supra*.

Any justification for banning unrelated residents from living together necessarily rests on invidious stereotypes—presuming that those who share housing with non-relatives, often lower-

income individuals such as students, immigrants, or racial minorities, are less worthy than the traditional ideal—that serve no legitimate governmental basis.

Measures that forbid unrelated individuals from cohabiting together despite adequate bedrooms are “impermissibly arbitrary, oppressive, and untailored.” *Yoder*, 2019 WL 415254, \*4. Such measures rest upon impermissible prejudice rather than permissible planning.

When physical and numerical standards already address occupancy, overlaying familial-relationship restrictions does nothing to advance health, safety, or welfare. Such restrictions intrude into the private arrangements of otherwise lawful tenants—undermining housing access, increasing costs, and intruding upon constitutional associations.

Unfortunately, the appeals court failed to address how Kent’s **occupancy** ordinance uses neutral, objective criteria—square footage, number of bedrooms, etc.—to ensure that occupancy limits coincide with infrastructure and safety considerations. The metrics employed in the occupancy code address the physical realities of a property and its capacity to accommodate residents, without resorting to arbitrary household composition limits based on whether occupants are related by blood, marriage, or adoption. As in *Yoder*, relationship restrictions lack a rational connection to legitimate zoning goals. This court should avert the constitutional problems caused by the appellate panel’s strained interpretation by acknowledging that Kent’s zoning code does not purport to regulate occupancy based upon familial relationships among occupants.

Such an unconstitutional “interpretation” ought to be avoided.

Perhaps most damaging to the Eleventh District’s surprise *in pari materia* analysis is its erasure of [§1367.01\(a\)\(1\)\(D\)](#), which mandates licensing of any “single-family dwelling that contains more than three unrelated residents”—the very arrangement the court claimed the code forbids.

## **CONCLUSION**

Kent's occupancy code achieves legitimate density objectives through neutral, property-based standards that apply equally to all households. Layering on familial-relationship restrictions adds nothing to public safety and undermines fairness. This court should recognize the sufficiency of Kent's existing, objective density controls and reject any interpretation that permits household composition limits untethered from the physical attributes of the dwelling.

Respectfully submitted,

/s/ Andy Mayle

## **CERTIFICATE OF SERVICE**

We emailed a copy of this brief to counsel for the parties and friends of the court on August 21, 2025.

/s/ Andy Mayle

#### **1415.04 OCCUPANCY LIMITATIONS.**

(a) Privacy. Dwelling units, hotel units, housekeeping units, rooming units and dormitory units shall be arranged to provide privacy and be separate from other adjoining spaces.

(b) Minimum Room Widths. A habitable room, other than a kitchen, shall be a minimum of seven (7) feet (2134 mm) in any plan dimension. Kitchens shall have a minimum clear passageway of three (3) feet (914 mm) between counterfronts and appliances or counterfronts and walls.

(c) Minimum Ceiling Heights. Habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a minimum clear ceiling height of seven (7) feet (2134 mm).

Exceptions:

1. In one- and two-family dwellings, beams or girders spaced a minimum of four (4) feet (1219 mm) on center and projecting a maximum of six (6) inches (152 mm) below the required ceiling height.

2. Basement rooms in one- and two-family dwellings occupied exclusively for laundry, study or recreation purposes, having a minimum ceiling height of six (6) feet eight (8) inches (2033 mm) with a minimum clear height of six (6) feet four (4) inches (1932 mm) under beams, girders, ducts and similar obstructions.

3. Rooms occupied exclusively for sleeping, study or similar purposes and having a sloped ceiling over all or part of the room, with a minimum clear ceiling height of seven (7) feet (2134 mm) over a minimum of one-third of the required minimum floor area. In calculating the floor area of such rooms, only those portions of the floor area with a minimum clear ceiling height of five (5) feet (1524 mm) shall be included.

(d) Bedroom and Living Room Requirements. Every bedroom and living room shall comply with the requirements of subsection (d) hereof.

(1) Room area. Every living room shall contain at least 120 square feet (11.2 m<sup>2</sup>) and every bedroom shall contain a minimum of seventy (70) square feet (6.5 m<sup>2</sup>) and every bedroom occupied by more than one person shall contain a minimum of fifty (50) square feet (4.6 m<sup>2</sup>) of floor area for each occupant thereof.

(2) Access from bedrooms. Bedrooms shall not constitute the only means of access to other bedrooms or habitable spaces and shall not serve as the only means of egress from other habitable spaces.

Exception: Units that contain fewer than two (2) bedrooms.

(3) Water closet accessibility. Every bedroom shall have access to at least one water closet and one lavatory without passing through another bedroom. Every bedroom in a dwelling unit shall have access to at least one water closet and lavatory located in the same story as the bedroom or an adjacent story.

(4) Prohibited occupancy. Kitchens and non-habitable spaces shall not be used for sleeping purposes.

(5) Other requirements. Bedrooms shall comply with the applicable provisions of this code including, but not limited to, the light, ventilation, room area, ceiling height and room width requirements of this chapter; the plumbing facilities and water-heating facilities requirements of Chapter 1416; the heating facilities and electrical receptacle requirements of Chapter 1417; and the smoke detector and emergency escape requirements of Chapter 1418.

(e) Overcrowding. Dwelling units shall not be occupied by more occupants than permitted by the minimum area requirements of Table 1.

**TABLE 1 MINIMUM AREA REQUIREMENTS**

SPACE	MINIMUM AREA IN SQUARE FEET		
	1-2 occupants	3-5 occupants	6 or more occupants
	120	120	150
	Living room a, b		
Dining room a, b	No requirement	80	100
Bedrooms	Shall comply with "Room Area" of Occupancy		

Limitations Section

For SI: 1 square foot = 0.093 m<sup>2</sup>.

a. See "Combined Spaces" for combined living room/dining room spaces.

b. See "Sleeping Area" for limitations on determining the minimum occupancy area for sleeping purposes.

(f) Sleeping Area. The minimum occupancy area required by Table 1 shall not be included as a sleeping area in determining the minimum occupancy area for sleeping purposes. All sleeping areas shall comply with subsection (d) "Bedroom and Living Room Requirements".

(g) Combined Spaces. Combined living room and dining room spaces shall comply with the requirements of Table 1 if the total area is equal to that required for separate rooms and if the space is located so as to function as a combination living room/dining room.

(h) Efficiency Unit. Nothing in this section shall prohibit an efficiency living unit from meeting the following requirements:

(1) A unit occupied by not more than one occupant shall have a minimum clear floor area of 120 square feet (11.2 m<sup>2</sup>). A unit occupied by not more than two (2) occupants shall have a minimum clear floor area of 220 square feet (20.4 m<sup>2</sup>). A unit occupied by three (3) occupants shall have a minimum clear floor area of 320 square feet (29.7 m<sup>2</sup>). These required areas shall be exclusive of the areas required by subsections (h)(2) and (3) hereof.

(2) The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a minimum clear working space of thirty (30) inches (762 mm) in front. Light and ventilation conforming to this code shall be provided.

(3) The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

(4) The maximum number of occupants shall be three (3).

(i) Food Preparation. All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.

(Ord. 2012-34. Passed 3-28-12.)