

## MEMORANDUM

TO: Pullman Board of Adjustment

FROM: Pete Dickinson, Planning Director  
Heidi Sowell, Assistant City Planner

FOR: Meeting of December 19, 2005

SUBJECT: Appeal of Notice of Violation (A-05-1)  
Duncan Street Overoccupancy

DATE: December 13, 2005

Staff Report No. 05-28

On November 1, 2005, Kathy Wilson of DRA Real Estate, L.L.C., on behalf of J. Craig Lester, filed an appeal of a Notice of Violation and Order to Correct or Cease Activity (hereinafter referred to as "Notice of Violation") issued by the Pullman planning department that claims that the number of unrelated persons living at 1025 NE Duncan Street exceeds the maximum level established in the Pullman Zoning Code (See Attachment "A," Appeal Letter; and Attachment "B," Location and Zoning Map). Upon receipt of this appeal, city staff scheduled a public hearing before the Board of Adjustment for December 19, 2005 in accordance with Chapter 17.185 of the Pullman City Code. Notice of this hearing was provided by publication, posting the site, and mailing as required by code.

### BACKGROUND

The zoning code contains definitions for "traditional family" and "functional family" that are appropriate to consider in cases regarding residential occupancy. These definitions are as follows:

Family, Traditional. A "traditional family" means one or more persons related by blood or marriage residing in a single dwelling unit. A family shall be limited to husband, wife, son, daughter, father, mother, brother, sister, grandfather,

grandmother, grandson, granddaughter, aunt, uncle, stepchildren, and legally adopted or state assigned foster children, or any combination of the above persons living together in a single dwelling unit.

Family, Functional. A “functional family” means a collective group of unrelated persons, limited to not more than two adult persons (together with their traditional family members of any age), living together as a single housekeeping unit, and sharing and operating a unified and common household.

The single family dwelling at 1025 NE Duncan Street is located in an R2 Low Density Multi-Family Residential zoning district. The zoning code occupancy rules pertaining to the R2 district [set forth in Subsection 17.75.075(2)] read as follows:

It shall be unlawful to occupy a single dwelling unit in an RT or R2 district by more than one of the following living units:

- (a) a traditional family as defined in Section 17.05.020; or
- (b) a functional family as defined in Section 17.05.020.

A traditional or functional family may have two additional unrelated persons and no others residing with the family in an RT or R2 district.

Taken together, the applicable zoning code provisions for the R2 Low Density Multi-Family Residential zoning district provide for no more than four unrelated persons to live together in a residence. Planning staff has determined that the dwelling unit at 1025 NE Duncan Street has six unrelated persons living together.

Based on previous enforcement efforts, planning staff had suspected for some time that the subject residence was occupied by more than the allowable number of unrelated people. Consequently, the planning department sent a letter to the owner in April of 2005 stating that the city would be verifying compliance in the fall, and that issuance of a Notice of Violation and fines would be a possibility if compliance was not met.

On September 27, 2005, city staff conducted a site visit as follow up and determined that six unrelated people were living in the home. During the site visit, an occupant of the house mentioned that four individuals were accounted for on one lease, and a separate lease included two other tenants, for a total of six people.

On October 24, 2005, planning staff mailed, by Certified Mail Return Receipt Requested, a Notice of Violation concerning the overoccupancy violation to property owner J. Craig Lester (See Attachment “C,” Notice of Violation). The city was provided with notification that Mr. Lester received the Notice of Violation (See Attachment “D,” Domestic Return

Receipt). As stated above, the appeal in this case was filed on November 1, 2005.

### CORRESPONDENCE RECEIVED

One item of correspondence has been received by the planning department since the notice of public hearing was issued for this matter. This correspondence, a letter from Tim A. Kohler and Marilyn Von Seggern, dated December 12, 2005, is included herein as Attachment "E."

### STAFF ANALYSIS

The appellant appears to have complied with the relevant procedural requirements. Therefore, with respect to this case, the Board is requested to rule on substantive grounds. The Board will be asked to affirm, modify, or reverse the action of planning staff in this matter.

Regarding the substantive aspects of the appeal, this case appears to staff to be very straightforward. The material facts of the case are undisputed. In its Notice of Violation, the city stated that over the allowable amount of unrelated persons are living at the subject property, located in an R2 Low Density Multi-Family Residential zoning district. This represents a violation of the law.

In her appeal documents, Ms. Wilson does not question these facts. In her appeal of the Notice of Violation, Ms. Wilson states, "This violation should be reversed as the dwelling unit is a four bedroom home." This information provided by the applicant is of no consequence with respect to this case.

The question that the Board must decide upon is this: did staff act properly or improperly in issuing the Notice of Violation given the current code requirements and the observed violations? Based on the evidence presented thus far, staff can find no reason why its decision to issue the Notice of Violation in this instance should not be affirmed.

### ACTION REQUESTED

1. Open the public hearing, establish rules of procedure, and ask Appearance of Fairness questions.
2. Accept oral staff report.
3. Accept public testimony regarding the subject appeal.
4. Decide, by resolution, to accept or reject the subject appeal. At the public hearing,

staff will have available draft resolutions prepared for either acceptance or rejection of the appeal.

ATTACHMENTS

- "A" Notice of Appeal
- "B" Location and Zoning Map
- "C" Notice of Violation
- "D" Domestic Return Receipt
- "E" Letter, dated 12/12/05, from Tim Kohler and Marilyn Von Seggern