



The City of Morgantown

389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
www.morgantownwv.gov

Office of the City Clerk

AGENDA MORGANTOWN CITY COUNCIL SPECIAL MEETING

June 16, 2020
5:00 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting will not be permitted. When it is time, the public may participate by videoconference at the following link: <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> with meeting number (access code) 793 734 477, or by calling in at the following number 408-418-9388 and using the access code 793 734 477. All members of the public may view the meeting on Channel 15 and by streaming hosted on the City's website at www.morgantownwv.gov.

1. **CALL TO ORDER:**
2. **ROLL CALL BY CITY CLERK:**
3. **PUBLIC HEARING FOR REPORTED PUBLIC NUISANCE AT
619 BROCKWAY AVENUE, 324 DEWEY STREET, AND 625 PENNSYLVANIA AVENUE**
4. **ADJOURNMENT:**

For accommodations, please contact us at 304-288-7072*



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Office of the City Clerk

June 5, 2020

Mr. Herold G. Berthy, Jr.
5 Woodland Terrace
Morgantown, WV 26505
PO Box 1093
Morgantown, WV 26507
*By first class mail,
Certified Mail, and
personal delivery*

RE: Public Hearing before Morgantown City Council
Reported Public Nuisance at
619 Brockway Avenue, 324 Dewey Street, and 625 Pennsylvania Avenue

Dear Mr. Berthy:

At its regular meeting on March 3, 2020, Morgantown City Council received a recommendation from the City Manager to conduct a hearing to determine whether you are maintaining a public nuisance at your property located at 619 Brockway Avenue, 324 Dewey Street, and 625 Pennsylvania Avenue. The recommendation was based upon the enclosed reports from the Chief of the Morgantown Police Department.

By majority vote, City Council set a hearing on the charges contained in the enclosed reports pursuant to Article 1149 of the City Code for March 17, 2020. The March 17 hearing was continued due to the COVID-19 outbreak. At its June 2, 2020 meeting, City Council set a new hearing date for **June 16, 2020 at 5:00 p.m.** The hearing will be held in Council Chambers, City Hall, 389 Spruce Street, Morgantown, WV, at 5:00 p.m. on June 16, 2020, but participants will attend only by electronic participation as described in this notice. You may appear and present evidence on your behalf, individually or by legal counsel or other agents you may choose.

The City Council consideration of the charges will proceed under the following procedures:

1. City Administration and the Property Owner may submit any documentation in support of their claims to City Council no later than 5:00 p.m. on June 12, 2020, by delivering such documentation to the office of the City Clerk, or by email to cwade@morgantownwv.gov. No documents will be accepted after that date except by order of Council at the public hearing.
2. If City Administration or the Property Owner submits any documentation, a copy of the same shall be provided to the other party at the same time by email, first-class mail, or personal delivery. Either City Administration or the Property Owner may also obtain a copy of any documentation submitted by requesting the same from the office of the City Clerk.
3. At the public hearing, the City Manager will present the City Administration's case and will have 20 minutes to present argument. The City Manager may designate other members of the City Administration, or third parties, to present all or a portion of the case.

4. Following presentation of the City Administration's case, the Property Owner will have 20 minutes to present the case. The Property Owner may designate other individuals, including but not limited to legal counsel, to present the case.
5. Council will not hear sworn witness testimony. The Property Owner and City Administration should present information from any person with knowledge of the matter within the 20 minutes allotted for presentation of the case or through submission of documentary evidence.
6. Following the conclusion of the arguments, City Council may ask questions of either or both of City Administration and the Property Owner.
7. Following the close of questioning, City Council may vote on the application for declaration of a public nuisance and, if a nuisance is found, prescribe the abatement, or Council may take the matter under advisement. If Council takes the matter under advisement, it may also elect to receive additional documents or written submissions from City Administration and the Property Owner, upon terms it may decide at the public hearing.
8. City Council shall issue a written order identifying its findings on the application.

Due to the ongoing public health response to the COVID-19 pandemic, this hearing will be conducted and recorded by videoconference through the Webex platform. You will access the meeting by using the following link: <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> with meeting number (access code) 793 734 477, or by calling in at the following number 408-418-9388 and using the access code 793 734 477.

If you object to participating in the hearing by videoconference, you must identify the reason for your objection and state each way in which a videoconference will not permit you to adequately participate in the hearing by filing such objection in the same manner as other materials filed by June 12, 2020.

A copy of this notice will be posted in a conspicuous place on the premises subject of the charges and also within 100 feet surrounding the premises. Should you have any questions regarding the conduct of the hearing, please contact the City Clerk's office.

Sincerely,



Christine Wade
City Clerk

xc: City Council
City Manager

w/encl: (1) Report of Public Nuisance – 619 Brockway Avenue
(2) Report of Public Nuisance – 324 Dewey Street
(3) Report of Public Nuisance – 625 Pennsylvania Avenue



Morgantown Police Department

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To: Paul Brake, City Manager

From: Ed Preston, Chief of Police

Copies: Emily Muzzarelli, Assistant City Manager
Ryan Simonton, City Attorney
Mark Caravasos, Fire Chief
Mike Stone, Chief Code Inspector
File

Date: February 25, 2020

Subject: PUBLIC NUISANCE

Pursuant to the Morgantown City Code 1149.04, I am requesting that you initiate actions to declare the property located at 619 Brockway Avenue a Public Nuisance as defined by Morgantown City Code 1149.03.

The property located at 619 Brockway Avenue is residential rental property that is owned by George H, Berthy, 5 Woodland Terrace, Morgantown WV 28561. The property is recorded with the Morgantown Code Enforcement Office as a "Vacant Structure". The following definitions per Morgantown City Code apply directly to this property.

1149.03 DEFINITION; PUBLIC NUISANCE

- (a) A public nuisance is one which affects an indefinite number of persons, or the residents of a particular locality, or people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Such public nuisance endangers the health, safety and welfare of the community and is dangerous and detrimental to the public health, may violate the laws of the City and/or State as well as obstructs the community from reasonable and comfortable use of property.
- (b) A public nuisance may arise from the unreasonable, unwarrantable or unlawful behavior associated with the property, either real or personal, which hinders the neighboring community and the general public from enjoying the common and public rights enjoyed by the general community in like areas where no such public nuisance exists.

- (c) For purposes of this article a continuing public nuisance is an uninterrupted or periodically recurring public nuisance, not necessarily a constant or unceasing injury, but a nuisance which occurs so often and is so necessarily an incident of the use of property complained of that it can fairly be said to be continuous. Such a nuisance may be of such character that its continuance is necessarily an injury which will continue without change.
- (d) A continuing public nuisance may be found to be a permanent public nuisance when its continuance is necessarily an injury which will continue without change, unless Council takes such action to cease any like nuisance from becoming established and re-occurring at the particular location. It is not enough to show a slight interference to the public welfare and such will not be restrained unless the type of business or manner of operation is injurious to the public health, safety and welfare of the community or has a tendency to promote unlawful behavior or behavior which is considered by the City Administration, including its health and/or safety officials, to be a menace to public order and safety.

This property is one of several owned by the same property owner, George H. Berthy, and is in close proximity to other properties that he owns that are either condemned or vacant, exacerbating the nuisance complaints in this particular neighborhood. Based upon the above definitions relating to public nuisance the following is submitted:

- 11/24/2019 – Officers responded to the property for suspicious activity and charged three (3) individuals for trespassing (Jeffrey MARSH, Sandra TENNENT and Candace ADAMS).
- 8/28/2109 – Officers assisted Code Enforcement for a condemnation and inspection of property.
- 8/27/2019 – Officers found the property unsecured with an open door.
- 8/16/2019 – Officers responded to a civil dispute and found one of the parties had an outstanding warrant for another jurisdiction and was taken into custody (Robert MILLER).
- 8/14/2019 – Officer found and charged Jason BROOM for trespassing.
- 7/24/2019 – Officers arrested Jennifer DOWNEY for an outstanding warrant for failure to appear.
- 7/13/2019 – Officers and EMS responded for a drug overdose. Victim was revived, drug and drug paraphernalia were confiscated.
- 7/11/2019 – Officers assisted Child Protective Services regarding a removal of children for safety reasons.
- 6/20/2019 – Officers responded to a verbal argument and property damage.
- 6/15/2019 - Officers responded to a verbal altercation and disorderly conduct.
- 2/17/2019 – Officers responded for a juvenile call and during the investigation arrested Taylor BELT on outstanding warrants from Maryland.
- 5/28/2019 – Officers arrested Joshua CRAWFOR and Nicole TYMAN for domestic battery.
- 8/27/2019 – Officers responded to a civil dispute.
- 10/15/2017 – Code Enforcement issued notice to
- 7/22/2017 – Officers responded to a complaint of Courtney MILLER trespassing.

The property is further a nuisance to the community and disturbs the sanctity of the neighborhood further attracting individuals who engage in criminal and nuisance activities on a recurring basis.

The following is provided:

- Jeffery MARSH
 - 8/20/2019 – Charged with Trespassing.
 - 8/14/2019 – Charged with Trespassing.
 - 12/4/2009 – was found looking into cars on Decker’s Creek by Officers.
- Sandra TENNANT
 - 8/30/2019 – Charged with Trespassing.
 - 7/13/2019 – Overdosed on controlled substances.
 - 6/24/2010- Arrested and charged by U.S. Marshall’s for probation violations.
- Candace ADAMS
 - 8/30/2019 – charged with trespassing and currently has an outstanding warrant for Trespassing and Forgery/Uttering.
- Jason BROOM
 - 11/6/2019 – Arrested and charged by the MonMetro Drug Task Force.
 - 8/8/2019 – Arrested for possession of Methamphetamine.
 - 7/30/2019 – was present in a vacant building where an altercation resulted in the arrest of Sheldon JACKSON for Wanton Endangerment with a Firearm.
 - 1/16/2019 – Arrested for Driving on Suspended License.
- Jennifer DOWNY
 - 7/24/2019 – Arrested for Failure to Appear.
- David DILLARD
 - 4/28/2018 – Arrested on outstanding Fugitive warrant and for possession of cocaine.
- Taylor BELT
 - 7/13/2019 – Charged with trespassing.
 - 7/11/2019 – Charged with trespassing.
 - 2/17/2019 – Arrested on outstanding Fugitive warrant.
- Joshua CRAWFORD
 - 12/24/2018 – Arrested and charged with Burglary and Conspiracy.
 - 5/28/2018 – Arrested and charged with Domestic Battery.
- Nicole TYMAN
 - 7/24/2019 – Charged with trespassing.
 - 6/10/2016 – Arrested and charged with Uttering (Counterfeiting).

The owner of the property is George H. BERTHY. Mr. BERTHY resides at 5 Woodland Terrace, outside of the municipal limits of Morgantown.

- 2/24/2020 – The Monongalia County Clerk’s Office confirmed that Mr. Berthy lists a P.O Box for his mail but changed his address for voting to 524 Dewey Street, but resides at 5 Woodland Terrace.
- Mr. BERTHY owns a significant number of vacant, abandoned or otherwise condemned property in the Greenmont Neighborhood.
- 8/13/2019 – Charged with multiple traffic violations.
- 1/29/2019 – Charged with Driving on a revoked driver license while officers attempted to serve an outstanding warrant for traffic violations.
- 1/17/2018 – Reported numerous tools stolen from his unoccupied rental unit at 629 Brockway Avenue which was owned by Mr. BERTHY at the time of the incident.

- 9/6/2017 – reported that a game camera was stolen from an unoccupied rental property at 201 Overdale Street. This property was owned by Mr. BERTHY at the time of the incident.
- 7/21/2017 – Officers responded to 619 Brockway Avenue and found the property occupied by Courtney Miller and three small children after the property had been condemned by Code Enforcement. This property was owned by Mr. BERTHY at the time of the incident.
- 4/17/2018 – Officers and Code Enforcement responded to and removed Christopher McGEE, Danielle McGEE and a dog. The residence had been condemned by Code Enforcement and was being used by vagrants and drug addicts as a place to use illegal controlled substances. The property was in complete disarray, used needles and other drug paraphernalia was observe in the residence. The property was boarded up and secured by City Personnel and the dog was surrendered to the Humane Society until an owner claimed it. This property was owned by Mr. BERTHY at the time of the incident.
- 3/24/2015 – Officers responded to 565 Clark Street to assist Thressie HINES who was attempting to relocate due to the building she was renting and apartment from Mr. BERTHY was condemned.

Citations have been issued and the arrests that have been made in an attempt to abate the ongoing criminal and nuisance behavior occurring at this residence, but this has not resulted in a cessation of criminal and nuisance activities.

Mr. BERTHY has been noticed on two separate occasions within the past year regarding continuing and ongoing issues with this property, some of which have been ongoing since 2012, through additional notices by Code Enforcement.

It is recommended, based upon the ongoing nature of the criminal and nuisance activities occurring at 619 Brockway Avenue Street, that the City of Morgantown place limitations regarding the use of the property.

- Mr. Berthy be required to bring the property in compliance with current Morgantown code and regulations within 30 days of receiving sanction.
- the property be secured in such a manner as to prevent individuals from habitating (“Squatting”), in this residence or using the residence for the purposes using or selling controlled substances and/or contraband.
- In the event that Mr. Berthy is unable to perform either of these tasks, a requirement that a property manager be engaged at Mr. Berthy’s expense in order to comply with these restrictions, otherwise, the city shall take reasonable steps to secure and maintain the security of the property and the cost of those actions be attached to the property.
- Should these actions fail to abate the ongoing problems, Mr. Berthy’s business license to rent property should be revoked until such time as each of his properties are brought up to compliance with Morgantown Municipal Code.



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To: Paul Brake, City Manager

From: Ed Preston, Chief of Police

Copies: Emily Muzzarelli, Assistant City Manager
Ryan Simonton, City Attorney
Mark Caravasos, Fire Chief
Mike Stone, Chief Code Inspector
File

Date: February 25, 2020

Subject: PUBLIC NUISANCE

Pursuant to the Morgantown City Code 1149.04, I am requesting that you initiate actions to declare the property located at 324 Dewey Street a Public Nuisance as defined by Morgantown City Code 1149.03.

The property located at 324 Dewey Street is residential rental property that is owned by George H, Berthy, 5 Woodland Terrace, Morgantown WV 28561. The following definitions per Morgantown City Code apply directly to this property.

1149.03 DEFINITION; PUBLIC NUISANCE

- (a) A public nuisance is one which affects an indefinite number of persons, or the residents of a particular locality, or people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Such public nuisance endangers the health, safety and welfare of the community and is dangerous and detrimental to the public health, may violate the laws of the City and/or State as well as obstructs the community from reasonable and comfortable use of property.
- (b) A public nuisance may arise from the unreasonable, unwarrantable or unlawful behavior associated with the property, either real or personal, which hinders the neighboring community and the general public from enjoying the common and public rights enjoyed by the general community in like areas where no such public nuisance exists.
- (c) For purposes of this article a continuing public nuisance is an uninterrupted or periodically recurring public nuisance, not necessarily a constant or unceasing injury, but a nuisance which occurs so often and is so necessarily an incident of the use of property complained of that it can fairly be said to be continuous. Such a nuisance may be of such character that its continuance is necessarily an injury which will continue without change.

- (d) A continuing public nuisance may be found to be a permanent public nuisance when its continuance is necessarily an injury which will continue without change, unless Council takes such action to cease any like nuisance from becoming established and re-occurring at the particular location. It is not enough to show a slight interference to the public welfare and such will not be restrained unless the type of business or manner of operation is injurious to the public health, safety and welfare of the community or has a tendency to promote unlawful behavior or behavior which is considered by the City Administration, including its health and/or safety officials, to be a menace to public order and safety.

Based upon the above definitions relating to public nuisance the following is submitted:

- 1/15/2020 – Officers met with the owner of the property, George H. Berthy and reported that the property should be unoccupied due to its “uninhabitable status”. During a search of the building, Kalie Marie JOHNSON, Timothy Shane SELF, Julie Ann WELLING and Matthew Black TENNANT, were arrested for the charge of burglary at this location. There were numerous drug paraphernalia items such as dirty needles and burned melting caps throughout the building. The drug paraphernalia and condition of the house indicate that the building has been used by drug addicts for a significant period of time for the purpose of using controlled substances such as heroin and other intravenous drugs.
- 1/14/2020 – Officers responded to the location due to neighbors reporting seeing individuals entering the property that was supposed to be unoccupied. Officer contacted the property owner, George H. Berthy, who reported that the property was unoccupied and that he would check it the next day.
- 1/9/2020 – Officers were dispatched to the area of this property for suspicious individuals coming and going from the residence.
- 9/20/2019 – Officers responded to a verbal argument that was disturbing the neighborhood. The argument was between Brittany ANDERSON and Robert MILLER, who resided at 111 Pinnacle Heights Drive at the time of the incident.
- 9/3/2019 – Officers responded to a report of a domestic disturbance disturbing the neighbors. No one was found at the time of the incident but was reported on 2019-105845 and the property was found unsecured with an open door. This incident was a second report of a domestic disturbance that was previously handled.
- 9/3/2019 – Officers responded to a report of a domestic disturbance that was reported by neighbors. Officers arrived and found Brittany MILLER and Robert MILLER involved in a verbal argument. The parties were separated, and Robert MILLER left the scene to stay at his father’s residence.
- 8/8/2019 – Officers responded to a child custody dispute following Robert MILLER’s declaration that he was no longer homeless and wanted custody of his daughter back.
- 5/13/2019 – Code Enforcement issued a summons to the property owner due to the condemned status of the property.
- 3/7/2019 – The property was found to be an unregistered rental property by Code Enforcement and a notice was posted for violation of City Code 1751.04 – Illegal Conditions. The property was subsequently condemned and resulted in a court hearing on 9/19/2019.
- 2/15/2019 – the property was found to remain in violation of city code and a notice was issued in a second attempt to bring the property into compliance.
- 1/19/2019 – the property was found to be in violation of city code and a notice was issued in an attempt to bring the property into compliance.

The property is further a nuisance to the community and disturbs the sanctity of the neighborhood further attracting individuals who engage in criminal and nuisance activities on a recurring basis. The following is provided:

- Kalie Marie JOHNSON has been arrested for receiving stolen property and possession of controlled substances.
 - 6/22/2019 – Officers found her under the Walnut Street Bridge and she was in possession of syringes and other drug paraphernalia in addition to a package of methamphetamine. During further investigation, JOHNSON was found in possession of items that were stolen from a vehicle that was previously reported (case 2019-37659) and property that was reported stolen from the “Friendship Room” (case 2019-67919).
 - 12/30/2018 – Officers responded to a domestic dispute involving JOHNSON and Alan WREN, at 550 Brockway Avenue. Both JOHNSON and WREN stated that they were homeless but denied any issues.
 - 11/5/2018 – Officers responded to a report of trespassers inside of 268 High Street. Officers found JOHNSON along with six (6) other homeless individuals trespassing inside of a closed business. All were issued trespass warnings.
 - 10/18/2018 – Officers responded to report of JOHNSON being observed by store personnel using heroin on the premise and wanted her trespassed from the property.
 - 8/2/2018 – Officers responded to a report of public disturbance involving JOHNSON and Joshua AUSTIN.
- Robert MILLER and Brittany ANDERSON (MILLER) have had numerous incidents.
 - 9/17/2019 – Robert MILLER and Brittany ANDERSON (MILLER) were involved in a verbal altercation disturbing the peace at 324 Dewey Street.
 - 9/11/2019 - Robert MILLER and Brittany ANDERSON (MILLER) were involved in a verbal altercation disturbing the peace at the intersection of Dewey Street and Elmina Street.
 - 9/3/2019 - Robert MILLER and Brittany ANDERSON (MILLER) were involved in a verbal altercation disturbing the peace at 324 Dewey Street.
 - 8/16/2019 – Robert MILLER was arrested on an outstanding warrant.
- Matthew TENNANT has been involved in several incidents.
 - 12/31/2019 – Officers charged him with Shoplifting.
 - 11/8/2019 – Officers responded to a report of suspicious activity on Listravia Avenue and found TENNANT and Carrie RILEY inside of a vehicle that did not belong to them. Both were charged with Auto Tampering and RILEY was found to be a fugitive with outstanding warrants from Pennsylvania.

The owner of the property is George H. BERTHY. Mr. BERTHY resides at 5 Woodland Terrace, outside of the municipal limits of Morgantown.

- 2/24/2020 – The Monongalia County Clerk’s Office confirmed that Mr. Berthy lists a P.O Box for his mail but changed his address for voting to 524 Dewey Street, but resides at 5 Woodland Terrace.
- Mr. BERTHY owns a significant number of vacant, abandoned or otherwise condemned property in the Greenmont Neighborhood.
- 8/13/2019 – Charged with multiple traffic violations.
- 1/29/2019 – Charged with Driving on a revoked driver license while officers attempted to serve an outstanding warrant for traffic violations.

- 1/17/2018 – Reported numerous tools stolen from his unoccupied rental unit at 629 Brockway Avenue which was owned by Mr. BERTHY at the time of the incident.
- 9/6/2017 – reported that a game camera was stolen from an unoccupied rental property at 201 Overdale Street. This property was owned by Mr. BERTHY at the time of the incident.
- 7/21/2017 – Officers responded to 619 Brockway Avenue and found the property occupied by Courtney Miller and three small children after the property had been condemned by Code Enforcement. This property was owned by Mr. BERTHY at the time of the incident.
- 4/17/2018 – Officers and Code Enforcement responded to and removed Christopher McGEE, Danielle McGEE and a dog. The residence had been condemned by Code Enforcement and was being used by vagrants and drug addicts as a place to use illegal controlled substances. The property was in complete disarray, used needles and other drug paraphernalia was observe in the residence. The property was boarded up and secured by City Personnel and the dog was surrendered to the Humane Society until an owner claimed it. This property was owned by Mr. BERTHY at the time of the incident.
- 3/24/2015 – Officers responded to 565 Clark Street to assist Thressie HINES who was attempting to relocate due to the building she was renting and apartment from Mr. BERTHY was condemned.

Citations have been issued and the arrests that have been made in an attempt to abate the ongoing criminal and nuisance behavior occurring at this residence, but this has not resulted in a cessation of criminal and nuisance activities.

Four different notifications of issues with this property have been given to Mr. BERTHY, in the form of door hangars, registered mail, summons and personal notification.

It is recommended, based upon the ongoing nature of the criminal and nuisance activities occurring at 324 Dewey Street, that the City of Morgantown place limitations regarding the use of the property.

- Mr. Berthy be required to bring the property in compliance with current Morgantown code and regulations within 30 days of receiving sanction.
- the property be secured in such a manner as to prevent individuals from habitating (“Squatting”), in this residence or using the residence for the purposes using or selling controlled substances and/or contraband.
- In the event that Mr. Berthy is unable to perform either of these tasks, a requirement that a property manager be engaged at Mr. Berthy’s expense in order to comply with these restrictions, otherwise, the city shall take reasonable steps to secure and maintain the security of the property and the cost of those actions be attached to the property.
- Should these actions fail to abate the ongoing problems, Mr. Berthy’s business license to rent property should be revoked until such time as each of his properties are brought up to compliance with Morgantown Municipal Code.



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Mike Stone, Chief Code Inspector
File

Date: February 25, 2020

Subject: PUBLIC NUISANCE

Pursuant to the Morgantown City Code 1149.04, I am requesting that you initiate actions to declare the property located at 625 Pennsylvania Avenue a Public Nuisance as defined by Morgantown City Code 1149.03.

The property located at 625 Pennsylvania Avenue is residential rental property that is owned by George H, Berthy, 5 Woodland Terrace, Morgantown WV 28561. The property is recorded with the Morgantown Code Enforcement Office as a "Vacant Structure". The following definitions per Morgantown City Code apply directly to this property.

1149.03 DEFINITION; PUBLIC NUISANCE

- (a) A public nuisance is one which affects an indefinite number of persons, or the residents of a particular locality, or people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Such public nuisance endangers the health, safety and welfare of the community and is dangerous and detrimental to the public health, may violate the laws of the City and/or State as well as obstructs the community from reasonable and comfortable use of property.
- (b) A public nuisance may arise from the unreasonable, unwarrantable or unlawful behavior associated with the property, either real or personal, which hinders the neighboring community and the general public from enjoying the common and public rights enjoyed by the general community in like areas where no such public nuisance exists.

- (c) For purposes of this article a continuing public nuisance is an uninterrupted or periodically recurring public nuisance, not necessarily a constant or unceasing injury, but a nuisance which occurs so often and is so necessarily an incident of the use of property complained of that it can fairly be said to be continuous. Such a nuisance may be of such character that its continuance is necessarily an injury which will continue without change.
- (d) A continuing public nuisance may be found to be a permanent public nuisance when its continuance is necessarily an injury which will continue without change, unless Council takes such action to cease any like nuisance from becoming established and re-occurring at the particular location. It is not enough to show a slight interference to the public welfare and such will not be restrained unless the type of business or manner of operation is injurious to the public health, safety and welfare of the community or has a tendency to promote unlawful behavior or behavior which is considered by the City Administration, including its health and/or safety officials, to be a menace to public order and safety.

This property is one of several owned by the same property owner, George H. Berthy, and is in close proximity to other properties that he owns that are either condemned or vacant, exacerbating the nuisance complaints in this particular neighborhood. Based upon the above definitions relating to public nuisance the following is submitted:

- 2/25/2020 – Officer responded to the location along with Code Enforcement Officers and found the structure occupied and the conditions to be in violation of IPMC Code Section 108.1.3. The structure was cleared, and condemnation orders posted to deter trespassers. The property owner was again notified of the non-compliance by Code Enforcement.
- 2/12/2020 – Officer responded to the location due to neighbors reporting loitering and trespassing on the property that is a registered vacant property. There were signs of habitation at the property, but no one was present on officer's arrival.
- 1/31/2020 – Code Enforcement issued notice for Failure maintain property in Litter Free Condition – Trash, mattresses and debris piled up on the property.
- 4/29/2019 – Officers assisted the Monongalia County Sheriff's Office serve an arrest warrant at this location.
- 3/13/2019 – Code Enforcement issued notice for failure to Maintain Litter Free Condition and was not remedied until 5/28/2019.
- 11/4/2018 – Officer responded to complaints of traffic at the residence blocking the roadway.
- 10/12/2017 – Officers responded to a larceny that occurred from a vehicle that was parked in the yard. The vehicle belonged to someone that didn't reside at the residence but was using the property as a parking area.
- 9/2/2017 – Officers responded to reports of people using drugs inside of vehicles parked in the yard.
- 8/13/2017 – Officers responded to an unconscious and unresponsive person in the yard.

The property is further a nuisance to the community and disturbs the sanctity of the neighborhood further attracting individuals who engage in criminal and nuisance activities on a recurring basis. The following is provided:

- Shawn BARKLEY, Donald R. JOHNSON and Donald L. JOHNSON are associates that have been found loitering and in an intoxicated state at this and other properties in the Greenmont Neighborhood.
 - 9/30/2019 – BARKLEY was arrested for Felony Larceny
 - 2/23/2018 – BARKLEY arrested for Failure to Register as a Sex Offender.
 - 1/14/2018 – BARKLEY was arrested for Obstructing a Police Officer.
 - 4/21/2016 – BARKLEY was arrested for Battery that occurred at 649 Brockway Avenue against Donald R. JOHNSON.
 - 1/26/2015 0 BARKLEY was arrested for Grand Larceny (Motor Vehicle).
- Donald R. JOHNSON
 - 8/19/2017 – Open Container violation
 - 4/22/2017 - Disorderly Conduct and in an argument with Donald L. JOHNSON
 - 4/21/2017 – Disorderly Conduct and in an argument with Shawn BARKLEY, resulting in BARKLEY’s arrest
 - 4/7/2016 0 Transported by EMS due to intoxication when he was found incapacitated in the yard of 625 Pennsylvania Avenue.
 - 3/23/2016 – Arrested for Domestic Battery.
 - 2/2/2016 – Arrested for Domestic Battery.
 - 2/2/2016 – Arrested for Disorderly Conduct.
- Donald L. JOHNSON
 - 8/22/2019 – Cited for Trespassing.

The owner of the property is George H. BERTHY. Mr. BERTHY resides at 5 Woodland Terrace, outside of the municipal limits of Morgantown.

- 2/24/2020 – The Monongalia County Clerk’s Office confirmed that Mr. Berthy lists a P.O Box for his mail but changed his address for voting to 524 Dewey Street, but resides at 5 Woodland Terrace.
- Mr. BERTHY owns a significant number of vacant, abandoned or otherwise condemned property in the Greenmont Neighborhood.
- 8/13/2019 – Charged with multiple traffic violations.
- 1/29/2019 – Charged with Driving on a revoked driver license while officers attempted to serve an outstanding warrant for traffic violations.
- 1/17/2018 – Reported numerous tools stolen from his unoccupied rental unit at 629 Brockway Avenue which was owned by Mr. BERTHY at the time of the incident.
- 9/6/2017 – reported that a game camera was stolen from an unoccupied rental property at 201 Overdale Street. This property was owned by Mr. BERTHY at the time of the incident.
- 7/21/2017 – Officers responded to 619 Brockway Avenue and found the property occupied by Courtney Miller and three small children after the property had been condemned by Code Enforcement. This property was owned by Mr. BERTHY at the time of the incident.
- 4/17/2018 – Officers and Code Enforcement responded to and removed Christopher McGEE, Danielle McGEE and a dog. The residence had been condemned by Code Enforcement and was being used by vagrants and drug addicts as a place to use illegal controlled substances. The property was in complete disarray, used needles and other drug paraphernalia was observe in the residence. The property was boarded up and secured by City Personnel and the dog was surrendered to the Humane Society until an owner claimed it. This property was owned by Mr. BERTHY at the time of the incident.

- 3/24/2015 – Officers responded to 565 Clark Street to assist Thressie HINES who was attempting to relocate due to the building she was renting and apartment from Mr. BERTHY was condemned.

Citations have been issued and the arrests that have been made in an attempt to abate the ongoing criminal and nuisance behavior occurring at this residence, but this has not resulted in a cessation of criminal and nuisance activities.

Mr. BERTHY has been noticed on two separate occasions within the past year regarding continuing and ongoing issues with this property, some of which have been ongoing since 2012, through additional notices by Code Enforcement.

It is recommended, based upon the ongoing nature of the criminal and nuisance activities occurring at 625 Pennsylvania Avenue, that the City of Morgantown place limitations regarding the use of the property.

- Mr. Berthy be required to bring the property in compliance with current Morgantown code and regulations within 30 days of receiving sanction.
- the property be secured in such a manner as to prevent individuals from habitating (“Squatting”), in this residence or using the residence for the purposes using or selling controlled substances and/or contraband.
- In the event that Mr. Berthy is unable to perform either of these tasks, a requirement that a property manager be engaged at Mr. Berthy’s expense in order to comply with these restrictions, otherwise, the city shall take reasonable steps to secure and maintain the security of the property and the cost of those actions be attached to the property.
- Should these actions fail to abate the ongoing problems, Mr. Berthy’s business license to rent property should be revoked until such time as each of his properties are brought up to compliance with Morgantown Municipal Code.