Housing Advisory Commission Minutes

Monthly Meeting: FMHA Offices, 103 12th Street, Fairmont

Wednesday, February 25, 2020, 8:30 AM

Attending: Lisa Darden, Amy Fairman, Rachel Fetty, Bill Kawecki, Gail Lipscomb, Alexis McMillen, Theressa Nichols, Sara Pardey, Arthur Trusler, Brian Walker, and John Whitmore

Enforcement of Fire Extinguishers in Rental Property: Group

Fire extinguishers are now required in rentals containing three or more units, even if sprinkler systems are present. Arthur Trusler stated that some landlords are against this requirement, as they fear tenants will try to fight the fire themselves, as opposed to calling 911. The most common types are Class K (for kitchen fires, about $15 each) and Class ABC (normal combustibles, flammable and combustible liquids, and electrical fires, about $45). There is no deduction in insurance, but the presence of a fire extinguisher is a requirement by some insurance companies.

Use of Body Cameras by Code Enforcement: Group

Amy Fairman from the City of Morgantown Code Enforcement Office said enforcement officers are now using body cameras during inspections to record what violations need to be corrected. This practice is good for when tenants are present or for absentee landlords and helps Code to see if officers are properly conducting inspections. Code keeps each video for three months, and few landlords have complained about the practice. Bill Kawecki asked if Code officers announced they were recording, and Amy responded that is not required by state law.

Brian Walker asked Sara Pardey to walk us through a typical inspection. Sara responded that officers begin the inspection by examining the outside structure (gutters, handrails, address numbers properly displayed on the front of the property), and then the interior portion of the rental is inspected for habitability. WHile anyone can call Code and ask for an inspection regarding the exterior of a rental, only the landlord or tenant can ask for an interior inspection. Routine

inspections are performed every three years.

City of Morgantown Nuisance Ordinance Proposal: Group

The proposed ordinance, read at the February 25 meeting of Morgantown City Council, is to provide the City to hold neglectful or absentee landlords responsible for allowing their properties to be health or safety risks. Other West Virginia cities, including Clarksburg, Fairmont, Martinsburg, and Parkersburg have enacted such ordinances with varying results. Alexis McMillen said the sale of rental property can thwart the inspection process. Regarding absentee landlords, process servers cannot serve out of state owners. Many have expressed interest in a property manager requirement for rentals, particularly for out of state property owners. John Whitmore said a legal loophole exists; property managers should be licensed real estate agents, but very few are in the area. Key components of property management (leasing, managing and renting) are considered real estate activities under existing West Virginia real estate licensing laws, but exemptions are made for property managers who work for just one company are exempt from this law. There is an attachment to these minutes with more information.

The cities of Fairmont and Morgantown have worked to identify abandoned properties. It can be a lengthy and costly process to track down owners of such properties, and if the owner resides in another state, it's nearly impossible to do much about them. Amy stated that property law in West Virginia is the property owner's domain, and some owners are habitual offenders. Mike Stone from Morgantown Code Enforcement has been looking into ways to enact stiffer penalties; the current penalty of $200 isn't enough of a deterrent. Adding an environmental judge who knows building and fire codes could streamline the process.

City governments typically aren't interested in seizing property, as they are not equipped to deal with demolition and upkeep, but an urban renewal authority (URA) can circumvent some of these issues, as URA's are public entities that can acquire, demolish or develop, and sell or lease neglected properties. Huntington and Charleston have URA's, but some areas of West Virginia have properties that are essentially without any value.

Housing Fair: Rachel and Alexis

Alexis stated the Morgantown Mall isn't available for our original April 4 target date and asked Commission members for ideas about other dates. April 25 was selected as the best date, and Alexis was able to secure the Morgantown Mall for Saturday, April 25. We continue to work on fair housing training, and Arthur and Alexis will work with Ronald Jones to see if the training can take place in the morning before the housing fair. Rachel mentioned that Chris Fletcher asks that we submit a request for funding for the fair.

New Business

John has asked a representative from Republic to attend the March meeting.

Lisa Darden took Commission members on a tour of FMHA's latest project, the Gaston Avenue Apartments at 200 Gaston Avenue, Fairmont: http://gastonavenueapartments.com/. This project will house 20 families and was formerly a hospital built in 1908. Families began moving in at the end of January, and there is a large waiting list for families interested in this location. There is an attachment to these minutes with more information.

Next Meeting

March 25, 2020.

Adjournment

Cook Hospital (a.k.a. Gaston Avenue Apts.)

*Cook Hospital has significant historic ties to Fairmont, being the first hospital in the City. Opened 1904.

*Gaston Avenue Apts. is a joint effort between Marion Co. BOE/Sadd Brothers/ADC and FMHA

*This project has NO historic tax credits/not on the register

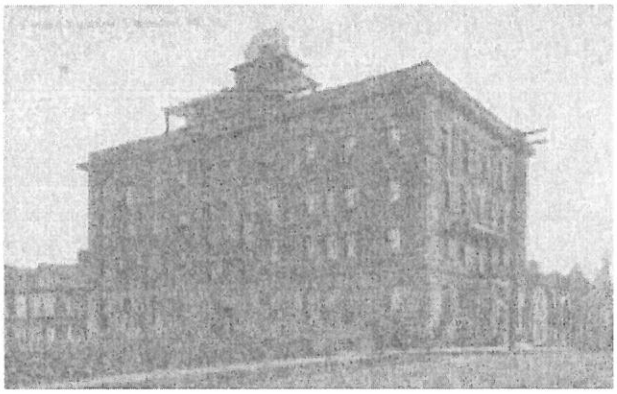
*The project total is estimated to be $3.5 million and of that $2.6 million is LIHTC/the remaining is coming from other financing means

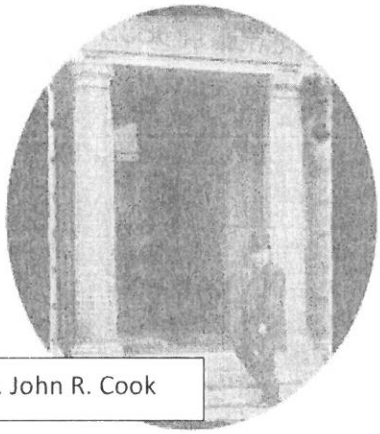
*20 Family Units

*12-2 Bedrooms

*8-1 Bedrooms

*10 PBV administered by FMHA-Section 8





Dr. John R. Cook

Cook Hospital History: **M. Raymond Alvarez, DHA, MPA, FACHE**

"It is not without exaggeration of fact to assert that Cook's Hospital of Fairmont is without a peer in the line of similar institutions in the state of West Virginia. It might be said further, that in but few states in the Union are there to be encountered hospitals better constructed, equipped, furnished and conducted than the one above named, the exceptions being in the large cities of the country where hundreds of dollars are expended annually in the maintenance of institutions of a public or semi-public character."

--*Industrial Guide to Fairmont, 1908,* published by the Fairmont West Virginian, edited by G. A. Mitchel

In the 1890s, Dr. John R. Cook, a Virginia native who was recruited to the coalfields by the Watsons to provide medical care to miners at New England Mine and Montana Coal and Coke operations. He resided in Rivesville, but relocated to Fairmont. Seeing the need for a way to treat patients in an environment designed for safe and sanitary care versus treating patients at home, he and Dr. John Howard leased the top floor of a house on Walnut Avenue to serve as the first hospital in Fairmont in 1899. There were three equipped rooms (males, females and surgical procedures). He also established the Cook Hospital and Training School Company and began a nursing program. In a year, he resolved to have a larger building, so the former residence of J. Walter Barnes was purchased at the corner of 2nd Street and Gaston Avenue around 1901. It could accommodate 50 patients but Dr. Cook made plans for a modern, multi-storied hospital. At the time of purchase of the Barnes home, a large Victorian structure situated behind the Fairmont Normal Campus, Dr. Cook believed that this would suffice for many years to come.

Many of the physicians in Fairmont declared the venture would not be profitable. To the astonishment of all, including Dr. Cook, after three years in the Barnes home, it was evident that the hospital was too limited as the patient volume continued to increase from all parts of the region. Dr. Cook then formulated plans by 1902 for a new building. All hospitals at that time operated without much money. Physicians donated their time, and costs for nurses and staff tended to be low. The Barnes home was moved to the rear of the property and construction began around 1903. Dr. Cook financed the building with sale of shares of stock. The new hospital opened in April 1904. The cost of the building was $75,000, with $10,000 for furnishings and $2000 for equipment. The laundry equipment was $2600. Basement ground space is 80' x 120' and total floor space of 48,000 square feet. Internal arrangement was planned by Dr. Cook. The roof included a sun parlor with potted tropical plants. Fourth floor contained two operating rooms (minor and major procedures), with sterilizing rooms and an anesthesia ('etherizing') room. The third and second floors were for private patients, size and arranged in proportion to the amount the patient was willing to pay. Several were private suites, others with connecting baths. General patient wards were located on each floor. There were 30 lavatories and bath rooms in all. Each of the three upper floors had a diet kitchen. On the ground floor from the Gaston Avenue entrance

to the right was a general reception room and business office. To the left of the entry were the library and parlor and nurses' dining room. Dr. Cook's offices were in the rear of the building, along with a pharmacy, two class rooms and rooms occupied by the nursing superintendent. Communication throughout between patients and nurses, nurses and the office were by electrical bells and annunciators.

The kitchen, boilers and general stores were located in the basement. An artesian well had an abundant supply of alkaline water 'rich in chemical properties indicated in many diseases usually treated at famous health resorts' (Mitchel, 1908). Water is pumped automatically to a tank on the roof that supplied the building's needs. The Training School for Nurses, established in 1900, was the first in North Central WV and among the earliest in the state. Dr. Cook died in 1908 from a blood infection from surgery. He is buried in Woodlawn Cemetery in Fairmont. Around this time, hospitals required significant funds, just as doctors and surgeons began getting paid and nursing and staffing were professionalized. By the time of Dr. Cook's death, over 3100 patients had been admitted. In 1914, Cook Hospital incorporated with a community board committed to the mission of treating all, and they became ever more vulnerable in the marketplace. A Woman's Auxiliary was established by 1916 and was the first of its kind in the state. The hospital ownership was transferred to the City of Fairmont in 1939 and a new facility, now named Fairmont General Hospital, opened on Locust Avenue in 1941, when the Cook Hospital ended an era of excellent care. Cook Hospital is the forerunner of Fairmont General Hospital, Inc.

About the Architect: Charles Grayum Badgley

Charles G. Badgley was born in Illinois in 1867, one of eight children of Mary Agnes Grayum Badgley, who was the widow of Aaron Badgley, who died in 1979. The family relocated to Gallipolis, Ohio shortly before Aaron's death. At the age of 23, Badgley lived in a Columbus boarding house while he worked as a draftsman in the office of architect J.M. Freese. Two years later, Badgley moved to Cambridge, MA, where he attended MIT from 1892-1894. The architect entered MIT later than most of his peers, and he left before graduating. He moved to Fairmont, WV by the late 1890s and lived with his brother, Aaron and his wife Emma, also a dentist like his father, at 706 Fairmont Avenue.

At the start of the 20th Century, Fairmont industrial money kept architects busy in the city. Nearly all of the styles popular in America during the historic district's period of significance may be seen and the names of architects who spent much of their professional careers enhancing the city's commercial core have been identified. Among important representative names of the profession are Charles Badgley, J.C. Burchinal, Andrew C. Lyons, and the Giffins Firm. By 1900, he and Lon C. Smith established Badgley and Smith architects. Together their buildings began to create a definite style. Their office was located at 310 Main Street in Fairmont in 1907. St. Peter's Catholic Church and grade school is one of the contributing structures to the Fairmont Historic District on the National Register of Historic Places. This design incorporates a Mission Style church with a curvilinear parapet and a high corner tower designed with Baroque flourishes. Badgley also designed two more hospitals for Fairmont and a number of public school buildings as well as some grand homes.

From 1908-1913, Badgley operated his office in Seattle, where he relocated along with his brother and family. His obituary notice published in a 1920 MIT publication stated: "Charles G. Badgley died in Seattle, Washington, in March 1915. He was unmarried and at the time of his death had built up a successful architectural practice particularly in Seattle and Vancouver, B.C., where his work was well known." He is buried in the Mount Zion Cemetery, Green Township, Gallia County, OH.

(sources: WV Division of Culture and History: Fairmont Historic District application 2009; http://www.wvculture.org/shpo/nr/pdf/marion/95001008.pdf; Pacific Coast Architects, retrieved from https://digital.lib.washington.edu/architect/architects/3044/); "Young Nurses Long Ago," R. Alvarez, Goldenseal Magazine 1991.

The goal of this proposed ordinance is to provide the City of Morgantown with a mechanism by which neglectful or absentee property owners can be held accountable for allowing their properties to endanger the health and safety of our community. The ordinance is similar, but not identical to, ones already in place in Fairmont, Clarksburg, Nitro, Shinnston, Wheeling, Buckhannon, Martinsburg, Parkersburg, Westover, and other cities throughout the United States. In order to preserve neighborhoods and protect low income housing areas, this ordinance would target properties used for specific criminal offenses. Without such an ordinance, Morgantown lacks an important tool for effectively combating the risks associated with vacant, abandoned, or chronically mismanaged properties.

Some critics of other nuisance ordinances have mistakenly described this proposed ordinance as creating a process that, once started, automatically results in eviction for tenants without regard for their rights, their circumstances, or any safety nets to stop the process. Although this characterization may be well intentioned, it is not accurate, and shows a lack of careful consideration of the language of the ordinance itself, the severity of the threat posed to public health and safety, and the effects that vacant and mismanaged properties have on the everyday lives of other residents, business owners, and citizens who live or work close to them.

For example, this ordinance does not confer any eviction powers upon the City and, indeed, the ordinance makes no reference to eviction whatsoever. It should be noted that – with or without the ordinance – eviction is a contractual provision between a tenant and a landlord. Tenants review and willingly agree to a specific set of rules and conditions outlined in every individual lease. In sum, it is an agreement between two consenting parties, and nothing in this ordinance is intended to replace or modify the eviction proceedings currently established by law, which afford tenants due process and legal protections.

Moreover, some contend that the ordinance would discourage victims of domestic violence from calling the police. However, the ordinance categorically excludes acts of domestic violence and responses by the City to reports of domestic violence from the types of incidents that allow a property to be classified as a nuisance.

Finally, the ordinance allows authorities to intervene and stop the process at various stages if the circumstances indicate that use of the ordinance is unwarranted or unnecessary. An action to abate a public nuisance must be filed in Municipal Court, and an order of abatement must be issued before the action may proceed. If an order of abatement is issued, it must be properly served in accordance with the West Virginia Rules of Civil Procedure, and it must provide a reasonable time frame for the persons involved to take corrective action. The ordinance also allows property owners – and tenants – to appeal the City's final decision, and any person affected by the decision has the right to seek a temporary injunction.

The ordinance will be presented to the City Council for consideration at a meeting on Tuesday, February 25, 2020. If the City decides to consider the ordinance, there will be opportunities to amend it before a final version is voted upon.

If you support the ordinance, please send your City Council representative a brief message stating as much before the meeting next Tuesday or show up at the Council of the Whole meeting.

1st Ward
Deputy Mayor Rachel Fetty
304-376-8823
rfetty@morgantownwv.gov

2nd Ward
Mayor Bill Kawecki
304-292-5154
wkawecki@morgantownwv.gov

3rd Ward
Zackery Cruze
865-548-3872
zcruze@morgantown.gov

4th Ward
Jennifer Selin
304-685-6569
jselin@morgantownwv.gov

5th Ward
Ron Dulaney
304-288-2073
rdulaney@morgantown.gov

6th Ward
Dave Harshbarger
304-290-3700
dharshbarger@morgantownwv.gov

7th Ward
Barry Wendell
304-685-1098
bwendell@morgantown.gov

ARTICLE 1149

AN ORDINANCE REGULATING PROPERTIES USED FOR CRIMINAL ACTIVITY AS A PUBLIC NUISANCE AND PROVIDING FOR ABATEMENT OF PUBLIC NUISANCES

1149.01 – Purpose:

a) To protect the health, safety and welfare of a community by providing a process for identification, inspection, and correction of disorderly houses and the removal of unsafe, vacant, and dangerous buildings within the City of Morgantown in a manner that provides adequate notice and due process to the owners of such houses and/or structures.

b) This article is intended to authorize the City of Morgantown to exercise, to the fullest extent provided by law, the power and authority of W. Va. Code § 8-12-5(23) as it may be amended.

1149.02 – Definitions:

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, is dangerous and detrimental to the public health, may violate the laws of the City and/or State, and obstructs the community from reasonable and comfortable use of property. (Passed 5-9-15).

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. (Passed 5-19-15).

c) Examples include the following:

1) Premises used for harboring criminal activity; the illegal possession, storage, delivery of or trafficking in controlled substances or other illegal drug activity; and/or the theft of personal property or storage of the proceeds of such theft; and

2) A dwelling, building or structure that is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, or criminal activity, or enables persons to resort to the dwelling, building, or structure for committing a nuisance or an unlawful act (Refer to Article 1719(d)7, Unsafe Structures Code, City of Morgantown passed 11-28-17).

d) For purposes of this ordinance, a public nuisance may not arise from acts of domestic violence or responses by the City to reports of domestic violence, and nothing herein is intended to discourage individuals from reporting acts of domestic violence.

e) Owner or property owner means a person who individually or jointly with others;

1) Has legal title to the property, with or without actual possession of the property;

2) Has charge, care or control of the property as owner or agent of the owner;

3) Is executor, administrator, trustee or guardian of the estate of the owner;

4) Is the agent or the owner for the purpose of managing, controlling or collecting rents; or

5) Is entitled to control or direct the management of disposition of the property.

1149.03 – Nuisance and Violations for Premises used for Certain Criminal Offenses:

a) Any premises used for harboring criminal activity, the illegal possession, storage, delivery of or trafficking in controlled substances or other illegal drug activity; and/or the theft of personal property or storage of the proceeds of such theft is declared to be a public nuisance. Provided, that no public nuisance or violation of this section shall be deemed to exist unless:

1) The property is used for two or more such offenses or illegal incidents within a twelve-month period, as evidenced by documented reports by police, code enforcement, or the Fire Marshall, or by conviction in a court of competent jurisdiction; or

2) The offense for which the property is used is punishable by imprisonment for one year or more.

And being further provided that, for purposes of this ordinance, acts of domestic violence and/or responses by the City to reports of domestic violence shall not constitute a public nuisance as defined herein.

b) Any person who owns, manages, or controls any premises and who:

1) Encourages or permits an illegal activity described in 1149.02 to occur or continue on such premises; or

2) Fails to implement reasonable and warranted abatement measures identified in the notice issued pursuant to 1149.04 or subsequently agreed to, or other abatement measures which successfully abate the nuisance within the 30-day period following the notice, or within any other agreed upon period, is guilty of misdemeanor offence and upon conviction thereof shall be subject to the penalties provided in 1149.05.

1149.04 – Action and Order of Abatement:

a) The Chief of Police or an authorized code enforcement representative of the City or the Fire Marshall may bring to Municipal Court, an action to abate a public nuisance described in 1149.02.

b) The Chief of Police, a code enforcement officer or the Fire Marshall shall issue an order of abatement upon finding of liability under this section. The notice shall describe the corrective action to be taken, identify the laws or regulations violated by the current condition, and identify a reasonable time within which corrective action must be taken by the owner or his/her agent. The order of abatement shall require the defendant to take measures reasonably calculated to prevent the recurrence of the illegal activity.

c) The order of abatement shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service may be made by the Fire Marshall, a code enforcement agency official, or a representative of the Morgantown Police Department. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia rules of Civil Procedure and delivery is refused, the code enforcement agency official, the Fire Marshall, or the representative of the Morgantown Police Department promptly, upon receiving notice of the refusal, shall achieve service by first class mail, postage prepaid. If the first-class mailing is not returned as undeliverable by the U.S. Postal Service, the notice is presumed to have been effectuated (Refer to Article 1718.06(b), Vacant Structure Code, City of Morgantown passed 10-17-17).

d) The order of abatement may also authorize the issuance of search warrants reasonably calculated to determine whether the nuisance has been abated or whether the Order of the court has been obeyed.

1149.05 – Penalty:

a) Each day that a violation of this article continues shall be considered a separate and distinct offense.

b) No person shall be found in violation of 1149.03(b)(1)(2) unless the authorized representatives of the municipality show by a preponderance of the evidence that the abatement measures were reasonable and warranted and that the defendant knowingly failed to implement them.

c) A person found in violation of 1149.03(b)(1)(2) by failing to meet the order of abatement will be subject to a fine in accordance with subsection (d) hereof and may be assessed by the Municipal Court.

d) Upon finding a liability under this article, the defendant shall be fined not less than $100.00 and not more than $1,000.00 per offense.

1149.06 – Appeals and Enforcement:

a) In the event that such property owner, tenant, business manager and/or licensee may be aggrieved by such decision of the municipality, which may include and not be limited to revocation or suspension of any licensures and/or the restricted use of such property having been declared a nuisance, petition of such review must be filed with the circuit court within a period of thirty days from and after the date of final action by the municipality. Any person, firm, corporation, landowner, licensee so affected has the right to apply to the circuit court for a temporary injunction pursuant to the provisions of the WV Code. The municipality is also entitled to any and all appropriate judicial relief against public nuisances. Refer to Article 1149.07, Appeals and Enforcement of Article 1149, Public Nuisance, City of Morgantown passed 5-19-15).

b) Nothing in article 1149, Public Nuisance, excludes the enforcement of Articles 1718, Vacant Structure Code and 1719, Unsafe Structures of Part 17, Building and Housing Code, of the City of Morgantown.

1149.07 – Severability:

If any section, subsection, provision, clause or phrase of this article or the application thereof to any person r circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, provisions, clauses or phrases or applications of this article and to this end each and every section subsection, provision clause and phrase of this article is declared to be severable. This article is in addition to and not dependent upon other articles of this Code. (Ord. 15-24 Passed 5-19-15.)