

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on Wednesday, January 11, 2023 at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present:

- J. Patrick Shaffer, Chairman
- Dortha Parsons
- Chris Meighen (*via telephone*)
- F. Lee West
- Michael Brown (*via telephone*)
- Timothy "Mike" Fazzini
- Steve Pulice, Interim City Manager

Member(s) Absent:

- C. David McMunn
- Wayne Worth, Council Representative

(Note: Two (2) vacancies exist)

Also Present:

- Ashley Carr, Code Department
- John Whitmore, Economic Development Director
- Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken by the City Clerk upon arrival.

MOTION by Mr. Fazzini, **SECONDED** by Mr. West for approval of the minutes of the session held on November 9, 2022. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: NONE.

NEW BUSINESS:

- A. **CONSIDERATION OF THE COMMISSION'S RECOMMENDATION TO CITY COUNCIL TO APPROVE THE PUBLIC HEARING DRAFT OF THE COMPREHENSIVE PLAN**

Mr. Whitmore provided members with a copy of the attached "Planning and Zoning Commission 2022 Consolidated Annual Report." Mr. Whitmore discussed the public participation stages recommending approval of the Comprehensive Plan to City Council who would then have another public hearing. Mr. Whitmore informed that the plan can be edited via resolution as the same would be passed via resolution. Mr. Whitmore apprised that the public participation process started in December 2021 at the Winterfest with over 300 comments during said event; in 2022 an in-depth community forum was held on-line and in person throughout the City, as well as various festivals. Mr. Whitmore informed that the plan includes a five-year plan and that he is confident that this process has been beneficial to the City. Mr. West inquired as to the zoning ordinances and when the same would be updated with Mr. Whitmore stating that the Comprehensive Plan fits into the land use and the updating of said ordinances will be recommended. Mr. Whitmore pointed out that subdivisions and land development are fairly quickly to change. Councilmember Worth inquired as to hybrid zoning with Mr. Whitmore apprising that during the process of amending the land development ordinances, there will be

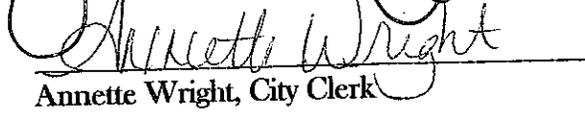
conversations on the level of regulations, etc. Mr. Whitmore remarked that this document is never final and always changes.

Concluding discussion, **MOTION** by Mr. Fazzini, **SECONDED** by Councilmember Worth to recommend the approval of the Comprehensive Plan to City Council. **MOTION APPROVED UNANIMOUSLY.**

Chairman Shaffer welcomed Interim City Manager Steve Pulice.

There being no further business to come before the Commission, **MOTION** by Mr. West, **SECONDED** by Mr. Fazzini for adjournment. **MOTION APPROVED UNANIMOUSLY.**



Chairman or Vice Chairman


Annette Wright, City Clerk

April 12, 2023
Date

City of Clarksburg, WV
Planning and Zoning Commission
2022 Consolidated Annual Report

WV State Code §8A-2-11 and §16-18-19 compliance document

560

2022 Planning and Zoning Commission Membership

J. Patrick Shaffer	Chair
C. David McMunn	Vice-Chair
Dortha Parsons	Secretary
Timothy "Mike" Fazzini	
Michael Brown	
Chris Meighen	
Brad Morris	
F. Lee West	
Wayne Worth	Council Representative
Harry Faulk	City Manager – Partial Year
Mark Kiddy	Interim City Manager – Partial Year

2022 Clarksburg Urban Renewal Authority Membership

Amy Strange	Chair
Bryan Payne	Vice-Chair
John Madia	
Jordan Thomason	
Harry Faulk	City Manager – Partial Year
Mark Kiddy	Interim City Manager – Partial Year

Non-Voting Members and Staff

Lillie Junkins	Council Representative
Jeff Kimble, Esquire	URA Counsel
John Whitmore, AICP	Executive Director & Director of Economic Development
Kimberly Karakiozis	Finance Director
Ashley Carr	Code Enforcement Director
Paula Hardman	Recording Clerk

2022 Planning Commission Cases

Location	Case Type	Issue	Outcome	Date
1316-1320 W. Pike Street	Minor Subdivision	Parcel subdivision	Approved	1/12/2022
Duff Avenue / Milford Street	Minor Subdivision	Parcel subdivision	Approved	4/13/2022
Watkins Lane / Coleman Avenue	Minor Subdivision	Parcel subdivision	Approved	4/13/2022
N. 12 th Street / North Ohio Avenue	Minor Subdivision	Parcel subdivision	Approved	5/11/2022
N. 12 th Street	Minor Subdivision	Parcel subdivision	Approved	7/20/2022
Upland Avenue	Right-of-way Abandonment	Right-of-way Abandonment	Approved	10/12/2022
1105 -1101 Taylor Street	Right-of-way Abandonment	Right-of-way Abandonment	Approved	10/12/2022
Edgewood Avenue / Nixon Avenue	Right-of-way Abandonment	Right-of-way Abandonment	Approved	10/12/2022
Marshal Street / E. Main Street	Right-of-way Abandonment	Right-of-way Abandonment	Approved	11/09/2022

2022 City of Clarksburg Building Permit Information

Code Enforcement records indicate that a total of 1,271 building permits were issued for a total valuation of \$26,976,532.34 in 2022. In 2021, records indicate that a total of 1,093 building permits were issued for a total valuation of \$26,421,688.13. This translates into an increase of 178 building permit applications, with a value increase of \$554,844.21. While the total number of building permit applications increased by sixteen percent (16%) from 2021, the total value of improvements only increased by 2% in the same time period.

Urban Renewal Authority Activity

Applicant	Address	Improvement Value	Award Amount
Vintage Variety, LLC	410 N. 4th Street	\$3,595.00	\$2,000.00
DestyonCare Healthcare, LLC	108 W. Pike Street	\$3,500.00	\$2,800.00
DestyonCare Healthcare, LLC	108 W. Pike Street	\$1,550.00	\$1,240.00
Gore Luxe Development, LLC	209 W. Pike Street	\$2,463.00	\$1,970.40
Watson Law, PLLC	208 Court Street	\$12,064.20	\$9,651.00
DAN MATT, LLC	134 S. 3 rd . Street	\$21,099.26	\$10,000.00
TOTAL		\$44,271.46	\$27,661.40

2022 Milestones

Comprehensive Plan

In 2021, the City of Clarksburg contracted with Environmental Planning and Design of Pittsburgh, PA to complete the Comprehensive Plan update in accordance with West Virginia State Code provisions. Members of the public were invited to participate in three unique rounds of workshops. A total of eleven workshops were held with digital participation, and targeted locations employed during the citizen participation portion of the plan. The document itself consists of four areas of focus including revitalization and redevelopment, recreation and natural resources, property maintenance, and community engagement and communications. The plan provides for a direct 5-year implementation section with specific strategies meeting objectives of the four focus areas. The plan document is anticipated to be reviewed and approved by the City Council as a resolution in early February, 2023.

Urban Renewal Authority Façade Grant Program

In 2022, The Clarksburg Urban Renewal Authority adopted the Third amendment to the Clarksburg Urban Renewal Authority Second Amended and Restated Policy and Guidelines, providing policy and guidelines for facilitating private property transfers between neighbors. This policy increased award amounts from a maximum of \$3,000 per project to \$10,000 per project and provides prospective tenants, property owners, and the general public with streamlined project location and timing information previously left to the Urban Renewal Authority Board's application review.

Small Business Assistance Grants

While not directly related to Urban Renewal Authority activities, the City of Clarksburg provided a business grant application in 2022 in facilitating American Rescue Plan Act objectives. A total of 30 applications were received. Three applications sought funds below \$24,500, six applications sought funds over \$25,000. Applicants sought a total of \$834,431 in grant funds. A total of six, \$25,000 awards were presented to new businesses. Four, \$10,000 awards were presented to businesses that had not obtained federal Covid-19 related funds. Seven structures are occupied by businesses that were awarded funds.

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on **Wednesday, April 12, 2023** at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present:

J. Patrick Shaffer, Chairman
 C. David McMunn
 Dortha Parsons
 Chris Meighen (*via telephone*)
 Timothy "Mike" Fazzini
 Steve Pulice, Interim City Manager
 Wayne Worth, Council Representative

Member(s) Absent:

F. Lee West
 Michael Brown

(Note: Two (2) vacancies exist)

Also Present:

James Cann, City Attorney
 Ashley Carr, Code Department
 John Whitmore, Economic Development Director
 Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken by the City Clerk upon arrival.

MOTION by Mr. McMunn, **SECONDED** by Councilmember Worth for approval of the minutes of the session held on January 11, 2023. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: NONE.

NEW BUSINESS:

A. ELECTION OF OFFICERS

- Chairman
- Vice Chairman
- Secretary

MOTION by Mr. Fazzini, **SECONDED** by Mr. Pulice that the officers remain in place (Chairman - J. Patrick Shaffer, Vice Chairman - C. David McMunn and Secretary - Dortha Parsons). **MOTION APPROVED UNANIMOUSLY.**

B. CONSIDERATION OF A PETITION FILED BY STOCKMEIER URETHANES USA, INC., 20 COLUMBIA BOULEVARD, REQUESTING THE ABANDONMENT OF PROGRESS WAY LOCATED IN THE BUSINESS AND TECHNOLOGY PARK

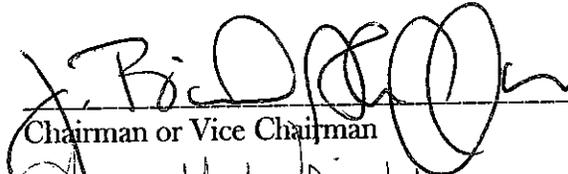
Chairman Shaffer declared the public hearing open with Ms. Woodlin, the engineer on site for Stockmeier, referencing the map she provided for review stating that Stockmeier recently acquired the property that belonged to Unifirst and that a 100' roadway separate their current property from their recently purchased property. Stockmeier wishes for the lot to be private which they will maintain. There being no other persons to speak for the public hearing, the same was

closed. Reporting on behalf of the Investigating Committee, Mr. McMunn informed that he visited the location and spoke to the City Clerk concerning the information noting the objection from the Water Board to said proposed abandonment which has now been resolved. Mr. McMunn stated that he did not see any concerns with the request. **MOTION** by Mr. McMunn, **SECONDED** by Ms. Parsons to recommend to City Council that said abandonment be approved. **MOTION APPROVED UNANIMOUSLY.**

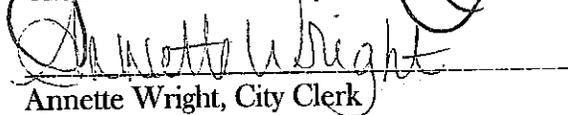
C. CONSIDERATION OF A PETITION FILED BY KIP SWIGER (COLLISION PLUS, LLC) REQUESTING THE SUBDIVISION OF LOTS OR PARCELS OF LAND SITUATE ON NORTH 12TH STREET AND NORTH OHIO AVENUE

Reporting on behalf of the Investigating Committee, Mr. Fazzini reported that the petitioner owns the land adjacent to said property and he did not see any concerns with the request with Mr. Carr concurring that this was a simple property split. **MOTION** by Mr. Fazzini, **SECONDED** by Councilmember Worth for approval of the above-captioned subdivision petition. **MOTION APPROVED UNANIMOUSLY.**

There being no further business to come before the Commission, **MOTION** by Mr. McMunn, **SECONDED** by Councilmember Worth for adjournment. **MOTION APPROVED UNANIMOUSLY.**



Chairman or Vice Chairman



Annette Wright, City Clerk

5/10/2023
Date

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on Wednesday, May 10, 2023 at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present:
J. Patrick Shaffer, Chairman
Dortha Parsons
Chris Meighen
F. Lee West
Timothy "Mike" Fazzini
Chris Lane
Marc Jackson
Steve Pulice, Interim City Manager
Wayne Worth, Council Representative

Member(s) Absent:
C. David McMunn
Michael Brown

Also Present:
Richard Marsh, City Attorney
Ashley Carr, Code Department
John Whitmore, Economic Development Director
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken by the City Clerk upon arrival.

MOTION by Mr. West, **SECONDED** by Mr. Fazzini for approval of the minutes of the session held on April 12, 2023. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: NONE.

NEW BUSINESS:

A. CONSIDERATION OF THE ADMINISTRATION'S REQUEST TO AMEND SECTION 1335.10 OF THE PLANNING AND ZONING CODE TO ALLOW FOR GRAVEL PAVING AREAS IN CERTAIN CIRCUMSTANCES

Mr. Whitmore explained that the Administration is recommending that the vehicles that are moved infrequently be permitted the use of gravel for the parking area therefor for vehicles such as recreational etc. with Mr. Lane pointing out that it may be difficult to determine what is considered "frequent" or "infrequent" use. Mr. Whitmore explained that the Commission is asking for a recommendation to be made to City Council. Concluding discussion, as well as review of the attached report (Attachment 1), **MOTION** by Mr. Fazzini, **SECONDED** by Mr. West to recommend to City Council that the above request be denied. **MOTION TO DENY CARRIED 5-4** with Mr. West, Councilmember Worth, Mr. Lane and Mr. Jackson casting the dissenting votes.

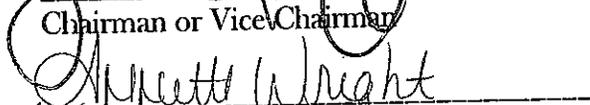
B. CONSIDERATION OF THE ADMINISTRATION'S REQUEST TO AMEND SECTIONS 1305.01, 1327.01, 1327.02 AND 1327.08 TO DEFINE AND INCLUDE ZONING DISTRICT REQUIREMENTS FOR BREWERY, BREW PUB, DISTILLERY, MINI-DISTILLERY, MICRO-DISTILLERY, OFF-PREMISES

**CONSUMPTION ALCOHOLIC BEVERAGE SALES LAND USE, PRIVATE CLUB,
TAVERN AND WINERY LAND USES**

Mr. Whitmore referenced the attached report (Attachment 2) explaining the same and Mr. Marsh noting that such amendment would bring the language in line with State Code. Concluding discussion, **MOTION** by Interim City Manager Pulice, **SECONDED** by Mr. Jackson to recommend to City Council that the above-stated request be approved. **MOTION APPROVED UNANIMOUSLY.**

There being no further business to come before the Commission, **MOTION** by Mr. West, **SECONDED** by Councilmember Worth for adjournment. **MOTION APPROVED UNANIMOUSLY.**



Chairman or Vice Chairman


Annette Wright, City Clerk

7/12/23
Date

CITY OF CLARKSBURG, WV
 ECONOMIC DEVELOPMENT DEPARTMENT
 PLANNING & ZONING COMMISSION STAFF REPORT
 MAY 10, 2023
 CASE TX-23-02 / ADMINISTRATIVE / PARKING SURFACE
 MATERIAL

REQUEST: Administrative request to amend Section 1335.10 of the Planning and Zoning Code to allow for gravel parking areas in certain circumstances.

BACKGROUND: Section 1335.10 of the Planning and Zoning Code requires that all automobile parking areas be constructed from concrete or asphalt. The use of gravel or similar material is not permitted with the exception provided for outdoor stadiums, parks, recreation areas, or similar uses, as shown in the code section below.

1335.10 SURFACE MATERIAL REQUIREMENTS.

- (a) All parking areas shall be constructed of bituminous asphalt, or concrete. The type of asphalt or concrete shall be in accordance with the West Virginia Department of Transportation concerning driveway entrances and shall be approved by the City Engineer.
- (b) No parking area, regardless of size, and no access drives shall be constructed of dirt or shall be permitted to track mud onto a City or State road or highway.
- (c) Parking areas shall be constructed of asphalt or concrete. Any associated driveway shall also be constructed of asphalt or concrete for the entire length and width of the driveway. The type of asphalt or concrete shall be in accordance with the West Virginia Department of Transportation concerning driveway entrances and shall be approved by the City Engineer.
- (d) For outdoor stadiums, parks, recreation areas, or similar uses, City Council may permit parking areas to be constructed of gravel or a tar/chip surface.

Recently, the Clarksburg City Council, Code Enforcement, and the City Engineer have discussed the possibility of allowing for gravel parking areas in additional residential situations to permit personal camper / recreational vehicles to be parked on these locations.

ANALYSIS: The City of Clarksburg's Planning and Zoning Code's requirements related to parking surface materials reflect issues with loose stone. While cheaper to install and maintain, gravel parking lots often have incidental erosion and discharge of stone materials into the public right-of-way. This is problematic for the City as federal storm water management requirements and

related enhanced maintenance needs dictate a storm sewer system free of debris. Further loose stone does create a roadway hazard that can be mitigated with the use of solid impervious parking lot materials. In reviewing other jurisdictions paving surface requirements, there does appear to be some flexibility, with Charleston, WV providing gravel driveways on private property, with right-of-way connection occurring on a paved driveway apron.

Charleston, WV:

Sec. 23-040-04 Surfacing

Areas used for off-street parking, circulation or vehicle display shall be surfaced with asphalt, concrete, masonry, or other solid paving materials with sufficient strength to support the vehicle loads imposed. Gravel driveways are permitted only for single family and duplex dwellings provided that the following conditions are met:

- A. A paved apron over the entire width of the right of way must connect the gravel driveway to the street, a minimum 5' paved apron is required;
- B. The driveway is edged with a barrier sufficient to keep the gravel solely within the driveway;
- C. The gravel used is angular and interlocking; and
- D. The area to be graveled has a maximum grade of 5% unless otherwise approved by the City Engineer's Office.

All off-street parking and other vehicle circulation areas shall be continuously maintained and designed to preclude free flow of storm water onto adjacent lots, properties, or public streets or ways. In addition, existing non-conforming graveled parking lots or parking spaces must be continuously maintained so that dirt, mud, and gravel shall not be tracked onto adjacent lots, properties, or public streets or ways. All land areas that are not covered with buildings or paved for off-street parking and circulation of vehicles shall be appropriately landscaped with grass or other vegetative ground cover, decorative mulch planting beds, trees or shrubs.

Fairmont, WV:

F. Surface Material. All parking areas and driveways for all uses shall be paved with a permanent surface material or contain a similar type material approved by the Planner. Gravel and other stabilization material without a permanent wearing surface, such as concrete or asphalt, is not permitted unless explicitly stated otherwise within this code.

Morgantown, WV:

- (c) *Surfacing and drainage.*
- (1) All open off-street parking areas shall be surfaced with an all-weather, dust-free concrete or asphalt material, and shall be maintained in good condition and free of weeds, dirt, trash and debris; except that, a gravel surface may be used for a period not exceeding six months after the date of granting the certificate of occupancy where ground conditions are not immediately suitable for permanent surfacing as specified above.
 - (2) A gravel surface in the area of storage or handling may be used permanently in association with industries that handle liquids or chemicals which create a potential hazard if containment should be lost and where absorption into the ground through a loose surface material would eliminate or alleviate such hazard.
 - (3) Such parking areas shall be graded and properly drained in such a manner that there will be no free flow of water onto either adjacent property or public sidewalks. Further, any run-off generated by such improved areas shall be disposed of in accordance with the stormwater management ordinance and other City regulations.
 - (4) Other surface materials and designs may be utilized when specifically approved by the City Engineer, for purposes of reducing storm water runoff or other environmental and aesthetic considerations.

Instances exist where gravel parking is permitted, with the goal of limiting gravel trespass into the right-of-way or neighboring properties.

Proposed Text Amendments

Staff provides for the complete removal and replacement of Section 1335.10 to allow for limited use of gravel parking areas for recreational vehicles, as there is less movement from the parking pad/driveway as compared to a traditional automobile used for commuter purposes. Also provisions related to special exception for gravel parking areas for certain outdoor uses is clarified. The proposed text is as follows:

1335.10 SURFACE MATERIAL REQUIREMENTS.

(a) Except as otherwise provided, all parking areas shall be constructed of bituminous asphalt, or concrete. The type of asphalt or concrete shall be in accordance with the West Virginia Department of Transportation concerning driveway entrances and shall be approved by the City Engineer.

(b) Parking areas intended for use by recreational vehicles, such as motorhomes and travel trailers; boats and associated trailers; enclosed trailers; and open utility trailers may be constructed of gravel and situated in the side or rear setback of the building. The City Engineer may set forth specifications for such gravel parking areas and all such gravel parking areas must be approved by the City Engineer prior to construction. For purposes of this section, an "open utility trailer" is a flatbed type trailer measuring no more than 16' in length. Nothing herein is intended to modify zoning and property use restrictions on the parking of commercial vehicles and trailers.

(c) No parking area, regardless of size, and no access drives shall be constructed of dirt or shall be permitted to track mud onto a City or State road or highway.

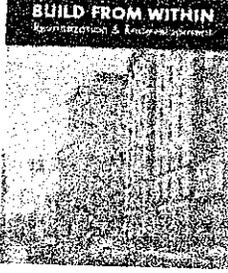
(d) Except as otherwise provided, parking areas shall be constructed of asphalt or concrete. Any associated driveway shall also be constructed of asphalt or concrete for the entire length and width of the driveway. The type of asphalt or concrete shall be in accordance with the West Virginia Department of Transportation concerning driveway entrances and shall be approved by the City Engineer.

(e) For outdoor stadiums, parks, recreation areas, or similar uses, the Board of Zoning Appeals may permit parking areas to be constructed of gravel or a tar/chip surface as a special exception.

COMPREHENSIVE PLAN: The Planning and Zoning Commission is tasked with providing a recommendation to the City Council regarding these zoning ordinance text amendments and their conformity to the 2022 Comprehensive Plan. In making this recommendation, West Virginia State Code §8A-7-8(a) requires the following:

§8A-7-8. Amendments to the zoning ordinance by the governing body.	
(a) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.	

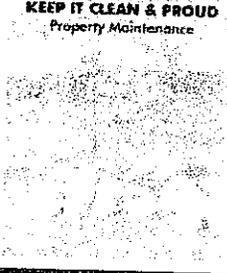
Economic Development staff provide that the 2022 City of Clarksburg Comprehensive Plan includes the Focus Areas: Revitalization and Redevelopment and Keep it Clean and Proud. The core objective of these focus areas are provided below:



BUILD FROM WITHIN
Revitalization & Redevelopment

A. Build from Within: Revitalization & Redevelopment

Objective: Reclaim the vitality of Clarksburg's downtown core by taking advantage of the City's unique cultural and historical assets/amenities and supporting redevelopment in alignment with established character.



KEEP IT CLEAN & PROUD
Property Maintenance

C. Keep it Clean & Proud: Property Maintenance

Objective: Nurture clean and well-kept neighborhoods through a comprehensive blight mitigation strategy, including community-supportive code enforcement, property owner assistance, and beautification/clean-ups.

The following actions are provided with these proposed text amendments and most cost conscious use of gravel:

A.2 Pursue a complete makeover of the planning & zoning code to encourage more contextual development and a more convenient development process -1. Land Use – Revisions to land use permissions are necessary to better align with the character of districts; contextual/desired uses may be added and incompatible uses removed.

C.2: Raise awareness and support the channeling of property owner assistance (i.e., loans, grants, and volunteer labor) geared toward maintenance and renovations, as well as citizen-driven beautification and clean-up efforts. (Integrate as part of the blight strategy formed by Action C.1)

C.3 Bolster code enforcement with additional/enhanced technical and legal tools. (Integrate as part of the blight strategy formed by Action C.1)

RECOMMENDATION: Zoning ordinance amendment requests should be evaluated on their land-use merits alone. Development intentions are extraneous, and the Commission should consider the request on its merits as a land use decision. In conducting such an analysis, the Commission should determine if the proposed land-uses are appropriately defined, are distinct from other established land-uses, and are consistent with the Comprehensive Plan.

Staff recommends that the Planning Commission send a recommendation to City Council for approval of the text amendments as provided in this report and included in ordinance form as Addendum A of this report.

CITY OF CLARKSBURG, WV
 ECONOMIC DEVELOPMENT DEPARTMENT
 PLANNING & ZONING COMMISSION STAFF REPORT
 MAY 10, 2023
 CASE TX-23-01 / ADMINISTRATIVE / WVABCA LAND USES

REQUEST: Administrative request to amend Sections 1305.01(5.1, 5.2, 22.1, 45.3, 45.4, 45.5, 48.5, 51.4, 56.2, and 65.1), 1327(e), 1327.02, and 1327.08 of the Planning and Zoning Code to provide brewery, brew pub, distillery, mini-distillery, micro-distillery, off-premises consumption alcoholic beverage sales land uses, private club, tavern, and winery land-use definition and associated permitted zoning district locations, and to clarify alcohol related land-uses.

BACKGROUND: The Economic Development Department seeks to amend Chapter 13, Planning and Zoning Code, of the Codified Ordinances to properly define land-use concerns involving the sale, manufacture, and on-premises consumption of beer, wine alcoholic cider, and alcoholic liquor. Currently, the City of Clarksburg's Planning and Zoning Code provides for private clubs, taverns, and night clubs, but does not properly define these terms or uses conflicting language when compared to General Offenses Code 521, as provided in the supplemental attachment located at the end of this report. As a 500-section ordinance, most offenses are directly regulated by the City of Clarksburg Police as criminal activities. West Virginia Alcoholic Beverage Control Administration (WVABCA) officers administer internal operations of permitted commercial sales locations.

ANALYSIS: The City of Clarksburg's Planning and Zoning Code's definitions fail to establish brewery, brew pub, distillery, mini-distillery, micro-distillery, off-premises consumption alcoholic beverage sales land uses, private club, tavern, and winery land-uses when definitions are provided in Section 521 related to alcoholic beverage-based activities. Brewery, distillery, and winery land-uses are defined to an extent. Newer smaller facilities are not defined, liquor stores or other off-premises consumption type land uses are not defined, and a mixed-use restaurant combined with an alcoholic beverage production facility does not currently exist. Private clubs and tavern terminology is used in the Planning and Zoning Code but without definitions. The term Night Club is used and defined but when the term is used in the ordinance it is generally reduced to a tavern type of WVABCA licensee. Staff recommends the following

terms be included into the Planning and Zoning Code to better reflect WVABCA statutory language.

- “Brewery” means an establishment where beer is manufactured or in any way prepared.
- “Brew Pub” means a restaurant combined with a brewery, distillery, mini-distillery, micro-distillery and/or winery.
- “Distillery” means an establishment where more than 50,000 gallons of alcoholic liquor is manufactured or in any way prepared.
- “Micro-Distillery” means an establishment where in any one year no more than 10,000 gallons of alcoholic liquor is manufactured.
- “Mini-Distillery” means an establishment where in any year no more than 50,000 gallons of alcoholic liquor is manufactured
- “Off-Premises Consumption Alcoholic Beverage Sales Land Uses” means the retail sale of beer, wine, or other alcoholic beverages for off-premise consumption in accordance with West Virginia Alcoholic Beverage Control Administration Class B licenses procedures.
- “Private Club” means an establishment that is licensed by the West Virginia Beverage Control Administration to provide for the on-premise consumption of beer, wine, and/or alcoholic liquor.
- “Tavern” means an establishment that is licensed by the West Virginia Beverage Control Administration to provide for the on-premise consumption of beer and /or wine but not alcoholic liquor.
- “Winery” means an establishment where wine or alcoholic cider is manufactured or in any way prepared.

In providing these definitions, staff also provides that the Brew Pub and off-premises consumption alcoholic beverage sales land uses as local business land uses, permitted in the B1, B2, B3, B4, and CBD Districts.

In addition to the above definitions, staff is providing for the removal of language that requires pool halls and on-premises alcohol consumption locations to only occur in hotel or motels in the Central Business District. Additional buffering restrictions related to these land uses have also been identified for removal.

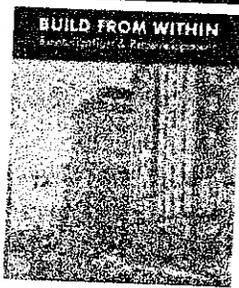
COMPREHENSIVE PLAN: The Planning and Zoning Commission is tasked with providing a recommendation to the City Council regarding these zoning ordinance text amendments and

their conformity to the 2022 Comprehensive Plan. In making this recommendation, West Virginia State Code §8A-7-8(a) requires the following:

§8A-7-8. Amendments to the zoning ordinance by the governing body. 

(a) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

Economic Development staff provide that the 2022 City of Clarksburg Comprehensive Plan provides for the Focus Area: Revitalization and Redevelopment. The core objective of the this focus area is provided below:



A. Build from Within: Revitalization & Redevelopment

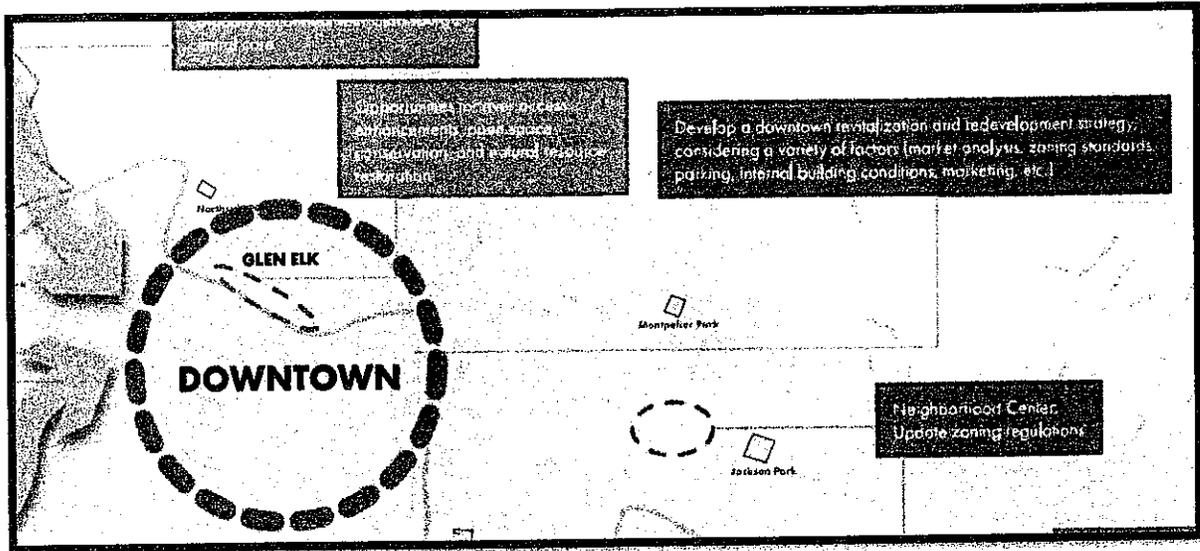
Objective: Reclaim the vitality of Clarksburg's downtown core by taking advantage of the City's unique cultural and historical assets/amenities and supporting redevelopment in alignment with established character.

The following actions are provided with these proposed text amendments:

A.1 - Build upon observations and goals of this plan to develop a downtown revitalization/economic development strategy to serve as a guidebook and vision for the future transformation of downtown Clarksburg. – Desired Land Uses

A.2 Pursue a complete makeover of the planning & zoning code to encourage more contextual development and a more convenient development process -1. Land Use – Revisions to land use permissions are necessary to better align with the character of districts; contextual/desired uses may be added and incompatible uses removed.

Future Land Use Mapping, provided on Page 4 of this report, also shows the core changes preferred for revitalization of the downtown area (CBD District).



RECOMMENDATION: Zoning ordinance amendment requests should be evaluated on their land-use merits alone. Development intentions are extraneous, and the Commission should consider the request on its merits as a land use decision. In conducting such an analysis, the Commission should determine if the proposed land-uses are appropriately defined, are distinct from other established land-uses, and are consistent with the Comprehensive Plan.

Staff recommends that the Planning Commission send a recommendation to City Council for approval of the text amendments as provided in this report and included in ordinance form as Addendum A of this report.

ARTICLE 521

Liquor Control

- 521.01 Definitions.
- 521.02 Article not applicable to certain uses by physicians, druggists and others.
- 521.03 Prohibited acts generally.
- 521.03A Sale of alcohol on Sundays.
- 521.04 Unlawful sale or possession by alcoholic liquor licensee.
- 521.05 Unlawful purchase of alcoholic liquors from State agency.
- 521.06 Intoxication or drinking in public places; illegal possession.
- 521.07 Acts prohibited by non-intoxicating beer licensee.
- 521.08 Unlawful purchase of non-intoxicating beer.
- 521.09 Acts prohibited by private club licensee.
- 521.10 Unlawful purchase from private club.
- 521.11 Acts prohibited by wine dealers.
- 521.12 Unlawful purchase of wine.
- 521.13 Unlawful purchase from retail liquor licensee.
- 521.14 Search warrants; searches and seizures.
- 521.15 Forfeiture of contraband vehicles.
- 521.16 Proceedings for confiscation.
- 521.17 Hard cider.
- 521.18 Off-premises sales not required to be logged.
- 521.19 Penalty.

CROSS REFERENCES

- See sectional histories for similar State law
- Authority to regulate liquor sales - see W. Va. Code 8-12-5(26)
- Nonintoxicating beer - see W. Va. Code Art. 11-18
- Local option - see W. Va. Code Art. 60-5
- Search warrants - see W. Va. Code 60-6-18
- Public drunkenness - see GEN. OFF. 5(7.05)

521.01 DEFINITIONS.

For the purposes of this article:

- (a) "Alcohol" means ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.
- (b) "Alcoholic liquor" includes alcohol, beer, wine, and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.
- (c) "An agency" means a drugstore, grocery store, or general store designated by the Commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control Commission.
- (d) "Beer" means any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.
- (e) "Brewery" means an establishment where beer is manufactured or in any way prepared.
- (f) "Commissioner" or "Commission" means the West Virginia Alcohol Beverage Control Commissioner.
- (g) "Department" means the organization through which the Commission exercises powers imposed upon it by this article.

- (h) "Distillery" means an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.
- (i) "Intoxicated" means a person's faculties are impaired by alcohol or other substance to the point where physical or mental control or both are markedly diminished.
- (j) "Manager" means an individual who is the applicant's or licensee's on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of West Virginia Code 11-16-1 et seq. and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include but are not limited to: coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine and liquor, as applicable; and managing security staff, security systems, video and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.
- (k) "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.
- (l) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.
- (m) "Nonintoxicating beer" means any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by West Virginia Code 11-16-2.
- (n) "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor.
- (o) "Person" means an individual, firm, partnership, limited partnership, corporation, or voluntary association.
- (p) "Powdered alcohol" means an alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter, powdered alcohol excludes any material intended for industrial purposes.
- (q) "Public place" means any place, building, or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels and any highway, street, lane, park, or place of public resort or amusement; provided, that the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of this article to sell alcoholic liquors for consumption on the premises; provided, however, that the term "public place" shall not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premise that qualifies and is licensed under the provisions of this article to sell alcoholic liquors for consumption thereupon; provided further, that the term "public place" shall not include a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium which holds a special license to sell wine pursuant to the provisions of West Virginia Code 60-8-3, in the designated areas of sale and consumption of wine and other restrictions established by that section and the terms of the special license issued thereunder.
- (r) "Sale" means any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by a principal, proprietor, agent, or employee.
- (s) "Selling" includes solicitation or receipt of orders; possession for sale; and possession with intent to sell.
- (t) "Spirits" means any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.
- (u) "State liquor store" means a store established and operated by the Commission under this article for the sale of alcoholic liquor in the original package for consumption off the premises.
- (v) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.
- (w) "Winery" means an establishment where wine is manufactured or in any way prepared. (WVaC 60-1-5)

521.02 ARTICLE NOT APPLICABLE TO CERTAIN USES BY PHYSICIANS, DRUGGISTS AND OTHERS.

The provisions of this article shall not prevent:

- (a) A physician from prescribing the use of alcoholic liquors when necessary for a bona fide patient;
- (b) A druggist from selling, upon a prescription properly issued by a physician, alcoholic liquors for medicinal purposes;
- (c) A physician, dentist or veterinarian, in the legitimate practice of his profession, from using and administering alcoholic liquors;
- (d) Hospitals, sanitariums or that division of any institution which is regularly conducted as a hospital, dispensary or infirmary from using or administering alcoholic liquors to bona fide patients. Institutions and the divisions thereof provided in this section may carry a stock of alcoholic liquors sufficient for this purpose;
- (e) Religious organizations from using wine for sacramental purposes.

(WVaC 60-8-5)

521.03 PROHIBITED ACTS GENERALLY.

No person shall:

- (a) Manufacture or sell in this City, without a license, any alcoholic liquor except as permitted by West Virginia Code Chapter 60;
- (b) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by West Virginia Code Chapter 60;
- (c) Sell without a license any alcoholic liquor other than provided by West Virginia Code Article 60-6 and Section 521.03A;
- (d) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrecified or impure form of ethyl alcohol, or any other foreign or deleterious substance or liquid;
- (e) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this State;
- (f) Advertise any alcoholic liquor in this State except in accordance with the rules and regulations of the West Virginia Alcohol Beverage Control Commissioner;
- (g) Distribute, deal in, process or use crowns, stamps or seals required under the authority of West Virginia Code by the West Virginia Alcohol Beverage Control Commissioner;
- (h) Manufacture, sell, give or offer to make a sale or gift of, transport or otherwise possess any alcoholic liquor or non-intoxicating beer except as permitted by West Virginia Code Chapters 11 and 60.
- (i) Whoever violates subsection (a) to (g) hereof is guilty of a misdemeanor for a first offense. (Ord. 16-25, Passed 8-18-16.)

521.03A SALE OF ALCOHOL ON SUNDAYS.

(a) "On-Premise Licensee" shall be defined to mean any person who holds one of the following Class A licenses issued by the West Virginia Alcohol Beverage Control Administration to sell alcoholic beverages:

- (1) Private Club (less than 1,000 members) -liquor, wine & non-intoxicating beer;
- (2) Private Club (1,000 or more members) -liquor, wine & non-intoxicating beer;
- (3) Fraternal Club (Non-Profit) - liquor, wine & non-intoxicating beer;
- (4) Fraternal Club (Non-Profit)- non-intoxicating beer;
- (5) Tavern - non-intoxicating beer;
- (6) Private Wine Restaurant - wine only;
- (7) Private Wine Restaurant - wine & non-intoxicating beer only;
- (8) Private Wine Spa - wine only;
- (9) Private Wine Bed & Breakfast - wine only;
- (10) Brew Pub (Resident Brewer/Importer License Required);
- (11) Special Events (Fairs and Festivals)- wine & non-intoxicating beer;
- (12) Special Events (Fairs and Festivals)- wine only;
- (13) Special Events (Fairs and Festivals)- non-intoxicating beer only; or
- (14) Growler.

(b) "Person" shall be defined to mean an individual, firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

(c) Notwithstanding anything to the contrary contained in the Code of City of Clarksburg, Code of West Virginia, or Code of State Rules of West Virginia, any On-Premise Licensee shall be permitted to sell alcoholic beverages pursuant to the terms of its license, but beginning at ten o'clock a.m. (10:00 AM) on any Sunday.

(Ord. 16-25, Passed 8-18-16.)

521.04 UNLAWFUL SALE OR POSSESSION BY ALCOHOLIC LIQUOR LICENSEE.

No person licensed under West Virginia Code Chapter 60 shall:

- (a) Sell, furnish, tender or serve alcoholic liquors of a kind other than that which the license or West Virginia Code Chapter 60 authorizes him or her to sell;
- (b) Sell, furnish, tender or serve beer to which wine, spirits or alcohol has been added;
- (c) Sell, furnish, tender or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture of the wine under rules of the Commission; (WVaC 60-6-6)

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- (d) (1) Sell, furnish, tender or serve alcoholic liquors or nonintoxicating beer to a person who is:
 - A. Less than twenty-one years of age;
 - B. An habitual drunkard;
 - C. Intoxicated;
 - D. Addicted to the use of any controlled substance as defined by West Virginia Code Chapter 60A;
 - E. Mentally incompetent.
- (2) It shall be a defense to a violation of subsection (d)(1)A. hereof if the seller shows that the purchaser:
 - A. Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
 - B. Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

(WVaC 60-3-22; 60-6-8)

- (e) Sell, furnish, tender or serve alcoholic liquors except as authorized by his or her license;
- (f) Sell, furnish, tender or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container; provided, that under certain requirements exceptions to liquor by the drink are as follows:
 - (1) A private club licensed under West Virginia Code 60-7-1 et seq., that is in good standing with the Commissioner and has paid a \$1000 on-premises only bottle service fee to the Commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by such a private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and the liquor bottle shall be removed from the licensed premises by any person or the licensee; and
 - (2) A Class A licensee licensed under West Virginia Code 60-8-1 et seq., may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless such licensee has obtained a license or privilege authorizing other activity;
- (g) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container; provided, that a licensee may sell, furnish, tender, and serve up to fifteen recipes of pre-mixed beverages consisting of alcoholic liquors and nonalcoholic mixer, in a manner approved by the Commissioner and in accord with public health and safety standards:
 - (1) The licensee shall use approved dispensing and storage equipment which shall be cleaned at the end of the day. Failure to clean the dispensing and storage equipment shall result in the immediate suspension or revocation of the permit;
 - (2) The licensee shall sanitize and clean the pre-mixing beverage storage equipment after each use or after each batch of the pre-mixed beverage is made; and
 - (3) The licensee shall maintain a written record reflecting the cleaning and sanitizing of the storage and dispensing equipment for inspection by the Commissioner and health inspectors;
 - (4) A violation or violations of this subdivision may result in the suspension or revocation of the permit and may result in additional sanctions under West Virginia Code Chapter 60 or 11-16-1 et seq.
- (h) Sell, furnish, tender or serve any alcoholic liquor when forbidden by the provisions of this article;
- (i) Sell, possess, possess for sale, tender, serve, furnish or provide any powdered alcohol;
- (j) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this article.

Whoever violates this section is guilty of a misdemeanor for the first offense.

(WVaC 60-6-8)

521.05 UNLAWFUL PURCHASE OF ALCOHOLIC LIQUORS FROM STATE AGENCY.

No person shall:

- (a) Being under the age of twenty-one years, for the purpose of purchasing alcoholic liquors from a State liquor store or an agency, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase alcoholic liquors from a State liquor store or an agency.
- (b) Knowingly buy for, give to or furnish to anyone under the age of twenty-one years to whom they are not related by blood or marriage, any alcoholic liquors from whatever source.

(WVaC 60-3-22a)

521.06 INTOXICATION OR DRINKING IN PUBLIC PLACES; ILLEGAL POSSESSION.

(a) A person shall not:

- (1) Appear in a public place in an intoxicated condition;

- (2) Drink alcoholic liquor or nonintoxicating beer in a public place;
- (3) Tender a drink of alcoholic liquor or nonintoxicating beer to another person in a public place;
- (4) Operate a business without a license issued under West Virginia Code 60-1-1 et seq., which knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site items such as cups, glasses, ice and nonalcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather, perhaps offering musical entertainment, exotic dancing, or other such music, entertainment, or other similar activity or entertainment. Such business may be commonly known as a "bring your own bottle", "bring your own booze" or "BYOB" establishments;
- (5) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commissioner, without having first obtained written authority from the Commissioner therefor; or
- (6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of West Virginia Code Chapter 60.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section:

- (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying the date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility; provided, that the issuance of a citation shall be used whenever feasible;
- (2) If it does not impose an undue burden on the officer, he or she may, after issuance of the citation, transport the individual to the individual's present residence or arrange for the transportation;
- (3) If the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by West Virginia Code 27-11-17; or
- (4) If the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness. The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken:

- (1) If the individual is no longer incapacitated, he or she may be released;
- (2) If the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or
- (3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of West Virginia Code Article 27-5 or 6A.

(d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (5), subsection (a) of this section; provided, that the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying out the provisions of this section.

(WVaC 60-6-9)

521.07 ACTS PROHIBITED BY NONINTOXICATING BEER LICENSEE

- (a) No licensee under West Virginia Code Article 11-16, his, her, its or their servants, agents or employees shall sell, give or dispense, and no individual shall drink or consume, in or on any licensed premises or in any rooms directly connected therewith, non intoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday, except in private clubs licensed under the provisions of West Virginia Code Article 60-7 and Section 521.03A, where the hours shall conform with the hours of sale of alcoholic liquors.
- (b) No licensee, his, her, its or their servants, agents or employees shall sell, furnish or give any non intoxicating beer as defined in this article to any person visibly or noticeably intoxicated, or to any person known to be insane or know to be a habitual drunkard.
- (c) No licensee, his, her, its or their servants, agents or employees, shall sell, furnish or give any non intoxicating beer as

defined in this article to any person who is less than twenty-one years of age:

(d) No distributor shall sell or offer to sell, and no retailer shall purchase or receive, any non intoxicating beer as defined in this article, except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subsection. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(e) No brewer or distributor or brewpub or his, her, its or their agents, shall transport or deliver non intoxicating beer as defined in this article to any retail licensee on Sunday;

(f) No brewer or distributor shall give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers; provided that a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any such events; provided however that no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the non Intoxicating Beer Commissioner.

(g) No licensee shall permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

(h) No licensee except the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, or a holder of a license for a private wine restaurant issued under the provisions of West Virginia Code Article 60-8, shall possess a Federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than non intoxicating beer;

(i) No licensee shall obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times; provided, that provisions of this subsection shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of West Virginia Code Article 60-7, or the premises of a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8;

(j) No licensee shall manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith; provided, that the prohibition contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8, insofar as such private wine restaurant is authorized to serve wine;

(k) No retail licensee shall sell or dispense non intoxicating beer as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this State;

(l) No licensee shall permit loud, boisterous or disorderly conduct of any kind upon his or her premises or permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located; provided, that no licensee shall have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(m) No person whose license has been revoked, shall obtain employment with any retailer within the period of one year from the date of such revocation, and no retailer shall employ knowingly any such person within such time;

(n) No distributor shall sell, possess for sale, transport or distribute non intoxicating beer except in the original container;

(o) No licensee shall knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this State or Municipality;

(p) No Class B retailer shall permit the consumption of non intoxicating beer upon his licensed premises;

(q) No Class A licensee, his, her, its or their servants, agents or employees, or any licensee by or through such servants, agents or employees, shall allow or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of eighteen years is in or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises;

(r) No distributor shall sell, offer for sale, distribute or deliver any non intoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such non intoxicating beer or sell, offer for sale, distribute or deliver any such non intoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such non intoxicating beer; provided, that nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale; and

(s) No licensee or any agent, servant or employee of any such licensee shall knowingly violate any rule or regulation lawfully promulgated by the Commissioner.

(t) Any person who violates any provision of this section, or any rule, regulation or order lawfully promulgated by the Commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be punished as provided in Section 521.99.

(u) Nothing in this section nor any rule or regulation of the Commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such licensee's lawful employ, including the sale or delivery of non intoxicating beer as defined in this article. With the prior approval of the Commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreation activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age; provided, that such person's duties shall not include the sale or delivery of non intoxicating beer or alcoholic liquors; provided, however, that the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee's license. (Ord. 16-25. Passed 8-18-16.)

521.08 UNLAWFUL PURCHASE OF NONINTOXICATING BEER.

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve nonintoxicating beer.

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores; provided, that such person shall not sell or deliver nonintoxicating beer.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years for the purpose of purchasing nonintoxicating beer, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or shall illegally attempt to purchase nonintoxicating beer.

(c) No person shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one years to whom they are not related by blood or marriage.

(WVAC 11-16-19)

521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.

(a) No person licensed under West Virginia Code Article 60-7, or his agent, employee or member thereof, on such licensee's premises shall:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away or permit the sale of, gift to or the procurement of any non intoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of non intoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away, or permit the sale of, gift to or the procurement of any non intoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of non intoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense non intoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of 3:00 a.m. and 1:00 p.m. on Sunday except as provided under Section 521.03A;

(6) Permit the consumption by, or serve to, on the licensed premises any non intoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor.

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of the private club or a guest of such member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the Commissioner;

(10) A. Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give non intoxicating beer, wine or alcoholic liquors to any person;

B. Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give non intoxicating beer, wine or alcoholic liquors to any person; or

(11) Violate any reasonable rule or regulation of the Alcohol Beverage Control Commissioner.

(b) No licensee shall advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

(Ord. 16-25. Passed 8-18-16.)

521.10 UNLAWFUL PURCHASE FROM PRIVATE CLUB.

(a) No person under the age of twenty-one years shall order, pay for, share the cost of or attempt to purchase any nonintoxicating beer, wine or alcoholic liquors from a licensee or consume any nonintoxicating beer, wine or alcoholic liquors purchased from a private club licensee or possess any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. Provided, that nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer, wine or alcoholic liquors when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years, for the purpose of purchasing nonintoxicating beer, wine or alcoholic liquors from a private club licensee, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase nonintoxicating beer, wine or alcoholic liquors from a licensee.

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of twenty-one years any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. (WVaC 60-7-12a)

521.11 ACTS PROHIBITED BY WINE DEALERS.

It shall be unlawful:

(a) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of West Virginia Code 60-8-6, or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in West Virginia Code 60-1-5a;

(b) Unless otherwise specifically provided for by the provisions of West Virginia Code Article 60-8, for a licensee under West Virginia Code Article 60-8 to acquire, transport, possess for sale, or sell wine other than in the original package;

(c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age or to a mentally incompetent person or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs; provided that the provisions of West Virginia Code 60-3A-25a shall apply to sales of wine;

(d) For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person, except as provided for in subsection (g) of this section;

(e) For a supplier or distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell such brand at wholesale. For the purposes of this article, "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the holder of a wine, or an agent specifically authorized by any of the above enumerated persons to make a sale of the wine to a West Virginia distributor; provided, that no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor or farm winery licensed as such in this State; provided, however, that nothing herein is considered to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale of which brand or brands such other distributor has been authorized by a licensed supplier to distribute. The Commissioner shall promulgate legislative rules necessary to carry out the provision of this subsection;

(f) For a person to violate any rule promulgated by the Commissioner under West Virginia Code Article 60-8.

(g) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment, including the sale of wine or distribution of wine on behalf of a winery, farm winery, farm entity, supplier or distributor under the provisions of this article. With the prior approval of the Commissioner, a licensee may employ persons who are less than eighteen years of age but at least sixteen years of age; Provided, that the person's duties may include the sale of nonintoxicating beer or wine only when directly supervised by a person twenty-one years of age or older; Provided, however, that the authorization to employ persons under eighteen years of age shall be clearly indicated on the licensee's license; Provided, further, that nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be

considered to prohibit any licensee from employing any person who is at least twenty-one years of age for the ordering and delivery of wine when licensed for the ordering and delivery of wine under the provisions of this article.

(WVaC 60-8-20)

521.12 UNLAWFUL PURCHASE OF WINE.

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve wine or other alcoholic liquor.

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores; provided, that such person shall not sell or deliver wine or alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years, for the purpose of purchasing wine or other alcoholic liquors from a licensee, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase wine or other alcoholic liquors.

(c) No person shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one years to whom they are not related by blood or marriage.

(WVaC 60-8-20a)

521.13 UNLAWFUL PURCHASE FROM RETAIL LIQUOR LICENSEE.

(a) (1) No person who is eighteen or over but under the age of twenty-one years shall purchase, consume, sell, serve or possess alcoholic liquor. Any person who is under eighteen years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a status offense, as that term is defined in West Virginia Code 49-1-4, and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in West Virginia Code 49-5-11.

(2) Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years shall, for the purpose of purchasing liquor from a retail licensee, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase liquor from a retail licensee.

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source.

(d) No person while on the premises of a retail outlet shall consume liquor or break the seal on any package or bottle of liquor.

(WVaC 60-3A-24)

521.14 SEARCH WARRANTS; SEARCHES AND SEIZURES.

If there is a complaint to the Police Court Judge on oath, supported by affidavit setting forth the facts for such belief that alcoholic liquors are being manufactured, sold, kept, stored or in any manner held, used or concealed in a particular house or other place in violation of Section 521.03 et seq., the Police Court Judge if satisfied that there is a probable cause for such belief, shall issue a warrant to search such house or other place for alcoholic liquors. Such warrant shall be directed to the Chief of Police or any police officer, and shall command such officer to search such house or other place therein designated for alcoholic liquors and to seize all stills and distilling apparatus and material for the manufacture of the same, and all alcoholic liquors, and materials used in the manufacture of alcoholic liquors, and all containers in which alcoholic

liquors may be found, which are kept, stored, possessed or in any manner used in violation of the provisions of this section or Section 521.03 et seq. and bring the same, if found, and any person in whose possession they are, if found, before the Police Court Judge. Any such articles seized under such warrant shall be safely kept by the direction of the Police Court Judge and may be used as evidence in any proceeding or trial.

An officer charged with the execution of a warrant issued under this section may whenever it is necessary, break open and enter a house or other place therein described.

(1968 Code Sec. 17-35)

521.15 FORFEITURE OF CONTRABAND VEHICLES.

Any conveyance or vehicles used for the transportation of alcoholic liquors in violation of Section 521.03 et seq. shall be deemed contraband and shall be forfeited to the City under the procedures provided for such forfeiture and confiscation in Section 521.16. Any such conveyance forfeited in accordance with the provisions of this article shall be turned over to the City; if the City has no need for such conveyance, it may order its sale or destruction. The proceeds from any such sale shall be placed in the General Fund.

(1968 Code Sec. 17-37)

521.16 PROCEEDINGS FOR CONFISCATION.

Proceedings for the confiscation and forfeiture of contraband vehicles under this section shall be had in the Police Court and the proceedings shall be as follows:

- (a) When such conveyance or vehicle has been seized under Section 521.15, the officer shall take possession of such vehicle and report the same to his commanding officer.
- (b) Within not less than ten days and not more than sixty days after the seizure of such conveyance or vehicle, the City Attorney shall file in the Police Court a petition against the seized property, which petition shall set forth in general terms the grounds of forfeiture for such property and pray that the same be forfeited to the City, and that all persons concerned or interested shall appear and show cause why such property should not be forfeited.
- (c) The owner of, and person in any manner then indebted, or liable for the purchase price of such property and any person having a lien thereon, if he is known, shall be made parties defendant to the petition and shall be served with the notice hereinafter provided at least ten days before the day set for hearing the petition. If they be residents of the State, and if he is unknown or a nonresident or cannot, with reasonable diligence, be found in this State, he shall be determined sufficiently served by publication of the notice once a week for two successive weeks in some newspaper of general circulation in the City.
- (d) Any person claiming to be the owner of such seized property or to hold a lien thereon or have an interest therein may appear at any time before final judgment and be made a party defendant to the petition, which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such claim or interest.
- (e) If the Judge of the Police Court shall find, or if it be admitted before the Judge, that the conveyance or vehicle at the time of the seizure was then being used in violation of Section 521.03 et seq. nevertheless: If it shall appear to the satisfaction of the Court that such claimant is the holder of a bona fide lien against the property and was the holder of such lien at the time of such seizure and that he was ignorant of such illegal use thereof or the use so made of such conveyance or vehicle was without his permission or consent expressed or implied and the claimant has perfected his lien, the Court shall:
 - (1) If the lien so established is equal to or more than the value of the conveyance or vehicle, such conveyance or vehicle shall be delivered to the lienor upon the payment of towing and storage, if any, and costs.
 - (2) If the lien is less than the value of the conveyance or vehicle, the same may be delivered to the lienor upon payment of the difference in amount as determined in such proceedings; but should the lienor not demand delivery as aforesaid, an order may be made for the sale of the property, out of the proceeds of which shall be paid first the towing and storage, if any, second the costs, third the lien, and the residue, if any, to the General Fund.
- (f) If, however, no valid lien or claim is established against the seized property, upon trial or afterward, or if it shall be determined that the owner thereof was himself using the same at the time of the seizure, or that such illegal use was with his knowledge or consent expressly or implied, then the property shall be completely forfeited to the City.

(1968 Code Sec 17-38)

521.17 HARD CIDER.

(a) "Hard Cider" means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey or other fruit, or from apple, pear, peach, or other fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent (0.5%) and less than twelve and one-half percent (12.5%) alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as a wine, wine product, or as a substitute for wine.

(WVaC 60-8A-1)

(b) Except as stated in West Virginia Code Article 60-8A, all wine licenses and other wine requirements set forth in West Virginia Code 60-8-1 et seq., 60-4-3b, and 60-6-2, shall apply to the manufacture, distribution or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell wine may manufacture, distribute or sell hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as such license or legal right authorizes him or her to manufacture, distribute or sell wine. No additional wine license fees shall be charged for the privilege of manufacturing, distributing, or selling hard cider.

(c) Except as stated in West Virginia Code Article 60-8A, all hard cider distributors are bound by all wine distribution requirements set forth in West Virginia Code 60-8-1 et seq., 60-4-3b, and 60-6-2, which shall apply to distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may distribute hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as a license or legal right would authorize him or her to distribute wine. An additional hard cider license fee shall not be charged for the privilege of distributing hard cider. (WVaC 60-8A-2)

521.18 OFF-PREMISES SALES NOT REQUIRED TO BE BAGGED.

(a) A licensee who is licensed for off-premises sales of nonintoxicating beer or nonintoxicating craft beer is not required to place nonintoxicating beer or nonintoxicating craft beer in a bag. (WVaC 11-16-5a)

(b) Alcoholic liquors in this state are not required to be placed in a bag by a licensee who is licensed for off-premises sales of alcoholic liquors.

(WVaC 60-1-3a)

521.89 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 521.05(a), 521.12(b) or 521.13(b) shall be fined not more than fifty dollars (\$50.00), or imprisoned for not more than seventy-two hours, or both, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for not more than one year.

(b) Whoever violates Section 521.05(b), 521.12(c) or 521.13(d) shall be fined not more than one hundred dollars (\$100.00), or imprisoned for not more than ten days, or both.

(WVaC 11-16-19, 60-3-22a, 60-8-20a, 60-3A-24)

(c) Whoever violates subdivision (1), subsection (a) of Section 521.06 shall be sentenced by a judicial officer in accordance with the following options:

(1) Upon first offense, a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00). If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours duration at the nearest community mental health - mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health - mental retardation center;

(3) Upon third and subsequent convictions, a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) and not less than five nor more than thirty days in jail or a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) and completion of not less than five hours of alcoholism counseling at the nearest community mental health - mental retardation center; provided, that three convictions for public intoxication within the preceding six months is considered evidence of alcoholism. For the educational counseling programs described in this subsection the community mental health - mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(4) A person charged with a violation of subdivision (1), subsection (a) of Section 521.06 who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to West Virginia Code Articles 27-5 and 6A.

(d) Whoever violates subdivision (2), subsection (a) of Section 521.06 shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00); and upon a second or subsequent conviction thereof, shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.

(e) Whoever violates subdivision (3), subsection (a) of Section 521.06 shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.

(f) Whoever violates subdivision (4) or (5), subsection (a) of Section 521.06 shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). Upon conviction of a second or subsequent offense, he or she is guilty of a felony and, shall be prosecuted under appropriate State law.

(WVaC 60-8-8)

(g) (1) Whoever violates Section 521.08(a) shall be fined an amount not to exceed five hundred dollars (\$500.00) or shall be confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed seventy-two hours, or both fined and confined or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not to exceed one year.

(2) Whoever violates Section 521.08(b) shall be fined an amount not to exceed one hundred dollars (\$100.00) or shall be confined in jail, or in the case of a juvenile, a juvenile detention facility, for a period not to exceed seventy-two hours, or both such fine and confinement or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not exceeding one year.

(3) Whoever violates Section 521.08(c) shall be fined an amount not to exceed one hundred dollars (\$100.00) or shall be confined in jail for a period not to exceed ten days, or both such fine and confinement.

(h) Whoever violates Section 521.09 shall be fined not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000), or imprisoned not more than thirty days, or both.

(WVaC 60-7-12)

(i) Whoever violates Section 521.10(a) or (b) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both, and in addition may, for the first offense be placed on probation for a period not to exceed one year.

(j) Whoever violates Section 521.10(c) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than ten days, or both.

(WVaC 60-7-12a)

(k) Whoever violates 521.12(a) or 521.13(a) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than seventy-two hours, or both, or in lieu thereof, may, for the first offense, be placed on probation for a period not to exceed one year.

(WVaC 11-16-19, 60-8-20a, 60-3A-24)

(l) Whoever violates Section 521.13(c) shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than ten days, or both.

(WVaC 60-3A-24)

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on **Wednesday, July 12, 2023** at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present: J. Patrick Shaffer, Chairman
C. David McMunn
F. Lee West
Chris Lane
Gary Keith II
Tiffany Fell, City Manager
Wayne Worth, Council Representative

Member(s) Absent: Dortha Parsons
Chris Meighen
Michael Brown
Timothy "Mike" Fazzini

Also Present: James Cann, City Attorney
Ashley Carr, Code Department
Cathy Keener, Code Department
John Whitmore, Economic Development Director
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken by the City Clerk upon arrival.

MOTION by Mr. West, **SECONDED** by Mr. Lane for approval of the minutes of the session held on May 10, 2023. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: NONE.

NEW BUSINESS:

A. CONSIDERATION OF A PETITION FILED BY MELODIE NICHOLS REQUESTING THE SUBDIVISION OF LOTS OR PARCELS OF LAND SITUATE ON FARLAND AVENUE

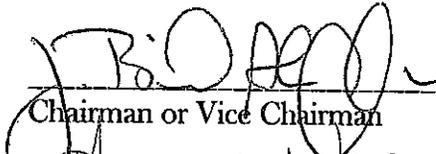
Reporting on behalf of the Investigating Committee, Mr. McMunn referenced the Methodist Church located thereat pointing out that the approval of this subdivision request would create variances that violate our code. Mr. Carr stated that the property is located within the business district wherein the set-back requirements, etc. are less stringent than in a residential district and further he did not believe that the land use would change. Mr. Whitmore remarked that the nonconforming use that is being created does not impact the use of the property. Mr. Lane expressed concern with the operation of the property noting the location of the stairwell of the church facility and how the same would be utilized for ingress and egress during emergency situations, etc. Concluding discussion, **MOTION** by Mr. Lane, **SECONDED** by Mr. Keith to approve the above-captioned request with the condition that a right-of-way easement be included in the deed to provide acceptable ingress and egress to the rear door of the church facility and further to approve the variance(s) for any set-back concerns should the same exist. **MOTION APPROVED UNANIMOUSLY.**

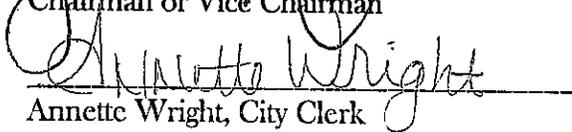
590
B. DISCUSSION/CONSIDERATION OF COMMITTEE ASSIGNMENTS

Mr. Lane requested that a committee be assigned or created to perform a comprehensive code review to bring back concerns or suggestions to the Commission with City Manager Fell apprising that the Administration is talking about redoing the zoning ordinances and suggested that she be given the opportunity to discuss the same in more detail with staff. The Commission was in agreement with the City Manager's suggestion with no committee being assigned or formed at this time to review the pertinent zoning codes. Also, the following Investigating Committees were confirmed:

- | | | | |
|----------------|--|----------------|---|
| Committee #1 - | C. David McMunn
Dortha Parsons
Chris Meighen | Committee #2 - | Patrick Shaffer
Mike Fazzini
Chris Lane |
| Committee #3 - | F. Lee West
Michael Brown
Gary Keith II | | |

There being no further business to come before the Commission, **MOTION** by Mr. West, **SECONDED** by Mr. Lane for adjournment. **MOTION APPROVED UNANIMOUSLY.**



Chairman or Vice Chairman


Annette Wright, City Clerk

12/13/2023
Date

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on Wednesday, December 13, 2023 at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present:
J. Patrick Shaffer, Chairman
C. David McMunn
Chris Meighen (via phone)
Chris Lane
Tiffany Fell, City Manager
Wayne Worth, Council Representative

Member(s) Absent:
F. Lee West
Michael Brown
Timothy "Mike" Fazzini
(one vacancy exists) Gary Keith II

Also Present:
James Cann, City Attorney
Ashley Carr, Code Department
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken by the City Clerk upon arrival.

MOTION by Mr. McMunn, **SECONDED** by Mr. Lane for approval of the minutes of the session held on July 12, 2023. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: NONE.

NEW BUSINESS:

- A. **PUBLIC HEARING AND CONSIDERATION OF A PETITION FILED BY GEORGE AND NANCY BROWN, 103 ARGONNE STREET, REQUESTING THE ABANDONMENT OF A PORTION OF AN UNIMPROVED ALLEY IN THE HARTLAND SECTION OF THE CITY**

Chairman Shaffer opened the public hearing with petitioner George Brown appearing therefor and explaining that the garage was already on the property when they purchased it and that they have made improvements to the garage over the years and he wants to make it a part of his property. There being no one else wishing to speak, Chairman Shaffer closed the public hearing.

Code Official Ashley Carr informed that his department did not have any concerns with the request. Mr. Cann noted that the owners on the opposite side of the alley were entitled to half of the abandonment; however, the Browns may seek sole ownership if agreed upon by said property owner. Concluding discussion, **MOTION** by Mr. Lane, **SECONDED** by Councilmember Worth to recommend to City Council the approval of said request for abandonment. **MOTION APPROVED UNANIMOUSLY.**

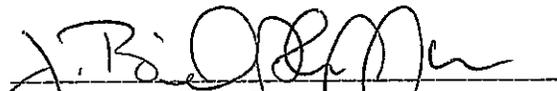
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B. CONSIDERATION OF A PETITION FILED BY PAUL KOPP REQUESTING THE SUBDIVISION OF LOTS OR PARCELS OF LAND SITUATE ON NORTH 21ST STREET

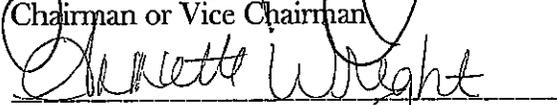
Code Official Ashley Carr nor Mr. Cann had any concerns with the request. Petitioner Paul Kopp explained that he owned a 24' X 24' block garage that he wished to sell; however, he would retain ownership of the remaining property. MOTION by Councilmember Worth, SECONDED by Mr. McMunn for approval of the above-captioned subdivision request. MOTION APPROVED UNANIMOUSLY.

C. CONSIDERATION OF A PETITION FILED BY ROSEBUD STORAGE (MARY FRANCES LLC) REQUESTING THE SUBDIVISION OF LOTS OR PARCELS OF LAND SITUATE ON ADENA LANE (ROSEBUD/OAKMOUND AREA)

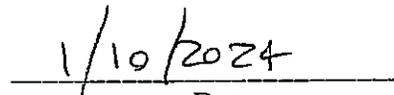
There being no concerns with the request, MOTION by Mr. Meighen, SECONDED by Mr. Lane for approval of the above-captioned subdivision request. MOTION APPROVED UNANIMOUSLY.

There being no further business to come before the Commission, MOTION by Mr. Lane, SECONDED by Councilmember Worth for adjournment. MOTION APPROVED UNANIMOUSLY.



Chairman or Vice Chairman


Annette Wright, City Clerk



Date

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on Wednesday, January 10, 2024 at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present:
J. Patrick Shaffer, Chairman
C. David McMunn
Chris Meighen
Chris Lane
Gary Keith II
Tiffany Fell, City Manager

Member(s) Absent:
Michael Brown
Timothy "Mike" Fazzini
Wayne Worth, Council Representative

Note: Two (2) vacancies exist

Also Present:
Ashley Carr, Code Department
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken by the City Clerk upon arrival.

MOTION by Mr. McMunn, SECONDED by Mr. Lane for approval of the minutes of the session held on December 13, 2023. MOTION APPROVED UNANIMOUSLY.

UNFINISHED BUSINESS: NONE.

NEW BUSINESS:

A. ELECTION OF OFFICERS

- Chairman
- Vice Chairman
- Secretary

MOTION by Mr. Keith, SECONDED by Mr. Meighen to appoint the following:

Chairman - J. Patrick Shaffer
Vice Chairman - C. David McMunn
Secretary - Chris Lane

MOTION APPROVED UNANIMOUSLY.

B. PUBLIC HEARING AND CONSIDERATION OF A PETITION FILED BY JONATHAN HENRY REQUESTING THE REZONING OF PROPERTY LOCATED AT 849 MILFORD STREET FROM ITS R-2 DESIGNATION TO A B-2 DESIGNATION

Chairman Shaffer declared the public hearing open with no one appearing therefor. Code Director Ashley Carr informed that said property is zoned as R-2 which the applicant is requesting the rezoning to allow for the operation of a garage. It was also noted that other businesses have operated at said location in the past. There being no concerns with the proposed rezoning, MOTION by Mr. Lane, SECONDED by Mr. Keith to recommend to City Council that said rezoning request be approved. MOTION APPROVED UNANIMOUSLY.

There being no further business to come before the Commission, MOTION by Mr. Keith, SECONDED by Mr. Lane for adjournment. MOTION APPROVED UNANIMOUSLY.

[Signature]
Chairman or Vice Chairman

2-14-2024
Date

Annette Wright
Annette Wright, City Clerk

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on Wednesday, February 14, 2024 at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present:
C. David McMunn
Chris Meighen (via telephone)
Timothy "Mike" Fazzini
Chris Lane (via telephone)
Roger Baker
Tiffany Fell, City Manager

Member(s) Absent:
J. Patrick Shaffer, Chairman
Michael Brown
Gary Keith II
Kim Basnett
Wayne Worth, Council Representative

Also Present:
Andy McMunn, Attorney for Petitioner
Cathy Keener, Code Enforcement
Annette Wright, City Clerk

Vice Chairman McMunn called the meeting to order with roll taken by the City Clerk.

MOTION by Mr. Meighen **SECONDED** by Mr. Lane for approval of the minutes of the session held on January 10, 2024. **MOTION APPROVED UNANIMOUSLY.**

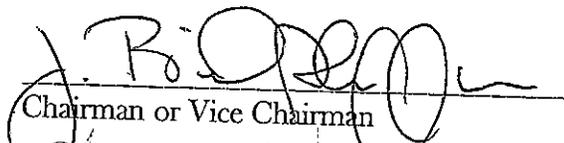
UNFINISHED BUSINESS: NONE.

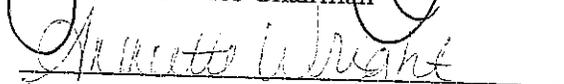
NEW BUSINESS:

- A. Consideration of a Petition filed by Richard Ritter requesting the subdivision/minor boundary adjustment of lots or parcels of land situate on Skyview Drive

Attorney Andy McMunn apprised that the petitioner lives next door to his daughter who has a shed on the property and that the petitioner is requesting a minor boundary adjustment so the shed would be located on his daughter's property. There being no concerns with said petition, MOTION by Mr. Fazzini, **SECONDED** by Mr. Baker for approval of the above-captioned petition. **MOTION CARRIED 5-0** with Vice Chairman McMunn abstaining due to his son's representation of the petitioner.

There being no further business to come before the Commission, MOTION made, **SECONDED** and **APPROVED UNANIMOUSLY** for adjournment.



Chairman or Vice Chairman


Annette Wright, City Clerk

3/13/2024
Date

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on Wednesday, March 13, 2024 at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present: J. Patrick Shaffer, Chairman
C. David McMunn
Chirs Lane (via telephone)
Kim Basnett
Roger Baker
Wayne Worth, Council Representative

Member(s) Absent: Chris Meighen
Michael Brown
Timothy "Mike" Fazzini
Gary Keith II
Tiffany Fell, City Manager

Also Present: Ashley Carr, Code Enforcement Supervisor
Cathy Keener, Code Enforcement
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken upon arrival.

MOTION by Mr. McMunn **SECONDED** by Mr. Baker for approval of the minutes of the session held on February 14, 2024. **MOTION APPROVED UNANIMOUSLY.**

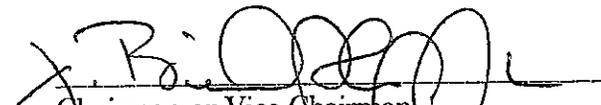
UNFINISHED BUSINESS: NONE.

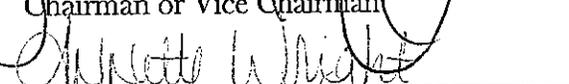
NEW BUSINESS:

- A. Consideration of a Petition filed by GKC Lucas, LLC (c/o Greg Schultz) requesting the subdivision of lots or parcels of land situate at Good Hope Pike (US Route 19)

Reporting on behalf of the Investigating Committee, Chairman Shaffer informed that construction was currently underway at said site and he did not see any concerns with the request with Mr. Carr also confirming that the Code Department did not have any issues with the petition. **MOTION** by M. McMunn, **SECONDED** by Councilmember Worth for approval of the above-captioned petition. **MOTION CARRIED 5-0** with Mr. Lane abstaining as the petitioner is an active client of his.

There being no further business to come before the Commission, **MOTION** made by Mr. Lane, **SECONDED** by Mr. McMunn and **APPROVED UNANIMOUSLY** for adjournment.



Chairman or Vice Chairman


Annette Wright, City Clerk

7/10/2024
Date

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on Wednesday, July 10, 2024 at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present: J. Patrick Shaffer, Chairman
C. David McMunn
Chris Meighen
Chirs Lane (via telephone)
Kim Basnett
Wayne Worth, Council Representative
Tiffany Fell, City Manager

Member(s) Absent: Roger Baker
Michael Brown
Timothy "Mike" Fazzini
Gary Keith II

Also Present: Ashley Carr, Code Enforcement Supervisor
Jason Lane, Project Director
Josiah Greaver, Petitioner
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken upon arrival.

MOTION by Mr. McMunn **SECONDED** by Mr. Meighen for approval of the minutes of the session held on March 13, 2024. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: NONE.

NEW BUSINESS:

- A. Consideration of a Petition filed by Thomas Payne for the approval of the simplified plat for property located at 364 Monticello Avenue

With the applicant not present and Mr. Lane expressing some concerns regarding the request, **MOTION** by Mr. Meighen, **SECONDED** by Mr. McMunn to **TABLE** the above-captioned petition. **MOTION APPROVED UNANIMOUSLY.**

- B. Consideration of a Petition filed by Josiah Greaver of Altitude Properties, LLC requesting the subdivision of lots or parcels of land situate at 328 Milford Street

Chairman Shaffer called for a report from the Investigating Committee with Mr. McMunn reporting that he could not recommend the subdivision based upon the set-back violations, lot size violations, etc. Petitioner Mr. Greaver stated that he wanted to subdivide the property to sell both houses that are located on the same plot and that the structures/property are already non-conforming uses. Mr. Lane concurred with Mr. McMunn and suggested that the alley remain as part of Tract 2 with a right-of-way granted for use by Tract 1. Mr. Greaver commented that by doing so would not result in a different outcome as the houses already consists of more than 35% of the lot coverage. City Manager Fell remarked that if the property was subdivided into two lots

the likelihood of home ownership versus rental would be greater. Mr. Greaver expressed his intentions to fix up both properties to sell rather than rent. Mr. Greaver apprised that he would have the plat amended and bring the same back to the Commission for consideration. Concluding discussion, MOTION by Mr. Meighen, SECONDED by Mr. Worth to TABLE the above-captioned matter. MOTION TO TABLE CARRIED 6-1 with Mr. McMunn casting the dissenting vote.

There being no further business to come before the Commission, MOTION by Mr. Worth, SECONDED by Mr. Lane for adjournment. MOTION APPROVED UNANIMOUSLY.

J. B. O'Neil
Chairman or Vice Chairman
Annette Wright
Annette Wright, City Clerk

8/14/2024
Date

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on **Wednesday, August 14, 2024** at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present: J. Patrick Shaffer, Chairman
Chris Meighen
Timothy "Mike" Fazzini
Gary Keith II (via telephone)
Roger Baker
Tiffany Fell, City Manager

Member(s) Absent: Michael Brown
Chris Lane
Kim Basnett
Councilmember Wayne Worth

Note: One (1) vacancy

Also Present: Ashley Carr, Code Enforcement Supervisor
Jason Lane, Project Director
Cathy Keener, Code Enforcement
Petitioners
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken upon arrival.

MOTION by Mr. Meighen, **SECONDED** by Mr. Baker for approval of the minutes of the session held on July 10, 2024. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS:

- A. Consideration of a Petition filed by Thomas Payne for the approval of the simplified plat for property located at 364 Monticello Avenue

Mr. Payne informed that he wanted to the combine the properties and has had the same surveyed. There being no concerns raised by Code Enforcement or the Commission, **MOTION** by Mr. Fazzini, **SECONDED** by Mr. Meighen for approval of the above-captioned petition. **MOTION APPROVED UNANIMOUSLY.**

- B. Consideration of a Petition filed by Josiah Greaver of Altitude Properties, LLC requesting the subdivision of lots or parcels of land situate at 328 Milford Street

Mr. Meighen inquired if the Commission was putting itself in a bad spot by approving the application as this would create another substandard size lot with City Manager Fell remarking that each application and property needed to be looked at individually and that she felt comfortable moving forward with the application. City Manager Fell noted that the petitioner made the change to the plat as requested by the Commission at its previous meeting wherein the petition was tabled.

MOTION by Mr. Keith, SECONDED by City Manager Fell for approval of the above-captioned petition. MOTION APPROVED UNANIMOUSLY.

NEW BUSINESS:

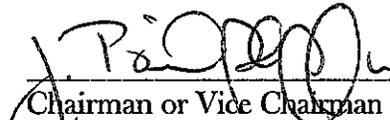
- A. Consideration of a Petition filed by Nicole Romano requesting the subdivision of lots or parcels of land situate on Monticello Avenue

With there being no concerns with the petition, MOTION by Mr. Fazzini, SECONDED by Mr. Baker for approval of the above-captioned petition. MOTION APPROVED UNANIMOUSLY.

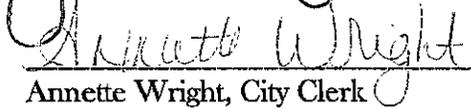
- B. Consideration of a plat submitted by Weber & Weber Law Offices for recordation of property located on South Florence Street and East Pike Street

Attorney Weber explained that this was simply a retracement of the old property description. There being no concerns with the plat submitted, MOTION by Mr. Fazzini, SECONDED by Mr. Meighen for approval of the above-captioned plat. MOTION APPROVED UNANIMOUSLY.

There being no further business to come before the Commission, MOTION by Mr. Fazzini, SECONDED by Mr. Baker for adjournment. MOTION APPROVED UNANIMOUSLY.



 Chairman or Vice Chairman



 Annette Wright, City Clerk

9/11/2024

 Date

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on Wednesday, September 11, 2024 at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present: J. Patrick Shaffer, Chairman
Chris Meighen
Timothy "Mike" Fazzini
Gary Keith II
Kim Basnett
Wayne Worth, Councilmember

Member(s) Absent: Michael Brown
Chris Lane
Roger Baker
Tiffany Fell, City Manager

Note: One (1) vacancy

Also Present: Jason Lane, Project Director
Petitioner
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken upon arrival.

MOTION by Mr. Meighen, **SECONDED** by Mr. Fazzini for approval of the minutes of the session held on August 14, 2024. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: None.

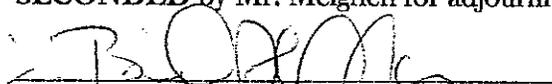
NEW BUSINESS:

- A. Consideration of a petition filed by Bryan Nicholson requesting the combination of lots or parcels of land situate on Broadway Avenue

Chairman Shaffer called for the report of the Investigating Committee with Mr. Keith informing that the petitioner wants to put a 40' x 70' metal building on the property. Mr. Nicholson explained that he owns all three lots and wants to combine said lots to put a garage and possibly one or apartments thereat. Mr. Lane apprised that there were no concerns from Code Enforcement.

MOTION by Mr. Keith, **SECONDED** by Councilmember Worth for approval of the above-captioned petition. **MOTION APPROVED UNANIMOUSLY.**

There being no further business to come before the Commission, MOTION by Mr. Keith, **SECONDED** by Mr. Meighen for adjournment. **MOTION APPROVED UNANIMOUSLY.**



Chairman or Vice Chairman

10/9/2024

Date



Annette Wright, City Clerk

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on **Wednesday, October 9, 2024** at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present: J. Patrick Shaffer, Chairman
Chris Meighen
Timothy "Mike" Fazzini
Gary Keith II
Kim Basnett
Tiffany Fell, City Manager

Member(s) Absent: Michael Brown
Chris Lane
Roger Baker
Councilmember Wayne Worth

Note: One (1) vacancy

Also Present: Jason Lane, Project Director
Petitioner
Richard Marsh, City Attorney
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken upon arrival.

MOTION by Mr. Meighen, **SECONDED** by Mr. Fazzini for approval of the minutes of the session held on September 11, 2024. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: None.

NEW BUSINESS:

A. Consideration of a petition filed by Debbie Feather requesting the subdivision of lots or parcels of land situate on North 20th Street

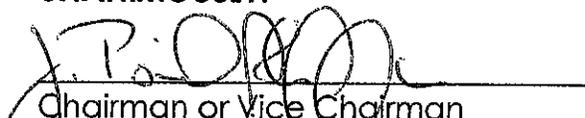
Chairman Shaffer called for the report of the Investigating Committee with Mr. Fazzini informing that the petitioner wanted to separate the garage from the residential structure. Mr. Lane stated that the proposed subdivision would result in a non-conforming lot. Petitioner Debbie Feather informed that the individual wanted to purchase the residential structure only and not the garage, as that would increase the price of the property. Mr. Marshall Goff spoke in support of Mrs. Feather's petition noting that the subdivision of the garage would allow home ownership of the residential property. City Manager Tiffany Fell stated that the City is trying to mitigate problems associated with non-conforming lots and that the approval of such would violate our code. Brief discussion was held concerning various ways for the petitioner

to maintain use of the garage without the subdivision. Mr. Keith suggested to the petitioner that she talk with a real estate attorney concerning this matter. At this time, the petitioner withdrew her petition.

B. Consideration of a Resolution to Petition City Council to Amend Zoning Ordinance Regarding 624 Armory Road

City Attorney Richard Marsh informed that said property is zoned residential; however, the surrounding properties are zoned industrial. Brief discussion was held concerning the erroneous zoning of said property with the Commission being in agreement to correct the matter. **MOTION** by Mr. Meighen, **SECONDED** by Mr. Keith for approval of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

There being no further business to come before the Commission, **MOTION** by Mr. Meighen, **SECONDED** by Mr. Fazzini for adjournment. **MOTION APPROVED UNANIMOUSLY.**



Chairman or Vice Chairman


Annette Wright, City Clerk

1/8/2025
Date

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on **Wednesday, January 8, 2025** at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present: J. Patrick Shaffer, Chairman
Chris Meighen
Chris Lane (via telephone)
Roger Baker
Hattie Wright
Councilmember Wayne Worth

Member(s) Absent: Michael Brown
Timothy "Mike" Fazzini
Gary Keith II
Kim Basnett
Tiffany Fell, City Manager

Also Present: Jason Lane, Project Director
Petitioners
Richard Marsh, City Attorney
Annette Wright, City Clerk

Chairman Shaffer called the meeting to order with roll taken upon arrival.

MOTION by Councilmember Worth, **SECONDED** by Mr. Meighen for approval of the minutes of the session held on October 9, 2024. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: None.

NEW BUSINESS:

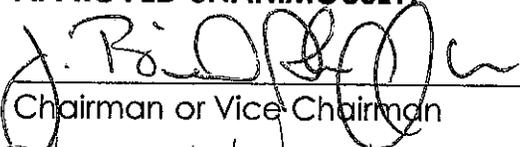
- A. **Consideration of a petition filed by Betty Gulas requesting the combination of lots or parcels of land situate on Thorn Street**

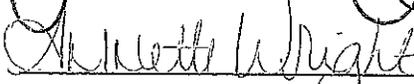
Attorney Kevin Watson, appearing on behalf of his client, Betty Gulas, informed that Ms. Gulas wished to combine her seven (7) parcels into one (1) lot. Chairman Shaffer called for the report of the Investigating Committee with Mr. Meighen informing that the petition was good with City Attorney Marsh confirming that the City had no concerns with the request. **MOTION** by Mr. Meighen, **SECONDED** by Mr. Baker for approval of the above-captioned lot combination petition. **MOTION APPROVED UNANIMOUSLY.**

B. Consideration of a petition filed by Robert Metheny requesting the subdivision of lots or parcels of land situate on Franklin Avenue

Mr. Baker, reporting on behalf of the Investigating Committee, stated that he did not see any concerns with the request with Mr. Lane confirming the same. **MOTION** by Mr. Baker, **SECONDED** by Councilmember Worth for approval of the above-captioned subdivision petition. **MOTION APPROVED UNANIMOUSLY.**

There being no further business to come before the Commission, **MOTION** by Councilmember Worth, **SECONDED** by Mr. Baker for adjournment. **MOTION APPROVED UNANIMOUSLY.**



Chairman or Vice Chairman


Annette Wright, City Clerk

5/21/2025
Date

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Clarksburg met in Session on **Wednesday, May 21, 2025** at 4:00 p.m. in Council Chambers, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present: J. Patrick Shaffer, Chairman
Chris Meighen
Kim Basnett
Roger Baker
Hattie Wright (via telephone)
Michael Brown (via telephone)

Member(s) Absent: Timothy "Mike" Fazzini
Chris Lane
Gary Keith II
Councilmember Wayne Worth
City Manager Tiffany Fell

Also Present: Steve Pulice, Community Planning & Admin. Project Mgr.
Jason Lane, Project Director
Petitioner Matt Dakon
Annette Wright, City Clerk

Due to lack of a quorum on May 14, 2025, the meeting was continued to this date.

Chairman Shaffer called the meeting to order with roll taken upon arrival.

MOTION by Mr. Meighen, **SECONDED** by Mr. Baker for approval of the minutes of the session held on January 8, 2025. **MOTION APPROVED UNANIMOUSLY.**

UNFINISHED BUSINESS: None.

NEW BUSINESS:

- A. Public Hearing and Consideration of a Petition filed by Matt Dakon of Dakon Development LLC requesting the rezoning of property located on Baltimore Avenue and B Street from its currently zoned R-4 status to an I-1 status**

Chairman Shaffer declared the public hearing open with the following individual(s) appearing therefor:

Petitioner Matt Dakon – informed that he owns a concrete company and that he purchased the above-referenced property to utilize as a "lay down" lot and that the property would not be used for a place of business but rather mainly storage for equipment.

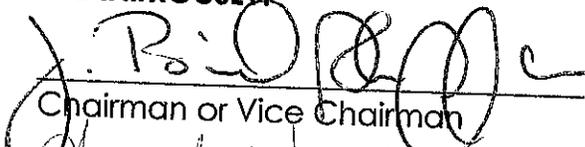
There being no one else wishing to speak, Chairman Shaffer closed the public hearing.

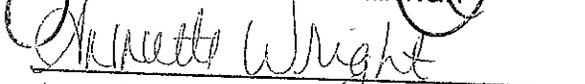
Reporting on behalf of the Investigating Committee, Chairman Shaffer informed that he looked at the property and he did not see any concerns with the request. Mr. Lane stated that the Code Department had no objections to the request and that Mr. Dakon was aware that it was his responsibility to relocate the sewer line should he build upon the same. Concluding discussion, **MOTION** by Mr. Meighen, **SECONDED** by Mr. Baker to recommend the approval of the above-referenced rezoning request to City Council. **MOTION APPROVED UNANIMOUSLY.**

B. Discussion regarding the housing/maintaining of storage containers and, if permitted, the zoning requirement therefor

Mr. Lane stated that his office has received calls concerning the placement of storage containers as a storage building and that our current ordinances do not address this matter. Concluding brief discussion, Chairman Shaffer requested that Mr. Lane keep the Commission apprised of this matter should the same be addressed by City Council.

There being no further business to come before the Commission, **MOTION** by Mr. Baker, **SECONDED** by Mr. Meighen for adjournment. **MOTION APPROVED UNANIMOUSLY.**



Chairman or Vice Chairman


Annette Wright, City Clerk

7/9/2025
Date