

VIRGINIA:

IN THE CIRCUIT COURT OF WARREN COUNTY

DAVID A. DOWNES)

Plaintiff)


Case No. CL 19-000173-00

vs.)

THE TOWN COUNCIL OF THE TOWN)
OF FRONT ROYAL, VIRGINIA)

Serve: Douglas W. Napier, Esquire)
Town Attorney)
102 East Main Street)
Front Royal, Virginia 22630)

Defendant)

CONFIRMED COPY
THIS APPEARS TO BE A
COUNTERPART OF A
DOCUMENT FILED IN
WARREN CO. CIRCUIT COURT
ON February 8, 2019

DEPUTY CLERK

**COMPLAINT FOR DECLARATORY JUDGMENT
AND PETITION FOR WRIT OF CERTIORARI**

COMES NOW, the Plaintiff, David A. Downes (Downes), *pro se*, and in support of his Complaint for Declaratory Judgment, requests for relief against the Town Council of the Town of Front Royal, Virginia (the “Town Council”) set forth herein, and his Petition for Writ of Certiorari, avers as follows:

SUMMARY

This Complaint seeks to reverse the Town Council’s decision of January 14, 2019, that upholds Town ordinances that intentionally and Unconstitutionally treat the Plaintiff as a “class of one” without any rational basis for treating similarly situated property owners differently that own (a) other art galleries and museums in Town; (b) other properties on the west side of Chester Street between East Main Street and Peyton Street, and (c) other properties on Main Street and Jackson Street that are in the same revitalization area of downtown Front Royal.

THE PARTIES

1. David A. Downes ("Downes) is a resident of Warren County, Virginia, and the owner of two parcels of real estate located in the Town of Front Royal, Virginia .
2. The Town Council is the legally constituted body governing the Town of Front Royal, Virginia (Hereinafter referred to as the "Town").

JURISDICTION AND VENUE

3. This Court has jurisdiction over this proceeding pursuant to Virginia Code §15.2-2285(F) and Virginia Code §8.01-184.
4. Venue is appropriate in this Court pursuant to Virginia Code §15.2-2285(F) and Virginia Code §8.01-257 because this Court has jurisdiction of the land affected by the decision of the Town Council which is the subject of this proceeding.

STATEMENT OF FACTS

5. In 1992, the Town Council promulgated the following ordinances, *inter alia*:
 - (a) *Art galleries/museums: [are required to have] one (1) parking space per three hundred (300) gross square feet.* " Front Royal Town Municipal Code [hereinafter "Town Code"] 175-104(F)(1)(i)
 - (b) *"Off-street parking shall not be required on any lot fronting on that portion of Main Street which extends from Royal Avenue to Happy Creek or upon that portion of Jackson Street which extends between South Royal Avenue and Church Street."* Town Code 175-104(K)
 - (c) *Off-street parking requirements may be waived by special permit for structures existing at the time of the adoption of this subsection on lots fronting the west side of Chester Street between East Main Street and Peyton Street. In considering the special permit, the Council shall evaluate handicapped access, traffic patterns and the effect on surrounding properties. As a condition to special permit approval, the Council may require a lesser number of off-street parking spaces to be supplied by the applicant than otherwise would be required and may require that there be no reduction in existing off-street parking spaces for the existing structure. [Added 6-23-1992 by Ord. No. Z-7-92] Town Code 175-104(M)(emphasis added)*

6. On or about August 5, 1999, Downes purchased, and has continuously owned since that date, certain real property in the Town of Front Royal, Virginia, containing .249 acres (more or less) and designated as Warren County, Virginia Tax Map Parcels 20A8(4) 44 and 45, also known as 14 Chester Street and 16 Chester Street, located in the Historic Overlay District (hereinafter the “Subject Property”) recorded as Instrument No. 990005373 in the Clerk’s Office of the Circuit Court of Warren County. See **Exhibit “A”** of Plat filed in the same Clerk’s Office at Deed Book 323, Page 217.
7. The parcel known as “14 Chester Street” has an improvement thereon of 3,006 square feet built in 1936 and the parcel known as “16 Chester Street” has an improvement thereon of 2,296 square feet built in 1900 according to Warren County Tax Records. Both lots front the west side of Chester Street between East Main Street and Peyton Street.
8. On September 25, 2003, the Town of Front Royal and Downes entered into a “Deed of Easement to Pave Parking Area” Instrument No. 03000362 in the Clerk’s Office of the Circuit Court of Warren County. Said instrument recognizes the partial ownership by Downes of six off-street parking spaces adjacent to the “Peyton Street parking lots” and identified as spaces Nos. 152, 153, 154, 155, 156, and 157. See **Exhibit “B”**
9. In 2015, the Town Council made several amendments to off-street parking ordinances that included designating different code numbers. The Town Council specifically did not incorporate former Town Code 175-104(M) that would have permitted Downes to request a special permit for the Subject Property where the Council was mandated to “evaluate handicapped access, traffic patterns and the effect on surrounding properties” in considering Downes’ request for a lesser number of off-street parking spaces than otherwise would be required for the existing structures.

10. Between 1992 and 2015, the Town Council treated the Subject Property as a special class of one pursuant to Town Code 175-104(M) because there were no other properties located on the west side of Chester Street between East Main Street and Peyton Street that had private parking spaces that would be affected by this ordinance.
11. On March 17, 2016, Downes obtained approval from the Town of Front Royal to locate the Virginia Beer Museum [“VBM”] at 16 Chester Street, Front Royal (License #0641)
12. The Virginia Beer Museum is a 501(c)(3) trust recognized by the United States Internal Revenue Service as 509(a)(2) Public Charity Museum (DLN #26053614005176), and recognized by the Virginia Department of Alcohol, Beverage and Control as a “museum” pursuant to Virginia Code § 4.1-208(A)(6)9h) through the issuance of a “museum” license limited to the Town of Front Royal (License # 089728) and is a member of the Virginia Association of Museums where membership is limited to “museums”.
13. On December 14, 2016, a nonholiday Wednesday with fair weather conditions, the Northern Shenandoah Valley Regional Commission, conducted a parking study under the direction of the Town’s Project Management Team, consisting of the Director of the Town Planning and Zoning for the Town of Front Royal and others.
14. On March 29, 2017, the “Envision 2.0 – 2017 Downtown Revitalization Plan” was published with the following conclusions:
 - (a) “An estimated 1,695 vehicles can be accommodated in public and private parking areas within the downtown study area.” Page 54
 - (b) “Approximately 42 percent of the available parking, 704 spaces, is unreserved (anyone can park) in public and private lots and on-street.” Id.

(c) The public parking area adjacent to and north of the Subject Property is known as the “Peyton Street lot”. The Study found that the *“100-space Peyton Street lot did not exceed 40 percent full at any time.”* Page 55 (Emphasis added). This is the public parking area adjacent to the Subject Property. See **Exhibit “C”** Page 52.

15. The map of the Downtown Revitalization Plan has areas shaded in Red to represent lots exempt from off-street parking requirements pursuant to Town Code 148-870(A)(17) and Blue to represent properties required to maintain off-street parking spaces.

16. The area designated in Blue identifies the Subject Property where the Town Council created a class of one.

17. On June 21, 2018, Downes submitted a request to the Town Council to amend Town Code 175-127.3 to exempt the requirement of “off street parking requirements for the Subject Property as found under Town Code 148-870(A)(17)[hereinafter “Amendment”]

18. At the time of the request, the following Town Code sections were in effect:

(a) *“Art galleries/museums [are required to have] one (1) parking space per three hundred (300) gross square feet.”* Town Code 148-870(A)(2)

(b) *“Professional offices: [are required to have] one (1) parking space per three hundred (300) gross square feet.”* Id.

(c) *“Off-street parking shall not be required on any lot fronting on that portion of Main Street which extends from Royal Avenue to Happy Creek or upon that portion of Jackson Street which extends between South Royal Avenue and Church Street.”*
Town Code 148-870(A)(17)

(d) *“...the reuse of properties with existing parking areas and/or loading spaces shall be exempt from the requirement to comply with the current parking area and loading space requirements of this Chapter, or Chapter 148; provided” certain conditions are met.”* Town Code 175-127

19. At the time of the request and continuing to the present, Downes required no more than three of the six private off-street parking spaces on the north border of his property on weekdays between 8 am and 4 pm to operate his office building at 14 Chester Street and no more than the same six parking spaces to operate the Virginia Beer Museum located at 16 Chester Street during the weekdays from 4 pm to 8 pm.
20. The only time period Downes would need more than six parking spaces would be for special events on Saturdays when the majority of the 100 Peyton Street lot public spaces are not in use and the businesses operated on Main and Jackson Street are closed.
21. At the time of the request and continuing to the present, the Subject Property was adjacent to the following real properties:

South: 12 Chester Street has **1,807** square feet of building space [*No off-street parking spaces*]

216 & 219 8 East Main has **4,936** square feet of building space [*No off-street parking spaces*]

214 East Main has **2,360** square feet of building space [*No off-street parking spaces*]

West: 220 East Main has **4,130** square feet of building space [*No off-street parking spaces*]

North: Peyton Street public parking lot (100 public parking spaces)

East: Chester Street with public parking spaces on street frontage

22. The other properties located on the west side of Chester Street between East Main Street and Peyton Street are the following:

10 Chester Street has **2,852** square feet of building space [*No off-street parking spaces*]

8 Chester Street (grouped with other lots and designated 300 East Main Street) has **9,100** square feet of building space. [*No off-street parking spaces*]

23. At the time of the request and continuing to the present, the west boundary of the Subject Property has a privacy fence that it is approximately 84' in length. Pursuant to Town Code 148-870(A)(7), *inter alia*, "*off-street parking spaces shall include an area of not less than 162 square feet (9' x 18')*". Consequently, the Town requires Downes to maintain NINE off-street parking spaces on the west side of his property in addition to the SIX off-street parking spaces on the north side of his property.

24. The Subject property, consists of a total of 5,302 building square feet is required to maintain **FIFTEEN off-street parking spaces**. By comparison, the adjacent lots to the Subject Property, the remaining lots and the west side of Chester Street between East Main Street and Peyton Street and the museums on Chester Street have no off-street parking nor are they required to by the Town of Front Royal to maintain any off-street parking spaces.

25. There is no legislative history for the Town of Front Royal to offer a rational basis to treat the Subject Property differently than the similar situated properties.

26. On July 18, August 1, and 15, 2018, the Planning and Zoning Commission of Front Royal [hereinafter “Commission”] conducted work sessions to discuss the Amendment. Downes attended each session and requested that the VBM be treated similarly to the other museums in Town that were not required to have off-street parking or to have his property treated similar as all of the properties adjacent to his property.
27. On September 19, 2019, the Commission conducted a public hearing where thirteen citizens spoke in favor of the proposed Amendment and three spoke in opposition.
28. At the same hearing, the Commission unanimously recommended against the proposed Amendment because they did not believe that it was appropriate to add more exemptions in the downtown area for any uses or properties until a parking strategy was developed to address the increasing demand for parking in the downtown area.
29. On October 15, 2018 and November 19, 2018, the Town Council conducted work sessions on the subject Amendment proposed by Downes. Councilman Sealock, et al, were present and Downes repeated his request that the VBM be treated like the other museums in town that were not required to have off-street parking or to have his property treated similar as all of the properties adjacent to his property.
30. On December 10, 2018, the Town Council approved the Amendment proposed by Downes with a “non-binding” four votes in favor of the Amendment from Councilmen Sealock, Meza, Morrison and Mayor Tharpe voted for the Amendment and Councilmen Tewalt, Gillispie and Connolly voted against the Amendment. Consequently, the Town Council affirmed on its first reading an Ordinance to amend Front Royal Town Code §§ 175-127.3 and 148.870.A.17, but exempt museums and art galleries from off-street parking requirements.

31. At the time of this vote, there were four other museums less than a block away and also located on Chester Street that were exempt from off-street parking requirements since they pre-existed the passage of the relevant Town ordinance. The one art gallery located in the Town is exempt because it has Main Street frontage.
32. On January 14, 2019, Councilman Sealock was the only councilman to offer a basis for treating the Subject Property differently from other museums, adjacent properties, and all of the properties exempt on Main and Jackson Street with the following statement:

Mr. Mayor, I have some real concerns. I tried to find data from the Parking Authority that was in control of the area before and, unbeknownst to me, there is no such data to tell us what the past history was. There was a great deal of parking there for the forty years I have been in town. What I am concerned about is a major concern. When we discussed this as a council, we were going with the Commission's recommendation. So, when I reread when I got the agenda, what I heard was there were four motions. And when you look at the four motions, they are almost identical except the last few words which I felt we should have had discussion on the change to the museum which did not happen as a council. We came into the meeting and were presented with four motions. I have a little concern with that. I did not have time enough to do my research to find out exactly. And it is an argument between the property owners. It is not a council issue except other than it has changed to the museum. The other thing that concerns me when we had the excessive, ah, "Peepers" that came into town, I was checking all of the streets to see, you know, what the traffic flow was and a lot of our tourists was confused because about how to get where they want to go with the traffic falling out. So, I came down Chester Street and I know Chester Street is extremely, ah, crowded. You can't get two vehicles past and when you get up to the, ah. When I was looking for the Parking Authority information, I wanted to see why those two houses was left off of parking in front. I cannot find any information. That a, that's a, from a lawyer's stand point, Mr. Downes, you would argue that point very much just like I am. So, in my travels today, looking at the traffic with the Peepers, I almost got hit when I hit Virginia Hale's area because it is a bad turn right there and it bottle necks down. So, I bring those issues forward because I was really concerned seeing four motions and at the last work session, I finally got an answer why we had four motions and that troubles me because we never had the opportunity to discuss a museum option and it was not presented from the Commission as well. So that is my concern. We did not have the time to discuss the so called four motions that came up. So, that is what I got to say about that.

33. Mayor Tharpe inquired of Councilman Sealock: “Would you like to amend the motion to take it back to work session to discuss the four motions?” Councilman Sealock’s response: **“No, it has gone on long enough.”**
34. As a result of the Amendment being denied on January 14, 2019, the Town Council intentionally treated Downes and the Subject Property he owned differently than similarly situated real estate owners that (a) operate museums on Chester Street, (b) own property on the border the Subject Property, and (c) own property located in the downtown area designated as the “Revitalization” area without a rational basis for being treated differently.
35. Upon information and belief, Councilman Sealock misapprehended the issue requiring a rationale basis to treat Downes differently from similarly situated property owners. But for that misapprehension, he would have recognized that an uninformed basis to treat Downes differently would, at a minimum, prompt him to follow the recommendation of the Zoning Commission to not decide the issue until further study could be conducted.
36. Upon information and belief, the proposed Amendment would have passed if Councilman Sealock had made an informed decision and voted in favor of the Amendment because the Mayor would have broken a tie vote between three votes for the Amendment and the remaining councilmen that declined to articulate any basis for their vote based on the Mayor’s previous vote for the Amendment on December 10, 2018.

COUNT I – DECLARATORY JUDGMENT

37. Paragraph 1 through 36 are incorporated herein by reference as though set forth at length.

38. Virginia Code § 8.01-184 provides the following:

In cases of actual controversy, circuit courts within the scope of their respective jurisdiction shall have power to make binding adjudications of right, *whether or not consequential relief is, or at the time could be, claimed* and no action or proceeding shall be open to objection on the ground that a judgment order or decree merely declaratory of right is prayed for. *Controversies involving the interpretation of deeds, wills, and other instruments of writing, statutes, municipal ordinances and other governmental regulations, may be so determined*, and this enumeration does not exclude other *instances of actual antagonistic assertion and denial of right*. (emphasis added)

39. The matter is pleaded herein is a case in actual controversy within the jurisdiction of this Court and ripe for decision.

40. The power to regulate the use of land is a legislative power, residing in the state, which must be exercised in accordance with constitutional principles. Board of Supervisors of Fairfax County v. Southland Corp., 224 Va. 514, 297 S.E.2d 718 (1982).

41. The Fourteenth Amendment to the United States Constitution provides in part “*nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws.*” Equal protection rights are found in the anti-discrimination clause of the Virginia Constitution’s due process clause in Article I, Section 11, which provides that persons are guaranteed “*the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin ...*”

42. Under the zoning enabling statutes, Virginia Code § 15.2-2282 captures equal protection concepts by requiring that all zoning regulations be uniform for each class or kind of buildings and uses throughout each district. In other words, zoning classifications must treat similarly situated property similarly. See Schefer v. City Council of the City of Falls Church, 279 Va. 588, 691 S.E.2d 778 (2010).

43. The equal protection clause of the United States Constitution “limits all state actions, prohibiting any state from denying a person equal protection through the enactment, administration, or enforcement of its laws and regulations.” Front Royal & Warren County Industrial Park Corp. v. Town of Front Royal, 135 F.3d 275 (4th Cir. 1998).
44. To establish an equal protection claim comprised of a “class of one,” a plaintiff must show that he “has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000).
45. The facts pleaded herein establish controversies regarding the following issues of Constitutional application, *inter alia*, which Downes seeks to be resolved by the declaratory judgment of this Court:
- A. Whether the Subject Property is similar situated to the other museums located in the Town of Front Royal.
 - B. Whether the Subject property is similar situated to the adjacent property owners located on Chester Street in the Town of Front Royal.
 - C. Whether the Subject property is similar situated to the property owners located on the exempt portions of Main Street and Jackson Street in the Town of Front Royal.
 - D. Whether the Subject property is treated differently than the other museums located in downtown area of the Town of Front Royal.
 - E. Whether the Subject property is treated differently than the adjacent properties located on Chester Street in the Town of Front Royal.
 - F. Whether the Subject property is treated differently than the property owners located on the exempt portions of Main Street and Jackson Street in the Town of Front Royal.

- G. Whether the Town of Front Royal has a rational basis to treat the Subject Property differently than the other museums located in the Town of Front Royal.
- H. Whether the Town of Front Royal has a rational basis to treat the Subject Property differently than the adjacent properties located on Chester Street in the Town of Front Royal.
- I. Whether the Town of Front Royal has a rational basis to treat the Subject Property differently than the exempt properties located on Main Street and Jackson Street in the Town of Front Royal.
- J. Whether the Town of Front Royal should be enjoined from requiring the Subject Property to maintain “off-street” parking in excess of the six parking spaces adjoining the Peyton Street Lot as long as a “museum” is operated at 16 Chester Street.
- K. Whether the Town of Front Royal should be enjoined from requiring the Subject Property to maintain “off-street” parking in excess of the six parking spaces adjoining the Peyton Street Lot.
- L. Whether the Town of Front Royal should be enjoined from requiring the Subject Property to maintain any “off-street” parking spaces.

WHEREFORE, the Plaintiff, David A. Downes, respectfully requests this Honorable Court as follows:

- (1) Undertake jurisdiction over this matter pursuant to Virginia Code §8.01-184, adjudicate the controversies set forth hereinabove and enter its decree declaring that the action of the Town Council of the Town of Front Royal, Virginia, in denying the Amendment submitted by the Plaintiff is in violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

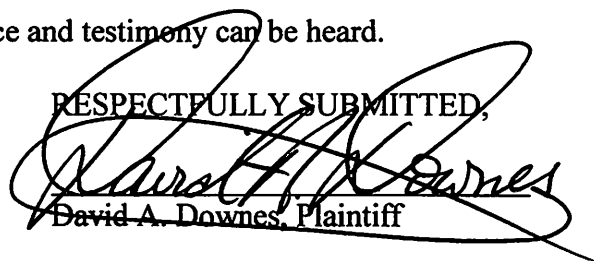
- (2) Enter its decree reversing the decision of the Town Council of the Town of Front Royal, Virginia, to deny the Amendment and declare the Amendment to be approved exempting “Art Galleries and Museums” from being required to have off-street parking in the Town of Front Royal, Virginia.
- (3) Enter its decree enjoining the Town Council of the Town of Front Royal, Virginia, from requiring the properties known as “14 Chester Street” and “16 Chester Street” to maintain any “off-street” parking spaces.
- (4) Such other relief as the Court deems necessary or property pursuant to Virginia Code §8.01-186.

COUNT II – PETITION FOR WRIT OF CERTIORARI

1. Paragraph 1 through 36 are incorporated herein by reference as though set forth at length.
2. Downes has been aggrieved by the actions of the Town Council of the Town of Front Royal, Virginia, as set forth hereinabove.
3. Due to the aggrievement caused by the Town Council, Downes is entitled, under the common law of the Commonwealth of Virginia, to the issuance of a writ of certiorari. Town of Appalachia v. Mainous, 121 Va. 666, 674 (1917).

WHEREFORE, the Plaintiff, David A. Downes, respectfully requests this Honorable Court grant the following relief:

- (1) Issuance of a Writ of Certiorari commanding the Town Council of the Town of Front Royal, Virginia, to make verified return, within thirty (30) days of the same being served upon the Town Council, of original or certified copies of any and all documents and papers referred to or relied upon by any member of the Town Council in arriving upon each member's decision to deny the Amendment and any and all documents and papers referred to or relied upon by the Town Council, as a body and any of its agents, agencies, employees, consultants or contractors in advising the Town Council about recommendations regarding the Amendment; and
- (2) Setting of a hearing date upon which evidence and testimony can be heard.

RESPECTFULLY SUBMITTED,

David A. Downes, Plaintiff

David A. Downes, Esquire
14 Chester Street
Front Royal, VA 226630
dadownes14@gmail.com
(540) 636-8500
(540) 636-8501 (facsimile)
VSB #27870
Plaintiff, *pro se*



LOUISE S. TURNER
 SHOWING BOUNDARY SURVEY
 #14 & #16 CHESTER STREET, A PORTION OF THE LAND OF

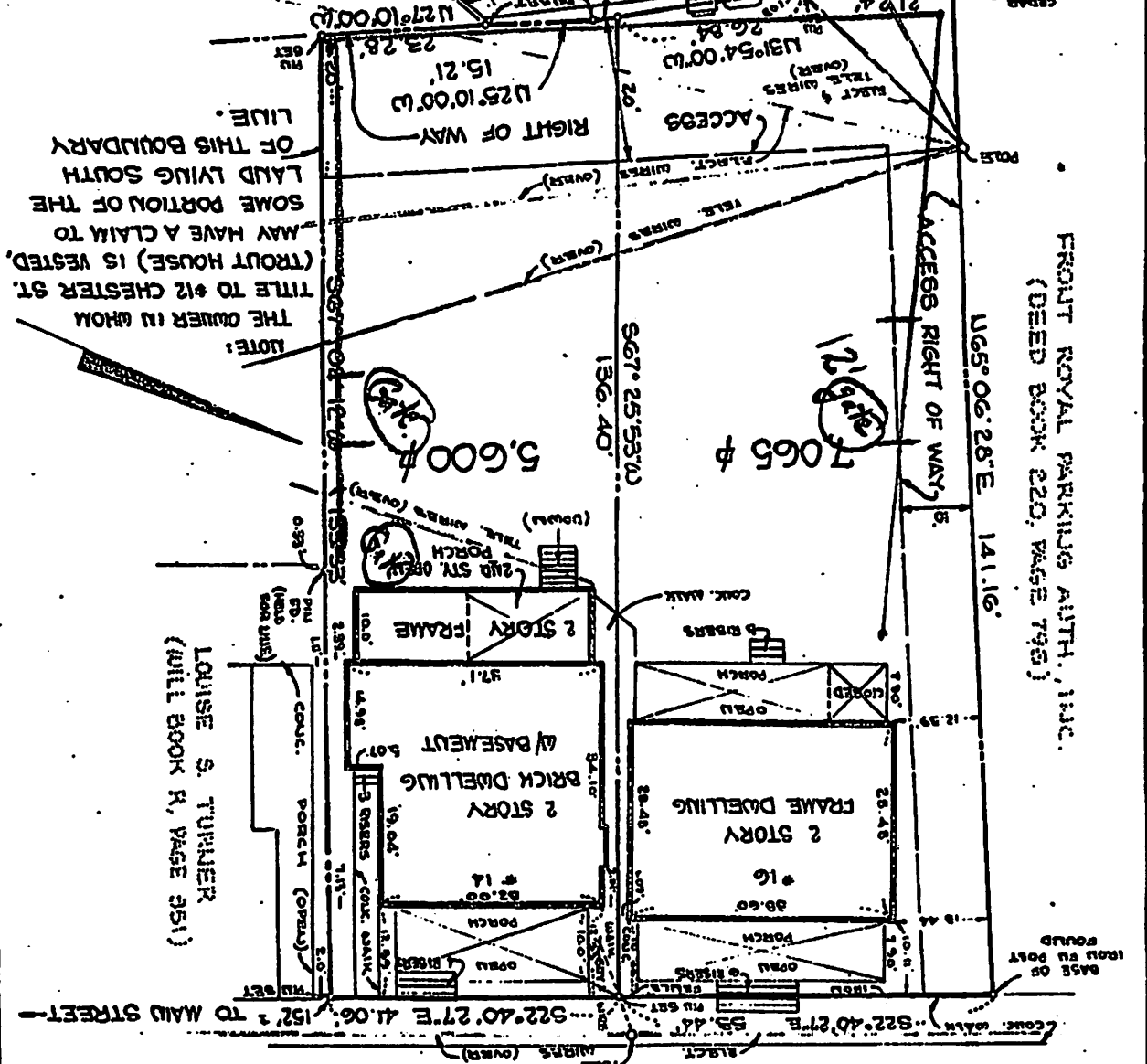
Wayne E. ...

PLAT

NO TITLE REPORT HAS BEEN FURNISHED TO LAND SURVEYS, INC.
 THIS LAND IS SHOWN ON TAX MAP 204 PART 8 @, AS PARCELS 44 (#14) & 45 (#16).
 MERIDIAN TAKEN FROM PLAT OF SURVEY BY S. W. BOYD, JR., RECORDED DEED BOOK 89 AT PAGE 322.

NOTES

WILLIAM J. COFFMAN et ux (DEED BOOK 152, PAGE 304)
 E. G. KAPPAPORT (D. B. 89, PG. 375), 1985.
 U. E. KREBSER et ux (D. B. 243, PG. 63)
 REVISID TO SHOW ACCESS RIGHT OF WAY; FEBRUARY 28, 1985.



LOUISE S. TURNER
 (WILL BOOK R, PAGE 951)

FRUIT ROYAL PARKING AUTH., INC.
 (DEED BOOK 220, PAGE 795)

CHESTER STREET

BOOK 323
 PAGE 217

Layout / Grading Plan

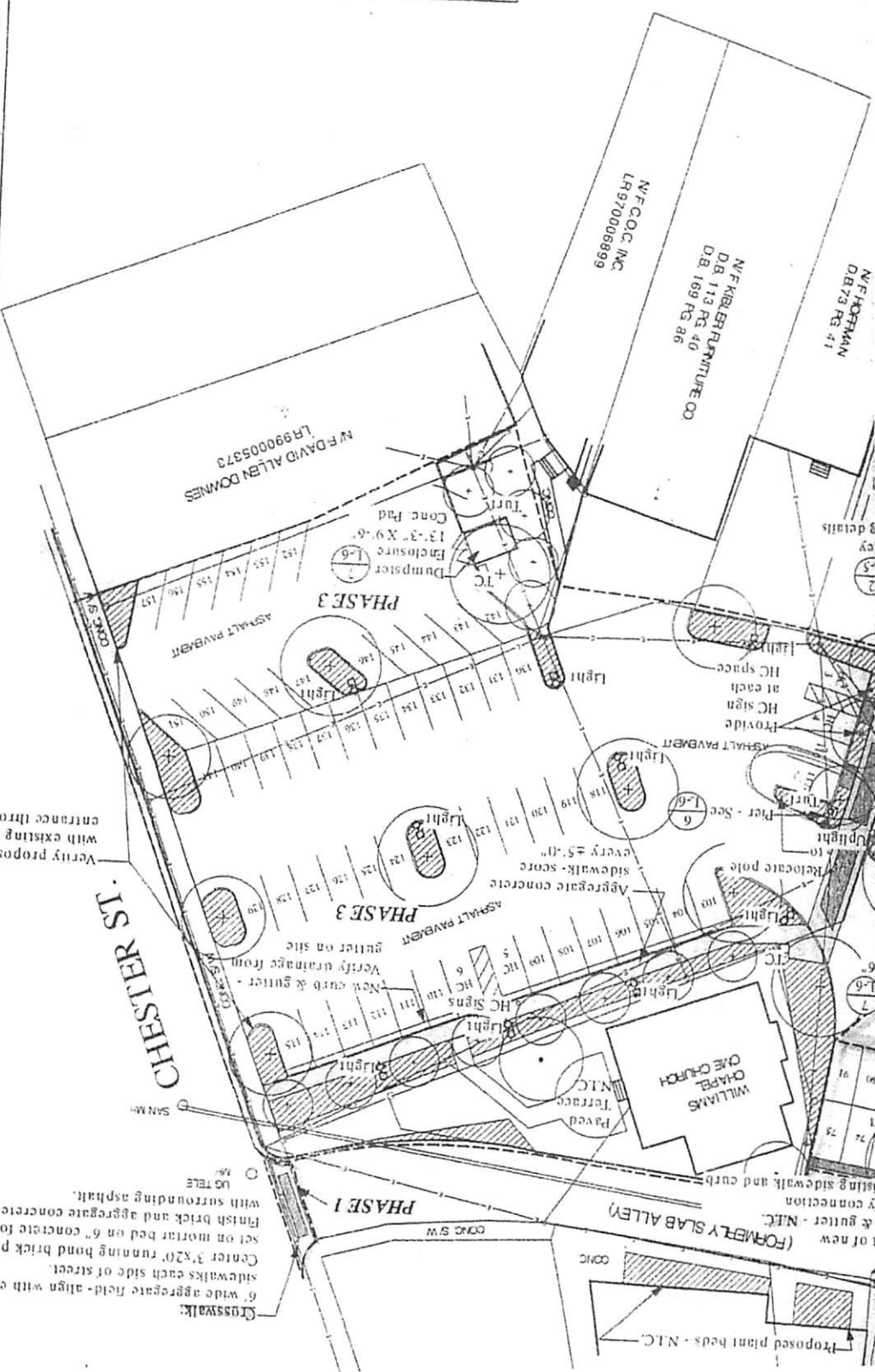
MONROE AND CROCKER, P.C.
 LANDSCAPE ARCHITECTURE, ENGINEERING, ARCHITECTURE
 Front Royal, Virginia
 P.O. BOX 122, MOUNT HILL, VIRGINIA 22653
 TEL: 540/636-1504 FAX: 540/636-7835 EMAIL: mcr@mcra.com

Scale: 1" = 30'-0"
 Date: 15 June 2001
 Project: MH / JM



- SYMBOL KEY:**
- Proposed Tree: Circle with a plus sign (+)
 - Existing Tree: Circle with a dot (•)
 - Trash Can: Square with 'TC' inside
 - Street Lamp: Square with 'SL' inside
 - Spot Light: Square with 'SL' and a beam symbol
 - Wall Lamp: Square with 'WL' inside
 - Proposed Planting: Square with diagonal hatching
 - Brick paving: Square with brick pattern
 - Aggregate Concrete: Square with aggregate pattern

- GENERAL NOTES:**
1. Curb and gutter to run on North side of Peyton Street - Not to be executed by Owner.
 2. Parking: Typical space size 9' x 18'. Handicap spaces 9' x 18'. 157 # Typical Spaces. 163 # Total Spaces.
 3. Handicap loading in painted as determined.
 4. See sheets L-3, L-4, L-5 for detailed layout information.





Town of Front Royal, Virginia DOWNTOWN REVITALIZATION AREA

