

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

July 20, 2010

Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Bay Hundred Restaurant
Appeal #1533**

Dear Ms. Corkell:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to install two fixed metal awnings over existing lot coverage within the setback of a Buffer Management Area (BMA). The area is currently used for outdoor tables and chairs and will continue to be used in this manner. The property is 0.83 acres in size and is designated as a Limited Development Area (LDA). The proposed awnings and deck will be located closer to Mean High Water (MHW) than the existing structure (19.6 feet); one awning will be located 3.6 feet from the MHW, while the second awning will be 26.5 feet from MHW. Total existing lot coverage is 31,259 square feet (86%); no new lot coverage is proposed.

In 2008 and 2009, the applicant requested a special exception to authorize seasonal outdoor seating for a restaurant in excess of 100 seats, and to permit a seasonal outdoor service bar, grill, and outdoor crab steaming area to the extent that these uses and accessory structures are considered expansions of a special exception use. Similarly, the applicant requested an after-the-fact variance to maintain two existing awnings and an existing wood deck within the 100-foot Buffer. While the special exception request was approved, the variance request was denied, and the applicant was required to remove the deck within sixty days of the date of the final decision (April 1, 2009). The decision did not mention removal of the awnings, but recent 2009 aerials appear to show that both the deck and awnings have been removed.

Based on the information provided, and based on the fact that the proposed awnings will be located over existing lot coverage, we do not oppose this variance request. However, we do have the following comments:

1. The site plan appears to be the same plan that was submitted for the 2009 variance, which shows a proposed deck on the site. However, as stated above, this deck was required to be removed. The applicant should provide a revised, updated site exhibit that does not include this deck on the plan. Given that this area appears to be vegetated, and given the existing lot coverage, this office would not support a proposed deck on the site.
2. The applicant shall be required to provide 3:1 mitigation for disturbance within the BMA setback.
3. Due to the extensive amount of lot coverage currently located onsite within an LDA area, we recommend the applicant install stormwater Best Management Practices onsite to address the rooftop runoff from the awnings. The Board may wish to consider having the applicant meet the Critical Area 10% Phosphorus Removal requirement onsite.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly
Natural Resource Planner
cc: TC 369-08

Martin O'Malley
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March 18, 2010

Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Bay Hundred Restaurant
Appeal #1493**

Dear Ms. Corkell:

Thank you for providing information on the above referenced variance request. The applicant is requesting a variance to install two fixed metal awnings over existing lot coverage within the setback of a Buffer Management Area (BMA). The area is currently used for outdoor tables and chairs and will continue to be used in this manner. The property is 0.83 acres in size and is designated as a Limited Development Area (LDA). The proposed awnings and deck will be located closer to Mean High Water (MHW) than the existing structure (19.6 feet); one awning will be located 3.6 feet from the MHW, while the second awning will be 26.5 feet from MHW. Total existing lot coverage is 31,259 square feet (86%); no new lot coverage is proposed.

In 2008 and 2009, the applicant requested a special exception to authorize seasonal outdoor seating for a restaurant in excess of 100 seats, and to permit a seasonal outdoor service bar, grill, and outdoor crab steaming area to the extent that these uses and accessory structures are considered expansions of a special exception use. Similarly, the applicant requested an after-the-fact variance to maintain two existing awnings and an existing wood deck within the 100-foot Buffer. While the special exception request was approved, the variance request was denied, and the applicant was required to remove the deck within sixty days of the date of the final decision (April 1, 2009). The decision did not mention removal of the awnings, but recent 2009 aerials appear to show that both the deck and awnings have been removed.

Based on the information provided, and based on the fact that the proposed awnings will be located over existing lot coverage, we do not oppose this variance request. However, we do have the following comments:

TTY for the Deaf

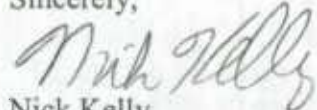
Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



1. The site plan appears to be the same plan that was submitted for the 2009 variance, which shows a proposed deck on the site. However, as stated above, this deck was required to be removed. The applicant should provide a revised, updated site exhibit that does not include this deck on the plan. Given that this area appears to be vegetated, and given the existing lot coverage, this office would not support a proposed deck on the site.
2. The applicant shall be required to provide 3:1 mitigation for disturbance within the BMA setback.
3. We recommend that a minimum 5-foot vegetated setback from the bulkhead be required to provide additional habitat and water quality benefits onsite.
4. Due to the extensive amount of lot coverage currently located onsite within an LDA area, we recommend the applicant install stormwater Best Management Practices onsite to address the rooftop runoff from the awnings. The Board may wish to consider having the applicant meet the Critical Area 10% Phosphorus Removal requirement onsite.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,



Nick Kelly

Natural Resource Planner

cc: TC 369-08

Martin O'Malley
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Margaret G. McHale
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Executive Director

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www.dnr.state.md.us/criticalarea/

June 24, 2008

Chris Corkell
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Easton, Maryland 21601

**Re: Bay Hundred Restaurant
Appeal #1493**

Dear Ms. Corkell:

Thank you for providing information on the above referenced special exception and variance request. The applicant is requesting a special exception to authorize seasonal outdoor seating for a restaurant in excess of 100 seats, and to permit a seasonal outdoor service bar, grill, and outdoor crab steaming area to the extent that these uses and accessory structures are considered expansions of a special exception use. Additionally, the applicant is requesting an after-the-fact variance to maintain two existing awnings and an existing wood deck within the 100-foot Buffer. The property is 0.83 acres and is designated Limited Development Area (LDA). The proposed awnings and deck will be located closer to Mean High Water than the existing structure (19.6 feet); one awning will be located 3.6 feet from the MHW, the second awning will be 26.5 feet from MHW, and the deck will be located immediately adjacent to the bulkhead. Total impervious surface onsite is 31,259 square feet (86%); no new impervious surface will be proposed onsite.

Provided that the proposed special exception is in conformance with the requirements of the Talbot County Ordinance for a special exception, we do not oppose the special exception request.

Based on the information provided, Commission staff questions whether a variance is the appropriate mechanism to permit redevelopment in excess of the 15% impervious surface area limit. Rather, the use of growth allocation should be considered. We note that Talbot County Code §190-109D has provisions that allow the County to create new IDA areas less than 20 acres in size. We recommend that the Board address whether the use of growth allocation is possible prior to considering the variance request.

Should the Board determine that this variance request can be heard, Commission staff recommends the following measures be considered as conditions to the approval:

1. Due to the after-the-fact nature of this request, we recommend 3:1 mitigation for disturbance to the 100-foot Buffer.
2. We recommend that the existing deck be configured to be pervious in nature (at least 1/8-inch gaps between the boards, a sloping 6-inch gravel bed is located below the decking to allow stormwater infiltration, and small shrubs planted around the deck).
3. We recommend that a 5-foot vegetated setback from the bulkhead be required to provide additional habitat and water quality benefits onsite.
4. Due to the extensive amount of impervious surface currently located onsite within an LDA area, we recommend the applicant install stormwater Best Management Practices onsite to address the rooftop runoff from the awnings. The Board may wish to consider having the applicant meet the Critical Area 10% Phosphorus Removal requirement onsite.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3483.

Sincerely,


Nick Kelly

Natural Resource Planner

cc: TC 369-08

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 10-1533

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., September 13, 2010, on the application of **BACK CREEK II, LLC** ("Applicant"). (After a short hearing the matter was continued to September 27, 2010, beginning at 7:30 p.m. when one of the members of the Board of Appeals elected to recuse himself from hearing the application.) The Applicant is seeking a modification of a special exception to increase the number of seats from 100 to 240, including both indoor and outdoor seating, in a special exception restaurant. Also, the Applicant is seeking a variance of the 100-foot shoreline development buffer to install two fixed metal-framed awnings over existing lot coverage to be 3.6 feet from mean high water at the closest point. The current structure is 19.6 feet from mean high water. The property is located on 6178 Tilghman Island Road, Tilghman, Maryland 21671. It is in the Village Center/Critical Area (VC/CA) zone. The property owner is Back Creek II, LLC, the Applicant. The request is made in pursuant to Chapter 190 Zoning, Article VI, §190-139, §190-140; Article IX, §190-180 E; and §190-182 of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Betty Crothers, John Sewell, and Margaret Young. The Applicant was represented by Willard C. Parker, II, Esquire, P.O. Box 1209, Easton, Maryland 21601. Michael L. Pullen, Esquire, County Attorney, represented Talbot County. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for variance with Attachment A.
2. Application for special exception modification with attachment.
3. Copy of a portion of the Talbot County tax map with the property highlighted.
4. Notice of Public Hearing.
5. Certificate of publication of the Notice of Public Hearing from the Star-Democrat.
6. Notice of hearing with a list of nearby property owners attached.
7. Copy of variance requirements from the Code with the Applicant's written response to each applicable requirement.
8. Copy of special exception requirements from the Code with the Applicant's written response to each applicable requirement.
9. Revised Staff Memorandum, dated August 26, 2010.
10. Revised Staff Memorandum, dated July 20, 2010.
11. Staff Memorandum, dated March 1, 2010.
12. Planning Commission comments.
13. Sign maintenance agreement.
14. Site Plans (two) prepared by Lane Engineering, LLC.
15. Seating floor plan.
16. Letter from the Critical Area Commission, dated July 20, 2010.
17. Disclosure & Acknowledgment Form.
18. Memorandum, dated September 10, 2010.
19. Memorandum, dated September 14, 2010.

The Board of Appeals decided to first consider the application for a modification of the special exception to increase the allowable seating at the restaurant to a maximum of 240 seats.

In his opening statement Mr. Parker advised the Board of Appeals that the Applicant had dismissed its appeal of an earlier decision of the Board. (In Appeal No. 1493-R the Board of Appeals revoked a special exception modification the Board had previously granted to Bay Hundred Restaurant, a former leaseholder of the property, allowing 270 seats at the restaurant. Back Creek II, LLC appeared at that hearing and advised that the leaseholder, Bay Hundred Restaurant, had been evicted. Back Creek II, LLC asked that the Board of Appeals not revoke the expanded seating special exception. The Board of Appeals denied that request. The effect of that denial was to limit the restaurant to 100 seats. Back Creek II, LLC appealed that decision to the Talbot County Circuit Court.) Mr. Parker provided the Board with a copy of the Stipulation of Dismissal of the Appeal. It was admitted as Applicant's Exhibit No. 1. He said that the Applicant now has a new operator of the restaurant and is seeking permission to expand the restaurant to 240 seats.

Mr. Parker said that because of its location on Knapps Narrows the restaurant serves a summer tourist trade as well as local patrons. It is not a "high end" restaurant, so its margins are smaller and its profitability is more dependent on volume. He said that the increased seating would have a positive effect on local employment and suppliers. Finally, he said that persons attending the earlier revocation hearing were concerned with loud music from the restaurant, not the number of restaurant seats.

The first witness was Jorge Alvarez, 303 Market Street, Oxford, Maryland 21654. Mr. Alvarez testified that he became the general manager of the Bay Hundred Restaurant on April 1, 2010. He has been in the restaurant business for 35 years, most recently as the executive chef of 202 Dover, a restaurant in Easton, Maryland.

Mr. Alvarez said that the restaurant hours of operation are 11:30 a.m. to 9:00 p.m. Sunday through Thursday and to 10:00 p.m. on Friday and Saturday. He clarified that the closing time is when the kitchen closes. The restaurant and bar remain open to allow patrons to complete their meals. The

restaurant serves two meals per day. It currently has 21 employees. With seating for 240 it will require 10 more employees.

In 2009, when the restaurant was permitted 275 seats, the revenue was over \$500,000.00. In 2010, when seating was reduced to 100, revenues decreased by about \$140,000.00. The restaurant is more of a family style restaurant with an average bill of about \$28 per person. "High end" restaurants have an average bill of \$60 to \$70 per person. High end restaurants can make a profit with a smaller number of diners but at \$28 per meal a 100-seat restaurant is not viable.

The restaurant serves both transient and local patrons. The patrons tend to be more local in the fall and winter. The majority of the restaurant's revenue is earned in the late spring and summer when most of the customers are transients.

Mr. Alvarez testified that he has spoken to neighbors of the restaurant and no one is against the proposed expansion of its seating.

He said that after the restaurant was required to reduce its seating it has had to decrease purchases of supplies from local suppliers.

The next witness was Mark F. Julyan, 27191 Baileys Neck Road, Easton, Maryland 21601. He has been the manager of the Back Creek II, LLC property in Tilghman for 15 years. Through Mr. Julyan and Mr. Alvarez the Applicant addressed the specific special exception requirements. Mr. Alvarez reported that there would be no increase in exterior lighting and the restaurant was in compliance with all Health Department regulations. He also testified that the restaurant's liquor license has a specific condition that the restaurant may not play live or recorded music outside.

Mr. Julyan said that the property has well water and public sewer. It has adequate parking with 48 spaces. He offered a plat showing the location of the parking spaces. The plat was admitted as Applicant's Exhibit No. 2. He said that parking was never a problem when the former restaurant was

operating with 275 allowable seats. He said that the restaurant has direct access to Route 33 and it does not rely on the use of any residential roads. He offered two aerial photographs of the property, one recent and one from a 1967 *National Geographic* magazine. They were admitted as Applicant's Exhibits No. 3 and No. 4, respectively.

The Board then considered the application for a special exception modification to allow a maximum of 240 seats at the restaurant. The Board discussed the matter and upon motion duly made and seconded, the Board made the following findings of fact and law in regarding the requested special exception modification:

1. All legal requirements pertaining to a public meeting were met.
2. The proposed use is consistent with the purposes and intent of the Talbot County Comprehensive Plan and complies with the standards of the land use district in which it is located. The current use of the property may intensify but will not change.
3. The proposed use is compatible in terms of scale, bulk and general appearance with adjacent land uses and with existing and potential uses in its general area. The present structure will not change significantly nor will the present use of the structure change as a result of the special exception. With the condition of no outside music, previously found to be a nuisance to neighboring residential properties, the proposed modification of the special exception will not be detrimental to the economic value of neighboring property.
4. The proposed use will not constitute a nuisance to other properties and it will not have significant adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution and other health and safety factors or environmental disturbances. The structure is an existing structure and its use will not be changed. It has adequate existing provisions for the aforementioned factors. As in the previous finding

the condition of no outside music, previously found to be a nuisance to neighboring residential properties, will not be a factor if the Applicant complies.

5. The proposed use will not have significant adverse impact on public facilities or services including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services. The current structure along with its existing utilities, lot size and parking, and public access are all adequate for the proposed increased seating for the restaurant. The increased seating will not have a significant impact on public facilities or services.
6. The proposed use will not have a significant adverse effect upon marine, pedestrian, or vehicular traffic. The increased seating in the restaurant might conceivably increase marine and vehicular traffic to and from the restaurant. However, the property has adequate provisions for dockage and parking and access thereto for any such increase of marine or vehicular traffic such that it will not result in a significant impact. It will not impact pedestrian traffic.
7. The proposed use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridge Ordinance, and other Applicable standards for road capacity. The restaurant property has immediate and adequate access to the adjacent state road for any increased traffic resulting from the increased seating capacity. The state road will easily absorb any such increased traffic.
8. Vehicle access to off-street parking areas and drive-in facilities are designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on

adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic will not use a residential street or create a hazard to a developed residential area. As noted above, the restaurant property is adjacent to and has adequate access to a state road.

9. The proposed use will not significantly adversely affect wildlife with respect to the site's vegetation or water resources in supplying food, water, cover, habitat, nesting, or other needs of wildlife. The increased seating will not change the physical structure of the restaurant or property. It will not impact wildlife.
10. The proposed use will not adversely affect any adjacent existing agricultural uses. There are no existing adjacent agricultural uses.

The vote was five to zero to approve the requested modification of special exception consistent with the evidence presented to the Board of Appeals and subject to the condition that the Applicant shall not produce, cause or sponsor any outdoor music on any part of the property, live or recorded, whether amplified or not. The Board previously found such outdoor music to be a nuisance to and adversely impact nearby residential property. The Board recognizes that, on occasion, persons on a boat or in a vehicle visiting the property may produce such music (or other disturbances). To the extent practicable the Board of Appeals expects that the Applicant will make appropriate efforts to control such disturbances created by patrons, as it may adversely affect other patrons of the restaurant as well as nearby property owners.

The Board of Appeals then heard evidence regarding the proposed variance of the 100-foot shoreline development buffer to install two fixed, metal awnings over existing lot coverage to be 3.6 feet from mean high water at the closest point.

Mr. Parker summarized the variance request. The Applicant wishes to construct fixed, metal frame awnings over an exterior part of the restaurant structure between the restaurant and the bulkhead and piers extending into Knapps Narrows. They are designed to shelter patrons from passing rainstorms and direct summer sunlight. He noted that the Critical Area Commission does not oppose the variance request.

The Applicant's first witness regarding the variance request was Richard L. VanEmburch, Civil Engineer, Lane Engineering, 117 Bay Street, Easton, Maryland 21601. He testified that the entire site, with minor exceptions, is impervious. It is exempt from the Storm Water Management ordinance. The proposed awnings would not cover any surface that is not already impervious. He submitted a Bay Hundred Restaurant Stormwater Management Report dated December 30, 2009. It was admitted as Applicant's Exhibit No. 5. He said that runoff is addressed by use of above ground planter boxes.

Mr. Parker offered a photograph of the restaurant showing previously existing awnings on the Knapps Narrows side of the restaurant. The photograph was admitted as Applicant's Exhibit No. 6.

Mr. Parker then offered a series of four photographs of the property of differing dates from the 1930's to the late 1980's. They demonstrated that the property proposed to be covered by the awnings has been impervious continuously from the 1930's to the present. The photographs were admitted as Applicant's Exhibit No. 7, No. 8, No. 9, and No. 10.

The next witness was Amy Swartz, 21498 Gibsontown Road, Tilghman, Maryland 21671. She grew up in the Tilghman area and has been familiar with the property since the mid to late 1980's. She said that there has always been outside seating at the restaurant up to the bulkhead between the restaurant and Knapps Narrows.

Mr. Julyan said that pavers replaced gravel in that area in the 1980's.

Mr. Alvarez said that the awnings are designed to shade and protect patrons from the weather. He chose to site the awnings on the water side of the restaurant because that is traditionally where outdoor seating has been for the restaurant. He said that side has the best access to the kitchen and bar. Other sides of the structure are not useful as they have utility structures and/or parking areas.

Mr. Parker then addressed each variance requirements.

The final witness was Basil M. DeLashmutt, 5689 Poplar Lane, Royal Oak, Maryland 21662. He testified that he is the principal owner of Back Creek II, LLC and has owned the subject property since 1987. He was in favor of the requested special exception and variance.

The Board then considered the variance request for the awnings. Upon motion duly made and seconded, that the variance request be approved subject to certain conditions the Board of Appeals made the following findings with regard to the proposed variance:

1. There are special conditions or circumstances that are peculiar to the land or structure such that a literal enforcement of the Code would result in an unwarranted hardship to the property owner. The area over which the awnings will be erected are long standing impervious surfaces having been paved or graveled for at least fifty years, long before the Applicant purchased the property. The awnings do not add any new impervious surface coverage to the site, but merely enhance the comfort and safety of customers and staff.
2. A literal interpretation of the Critical Area requirements of this chapter will deprive the property owner of rights commonly enjoyed by other property owners in the same zoning district. Other owners in the same zoning district are able to use pre-existing lot coverage and impervious surfaces for uses and structures contemplated by the Zoning Ordinance.
3. The granting of a variance will not confer upon the property owner any special privilege that would be denied by this chapter to other owners of lands or structures within the same zoning

district. The Applicant will continue to use an area that has been used for the same or similar purposes for many years.

4. The variance request is not based on conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property. The request is related to historical use of the property predating the Critical Area laws and regulations.
5. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variance is in harmony with the general spirit and intent of the state Critical Area Law and Critical Area Program. The variance will be subject to certain conditions insuring the same.
6. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.
7. The need for the variance is not because the lot is a legal nonconforming lot.

The vote was five to zero to approve the requested variance. The variance is subject to the following conditions:

1. The Applicant shall apply for a Pre-Application meeting prior to making a submission for a Major Site Plan review for the steel framed awnings in accord with Talbot County Code, section 190-184.
2. Upon Major Site Plan approval, the Applicant shall obtain proper permits from the Department of Permits and Inspections for all variances granted by the Board of Appeals.

3. Mitigation for the approved disturbance in 100-foot shoreline development buffer shall be a three to one ratio.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **BACK CREEK II, LLC** (Appeal No. 10-1533) is **GRANTED** the requested special exception consistent with the evidence presented to the Board of Appeals and is **GRANTED** the requested variance consistent with the evidence presented to the Board of Appeals, each subject to the aforementioned conditions, each by vote as previously noted.

GIVEN OVER OUR HANDS, this 22nd day of November, 2010.

TALBOT COUNTY BOARD OF APPEALS



Paul Shortall, Jr., Chairman



Phillip Jones, Vice Chairman



Betty Crothers

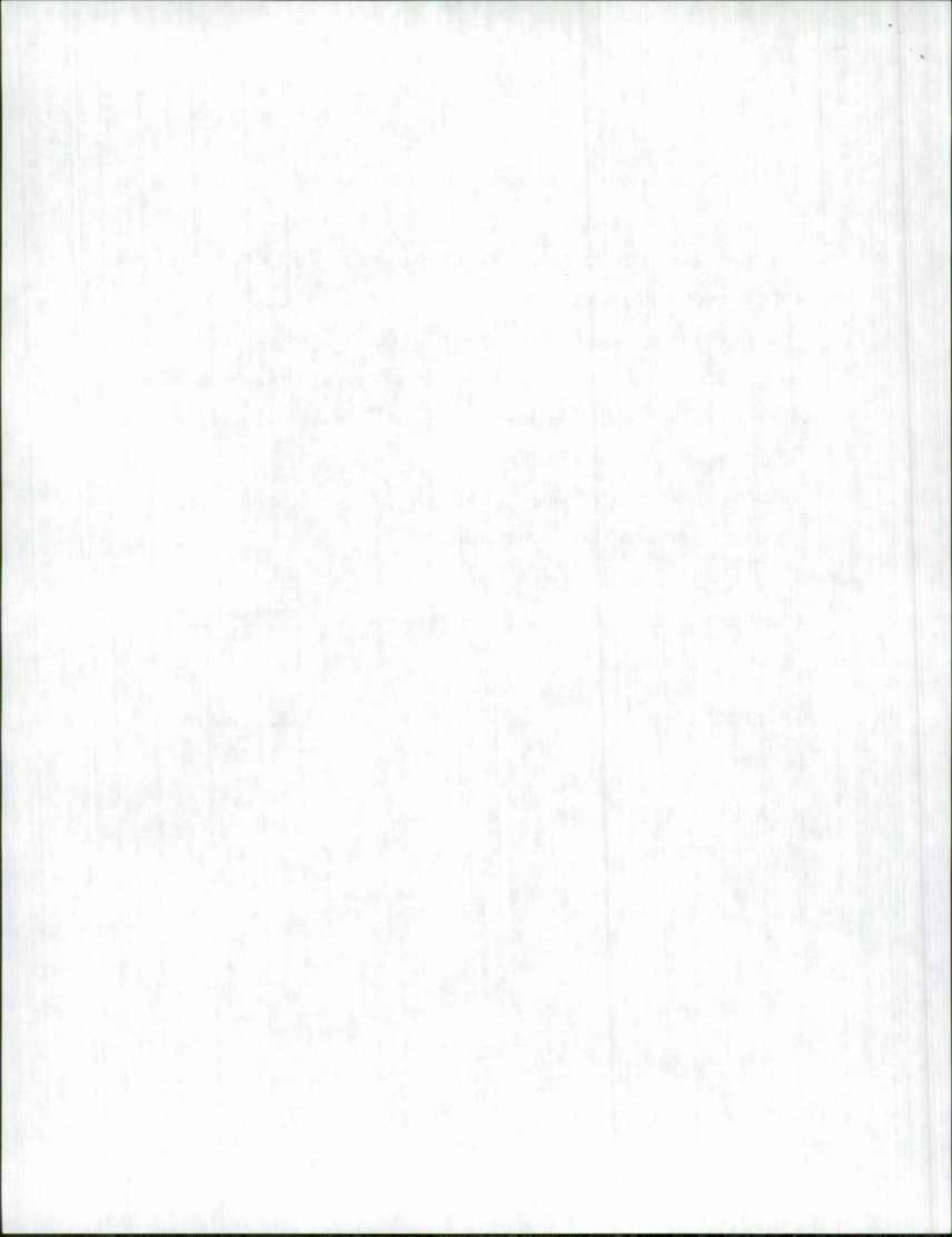


John Sewell



Margaret Young

Board of Appeals/1533.BackCreekIIVarianceSpecialExceptionCA



369-08



TALBOT COUNTY BOARD OF APPEALS

28712 GLEBE ROAD, SUITE 2
EASTON, MARYLAND 21601

PHONE: 410-770-8040

FAX: 410-770-8043
TTY: 410-822-8735

April 1, 2009

Critical Area Commission
Nick Kelly
1804 West Street
Annapolis, MD 21401

RE: DECISION ON BOARD OF APPEALS #1493 Bay Hundred Restaurant

Dear Mr. Kelly,

Enclosed please find a copy of the signed Board of Appeals decision on the above referenced project. Please note that there is a 30 day appeal period with the Circuit Court from the date the decision was signed.

Should you have any questions in reference to this appeal please call the Board of Appeals office.

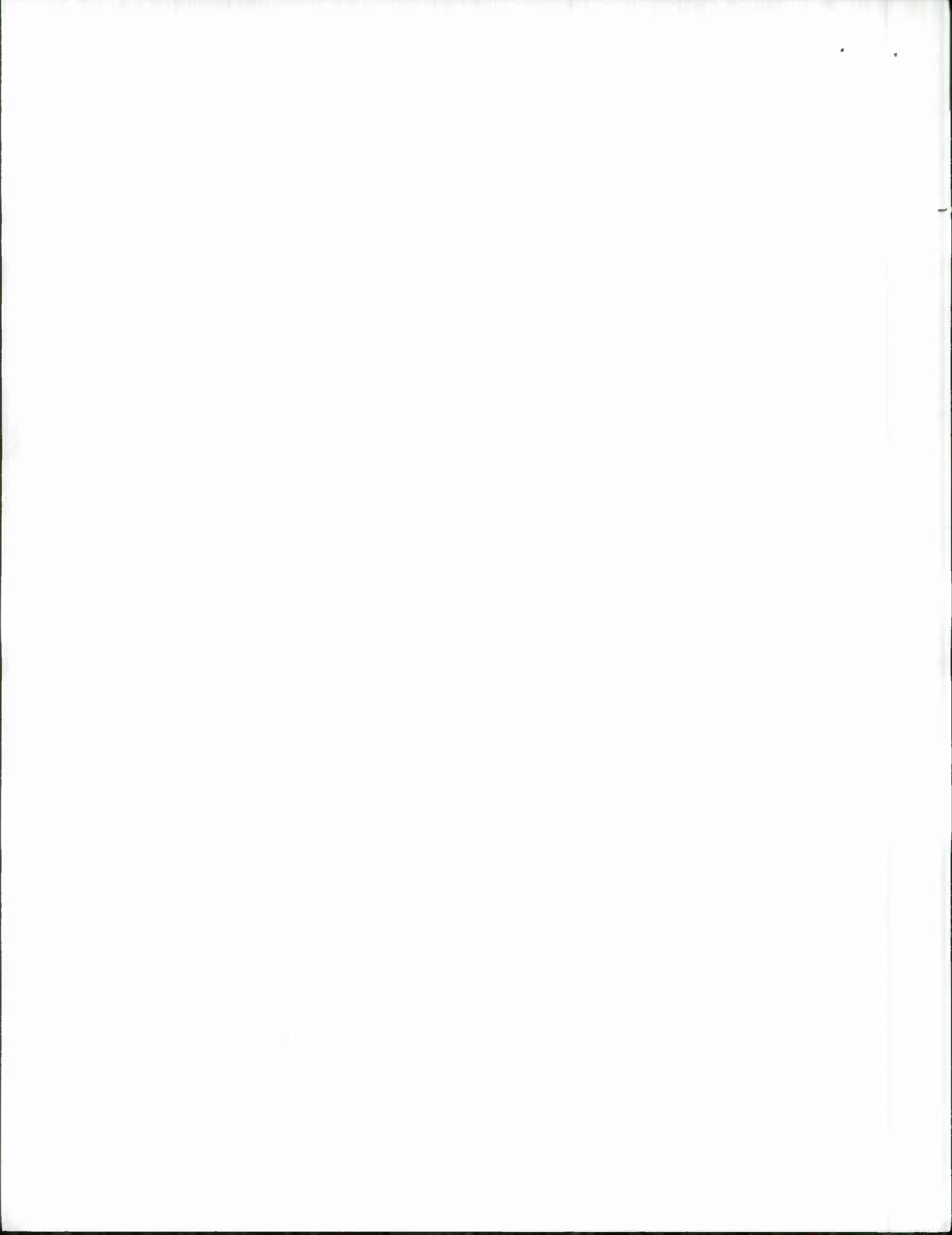
Sincerely,

A handwritten signature in blue ink that reads "Chris Corkell".

Chris Corkell
Administrative Assistant

Enclosure





DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 1493

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the "Board") at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., November 24, 2008, to consider whether to modify, revoke, or attach other conditions to the amendment of a special exception granted to Bay Hundred Restaurant, Inc. (the "Applicant"), at a July 7, 2008 hearing memorialized in its September 11, 2008 decision. Additionally, the hearing was to consider the effect of HB 1253 upon the "after-the-fact" approvals granted to the Applicant, and to consider other issues presented at the hearing.

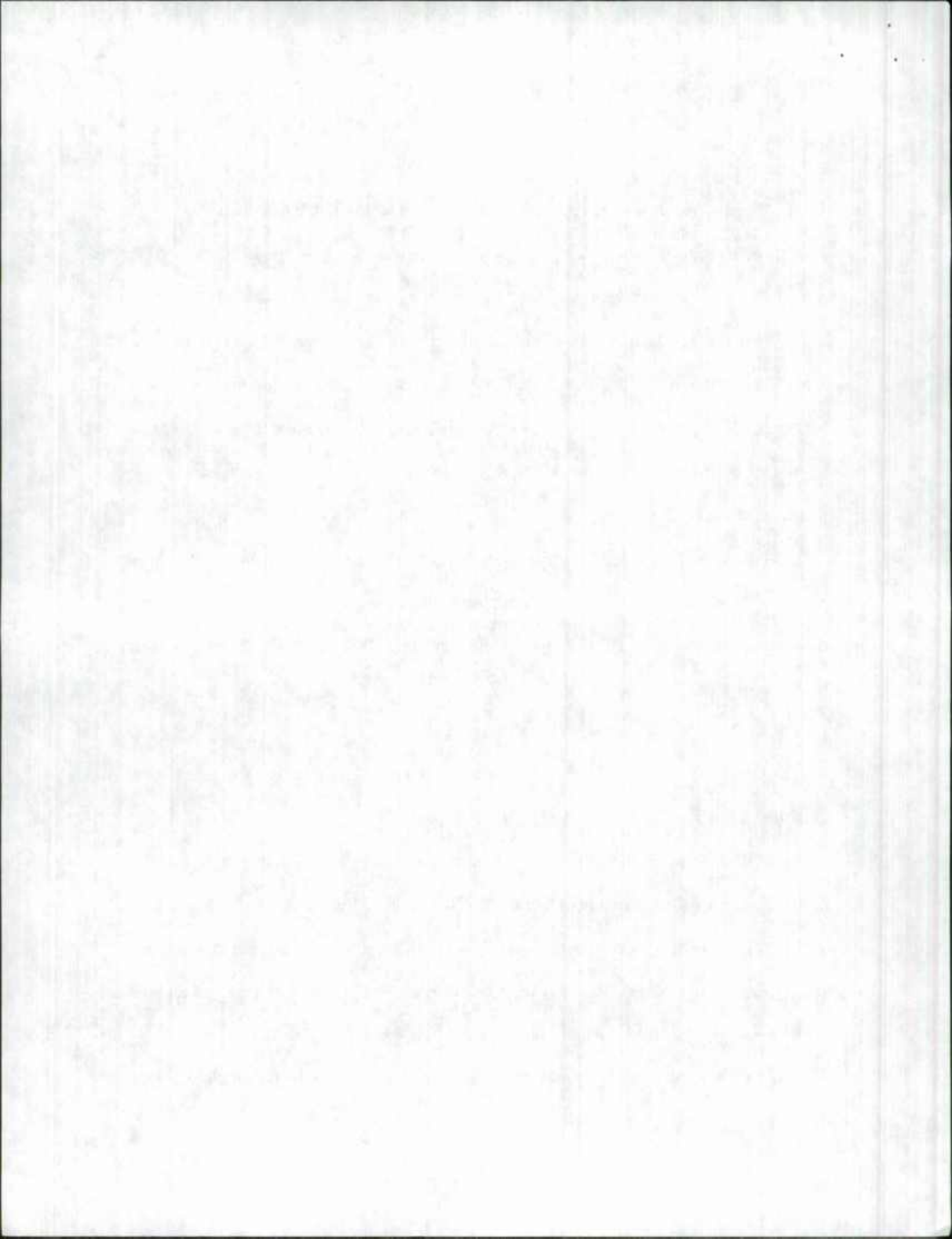
Present at the hearing were Board members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Rush Moody, Betty Crothers, and John Sewell. The Applicant was represented by Derrick Dye, Esquire. The County was represented by Michael L. Pullen, Esquire. Glenn D. Klakring was the attorney for the Board.

Introduction

At the July 7, 2008 hearing and in the decision dated September 11, 2008, the Board took the following action:

(1) Approved Applicant's request to amend an existing special exception to authorize an increase from 100 to a maximum of 275 seats at Bay Hundred Restaurant (the "Restaurant");

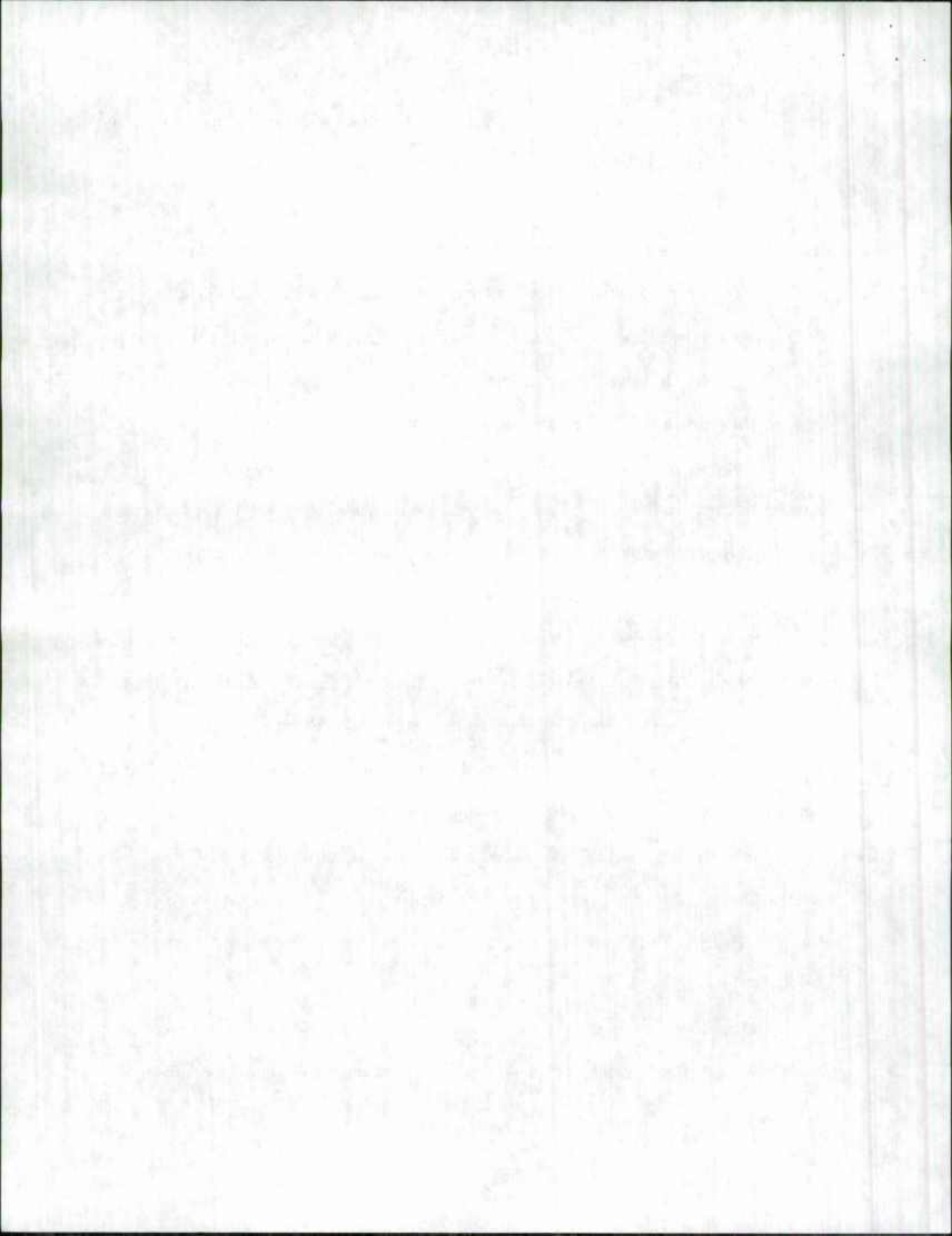
(2) Authorized seasonal outdoor service bar, grill, and an outdoor crab steaming facility at the Restaurant to the extent these were considered an expansion of the special exception use. There were two conditions, among others, placed on the approval of this amendment to the existing special exception: (1) the seating capacity was not to exceed a maximum of 275 seats;



and, (2) approval was conditioned upon Applicant's continued adherence to its policy of no outdoor music, and continued avoidance of any other adverse and offensive impacts on the surrounding area. The Board also granted a variance to expand and extend a pre-existing wood deck to move it closer to the water on the northwest side of the building. Applicant had previously expanded and extended the deck without a required variance or a building permit. The Board conditioned approval of this variance upon the Applicant obtaining proper building permits for the deck from the County, and the Applicant providing for mitigation at a ratio of 3:1 for the development activity undertaken without the required variance or proper permits.

It came to this Board's attention that on August 23, 2008, Applicant, in addition to its standard restaurant and bar fare, offered Restaurant customers a live band playing outdoor music. This prompted the County Attorney's Office to request the Board to hold the instant hearing to consider whether to revoke its approval of the amendment to the special exception or to attach additional conditions to that amendment. Additionally, the County asked the Board to address the effect of House Bill 1253 enacted by the Maryland General Assembly, effective July 1, 2008, to "after-the-fact" approvals required to legalize existing violations in the Critical Area. That Bill enacted significant restrictions on local jurisdictions' authority to accept or grant applications for approvals to legalize an existing Critical Area violation "after-the-fact." In general, under House Bill 1253 no local jurisdiction may legalize an existing Critical Area violation through an "after-the-fact" approval until there has been an assessment of a civil monetary penalty and a restoration or mitigation plan submitted by the Applicant and approved by the local jurisdiction.

At the hearing on November 24, 2008, the issues for the Board were: (1) whether to prescribe additional conditions, restrictions, or limitations on the amendment of the special



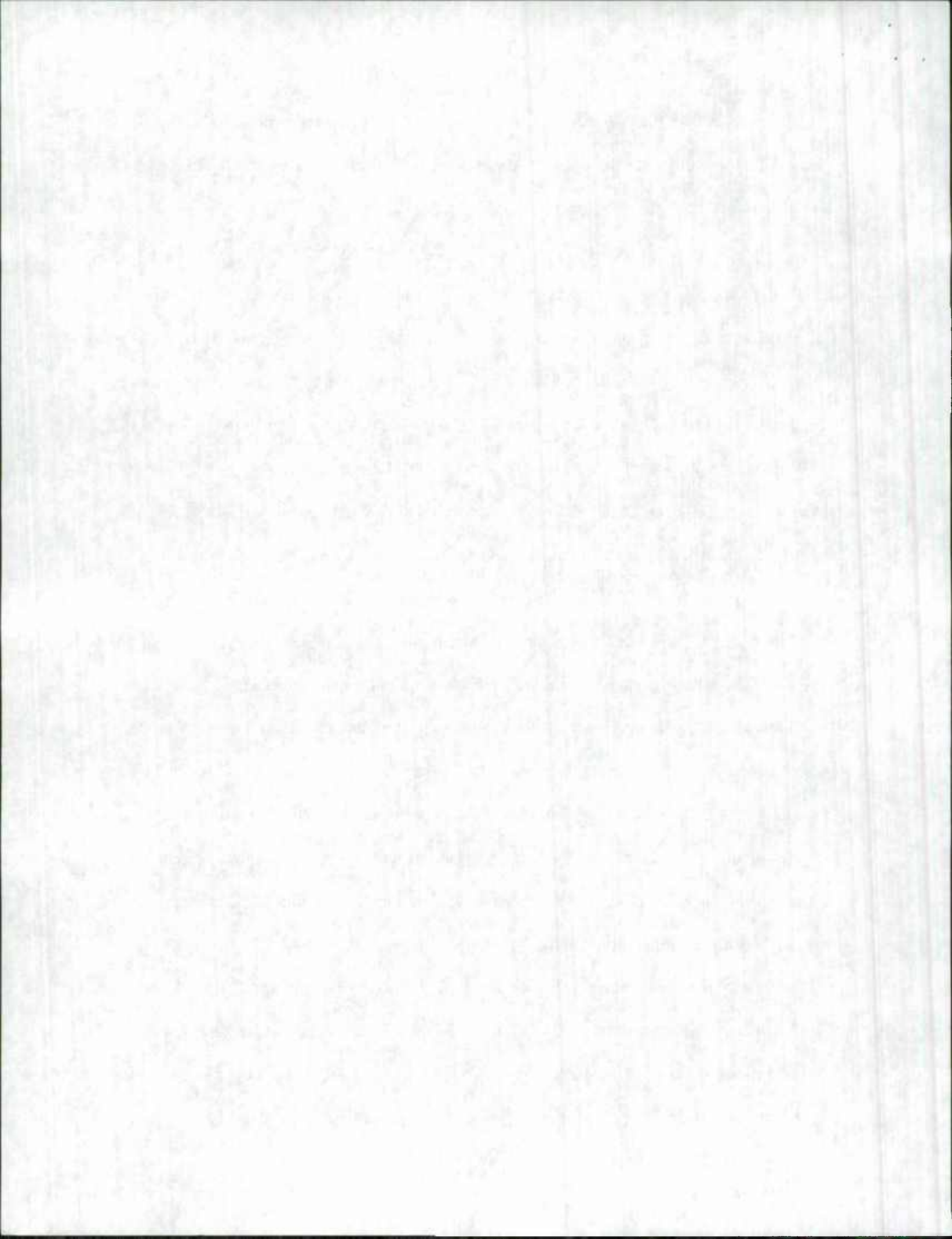
exception increasing the number of seats, or to revoke that amendment for violation of the condition prohibiting outdoor music; (2) the effect and application of House Bill 1253, and other issues developed during the hearing.

Robert D. Graham, the County's Chief Code Compliance Officer, testified that the original request for zoning enforcement came on May 11, 2007, *via* a report from North Tilghman residents complaining about outdoor music at the Restaurant. County Exhibit No. 2, a "Request for Zoning Inspection" indicated the description of the alleged violation was, "... Outdoor music at Bay Hundred Restaurant... " "Currently Friday, Saturday, Sunday is expanding to Wednesday, Thursday, Friday, Saturday, and Sunday." County Exhibit No. 3 was a letter from Mark F. Julyan, General Manager, Knapps Narrows Marina & Inn, dated May 24, 2007, stating:

"... The music stops at 10 pm on weekends and if there are any other requirements of Mr. Chew he has assured me he will comply. Please let me know what if any other actions I will need to take in order to comply with all County regulations."

On June 13, 2007, Mr. Graham spoke with Mr. Mark Chew, Applicant's President, and Mr. Mark Julyan, author of the above letter and the landlord's general manager. Mr. Graham informed Mr. Chew that playing outdoor music at the Restaurant was prohibited by the Talbot County Code. Mr. Chew told Mr. Graham he had no problem stopping the music and that he was looking for an excuse not to play it anymore because while half his customers liked it, the music irritated many of his customers across Maryland Route 33 in the Camper Circle (North Tilghman) area and he didn't want to alienate those customers. He told Mr. Graham he would not play any more outdoor music at the Restaurant.

County Code Compliance Officers received another complaint regarding outdoor music scheduled at the Restaurant for Sunday, July 22, 2007, and conducted a site visit to the Restaurant on that date. Upon arrival, they observed a huge crowd at and around the Restaurant

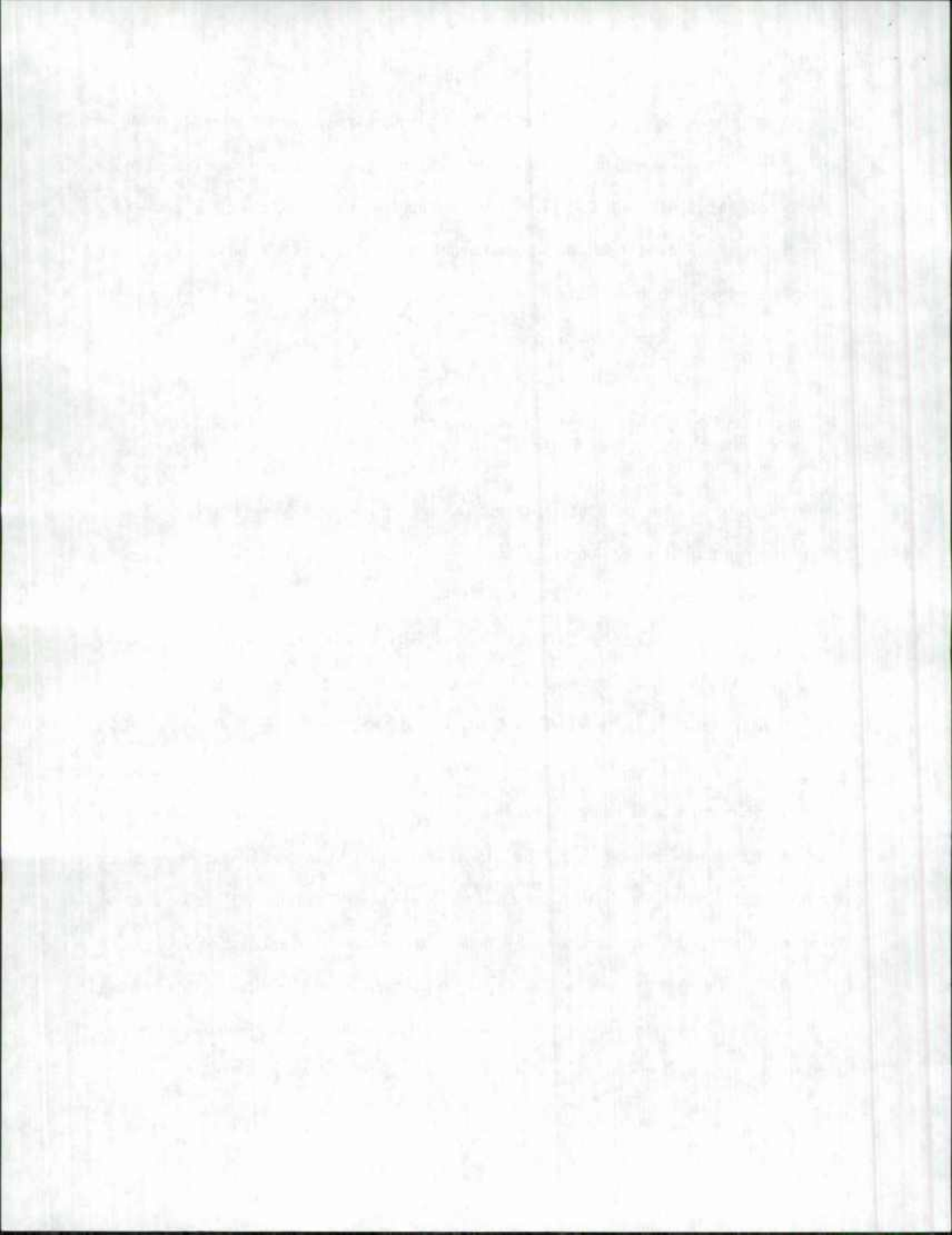


estimated to be between two hundred and three hundred persons. The Restaurant's parking lot was completely full, as was the parking lot of the adjacent marina. Vehicles were parked on the shoulders of Maryland Route 33 down to Camper Circle. Outdoor music, being played outside the Restaurant, could easily be heard on Maryland Route 33. There was a large advertisement on Maryland Route 33 for live entertainment, the "Redneck Yacht Club Deck Party," being hosted by a disc jockey live from a local radio station.

As a result of observations at the Restaurant on Sunday, July 22, 2007, Mr. Graham contacted the County Attorney's Office and requested that a civil action be filed in the Circuit Court for Talbot County to seek a temporary restraining order to prevent the property owner from playing outdoor music at the Restaurant. Shortly thereafter, a Consent Order was prepared, signed by Mr. Chew and the County, and submitted to the Circuit Court for Talbot County. The Circuit Court executed this Consent Order on July 30, 2007.

On or about October 22, 2007, Mr. Graham saw an advertisement in the *Star-Democrat* for a Halloween Party with live music at the Restaurant and called Mr. Chew. Mr. Chew assured Mr. Graham that the music would be inside, not outside. On April 3, 2008, Mr. Graham saw another advertisement in the *Star-Democrat* for live music at the Restaurant. On October 5, 2008, Mr. Graham became aware of a handbill advertising live entertainment at the Restaurant in conjunction with a charitable benefit for Maryland's Ronald McDonald House. Mr. Graham testified his last site visit to the Restaurant was "this past Friday," [November 21, 2008] when he observed a freestanding sign advertising live music at the Restaurant on Fridays and Saturdays.

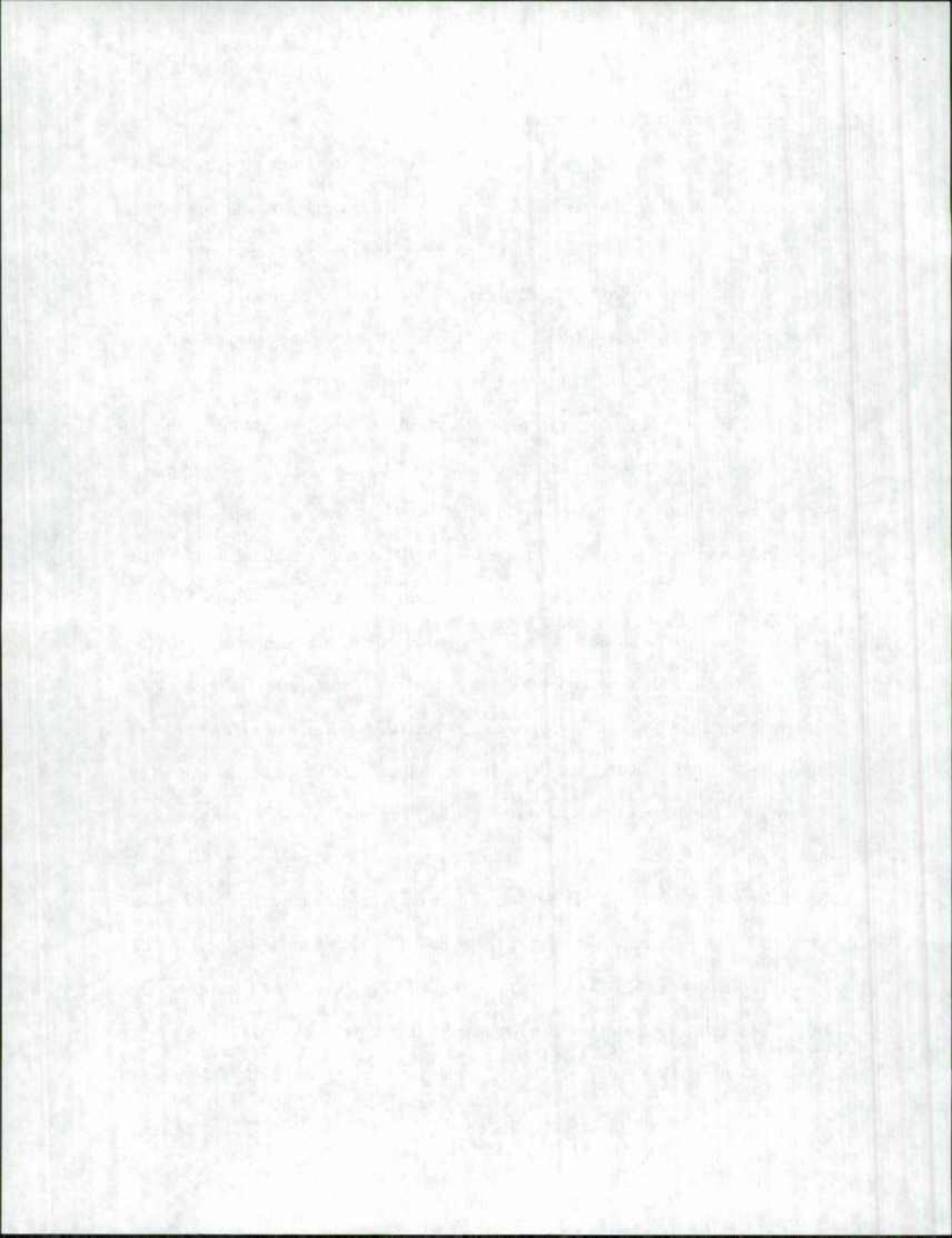
Mary Kay Verdery, Assistant Director of Planning and Zoning, testified regarding House Bill 1253, which amended certain requirements concerning "after-the-fact" approvals, permits, and special exceptions, and variances for violations in the Critical Area. She indicated that a



local jurisdiction cannot grant a variance or special exception, or issue a permit or approval "after-the-fact" to legalize an existing violation in the Critical Area unless the Applicant has: (1) been assessed and paid a civil monetary fine; (2) prepared a restoration or mitigation plan that is approved by the local jurisdiction; and, (3) performed the abatement measures, as approved within the plan. She testified that the Applicant has not been assessed nor paid a civil monetary penalty for the Critical Area violations in this case, nor has the Applicant prepared a restoration or mitigation plan, and no such plan has been approved by the County.

Ms. Verdery testified concerning the Plat submitted into evidence at the hearing before the Board on July 7, 2008. She identified the area of the new deck built without a required variance and without a building permit. She identified the property line between the Restaurant parcel and the adjacent parcel shown on the Plat. The Plat itself indicates that Back Creek II, LLC, owns the parcel on which the Applicant operates the Restaurant, and that the adjoining parcel is owned by Back Creek, LLC, a separate owner and a distinct legal entity. Ms. Verdery testified that the County cannot issue a building permit for this deck that, as built, extends across a property line dividing parcels not in common ownership. She indicated the owners of each separate parcel would have to apply for separate variances for each parcel; one for a Critical Area variance for the deck to be constructed closer to the water, and another variance to reduce the side yard setback. She indicated that there had been no applications for these variances filed by either property owner and that the County does not have the authority to issue a building permit until and unless the requisite variances are applied for and granted by the Board.

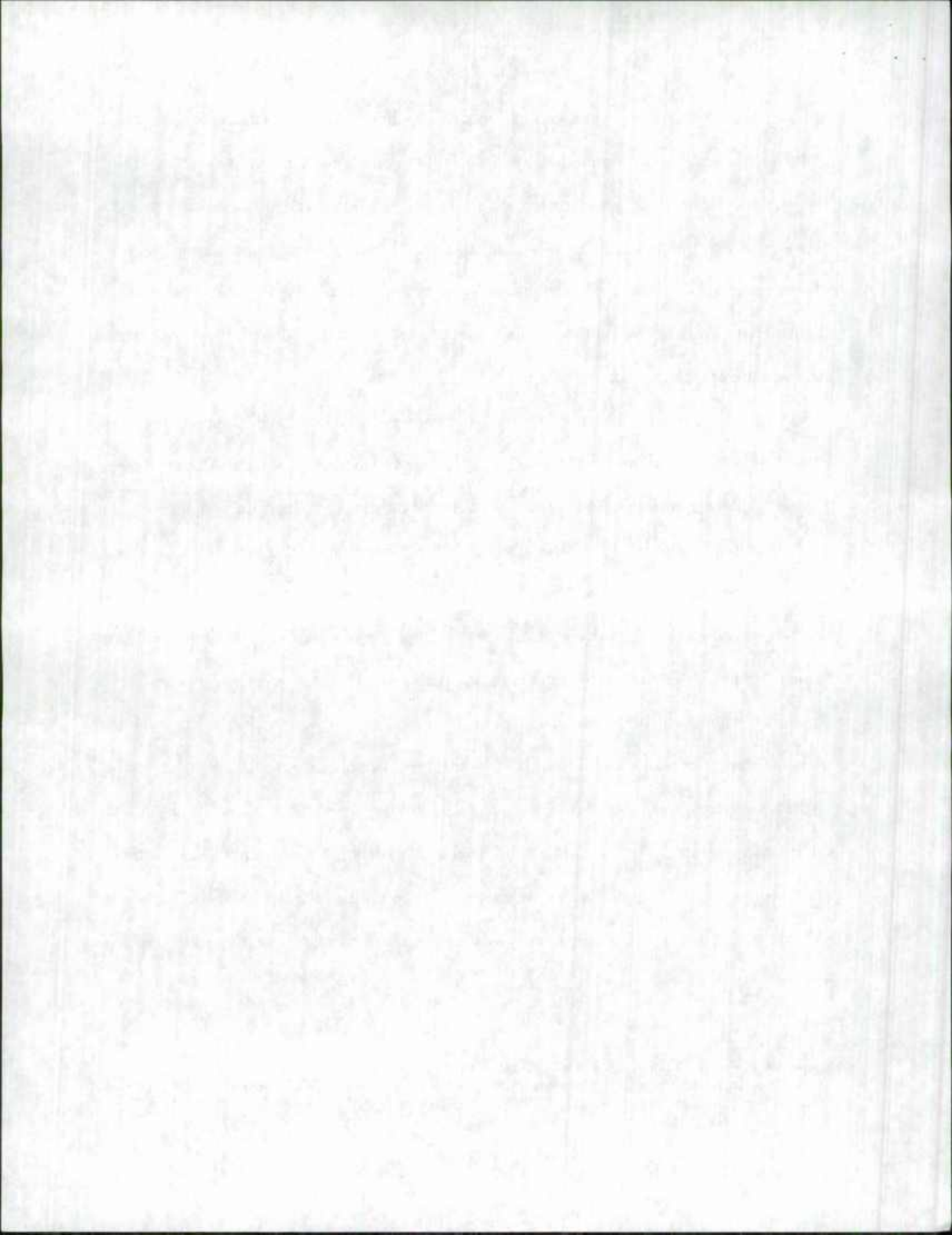
Ms. Verdery testified that the Restaurant is in the Village Center (VC) zone in the Critical Area. The General Table of Land Use Regulations (the "Table") contains a land-use category titled, "Restaurants, Bars and Night Clubs." Restaurants are permitted by special exception in



the VC zone -- bars and night clubs are excluded, except liquor sales associated with a restaurant. *A Planners Dictionary*, sponsored and utilized by the American Planning Association defines "nightclub (see also bar)" as "a commercial establishment dispensing alcoholic beverages for consumption on the premises and in which dancing and musical entertainment are permitted." Because night club uses are excluded in the VC Zone, musical entertainment associated with a night club use, such as live outdoor music, is not permitted under the Talbot County Code as part of a special exception restaurant use in the VC Zone.

Leslie Steen, a neighborhood resident, lives across Maryland Route 33 on the other side of the bridge across Knapps Narrows, four houses down from the Restaurant, facing Knapps Narrows. She testified about outdoor music at the Restaurant for the past three summers. The outdoor music started each year when the weather got warm and lasted until the weather got cold. In 2006, the outdoor music from the Restaurant was periodic; it ended by 10:00 p.m.,¹ and was not played every weekend. In the summer of 2007, the outdoor music was quite frequent, being played every Friday and Saturday night and perhaps Sundays too, at higher noise levels. It was loud enough to disturb her because of its increased volume, louder than it had been the previous year. The outdoor music was bothersome to the neighborhood to the point that several of the residents complained to Mr. Chew personally, asking him to moderate it. In response to the Board's questions, she indicated she believed in 2007 that the music continued all summer long, even after the July 30, 2007 Consent Order. She testified that in 2008, the Restaurant offered outdoor music periodically, about twice a month, until about 10:00 p.m. or 11:00 p.m. at night.

¹The music ending at 10 p.m. on weekends is consistent with Mark Julyan's May 24, 2007 letter, County Exhibit No. 3. That letter was written in the *beginning* of the 2007. That 10 p.m. cut-off is not consistent with other witnesses' testimony about when the music ended during the summer of 2007.



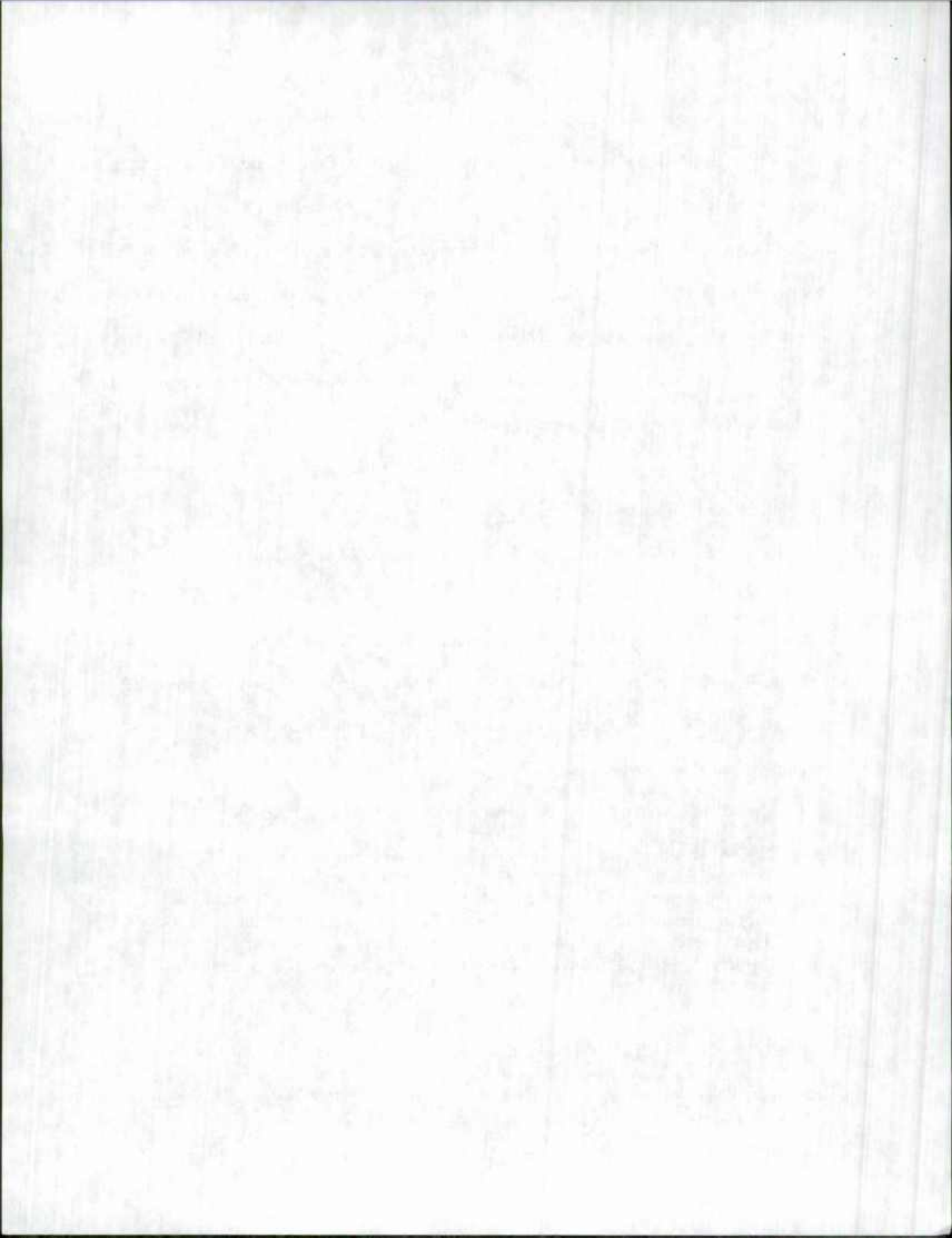
Rondy Alstrom has lived on Tilghman Island 30 years, and now lives in North Tilghman, 13 lots from the Restaurant. She stated that the outdoor music from the Restaurant has been a constant problem in the neighborhood for several years and 2007 was the worst she's ever heard it. It was almost every weekend and as the night wore on the music got louder until closing time, which was 12:00 midnight or 1:00 a.m. She did not like the outdoor music and it interfered with her ability to sleep. She is a professional real estate agent, having specialized in selling Tilghman Island real estate for 22 years. She testified that the outdoor music from the Restaurant has had a negative effect on surrounding property values, that as a realtor she has had problems selling properties with nearby outdoor music and that because of those problems she would not show those properties on weekends.

Mr. Chew testified to being President of Bay Hundred Restaurant, Inc. and acknowledged that he signed a Consent Order (County Exhibit No. 4) issued by the Circuit Court for Talbot County on July 30, 2007, that prohibited outdoor music at the Restaurant. Both in his testimony on direct examination and through his counsel, Mr. Chew admitted to providing live outdoor music at the Restaurant on August 23, 2008, because he knew it would benefit him financially, claiming it was a "judgment call."

Concerning execution of the Consent Order, Mr. Chew testified that

"I sign, what happened was that when Mr. Graham came down and he give me a violation and then I believe the, the, the State Attorney call Mr. Julyan and so I went down there and I sign a concede (sic) order I can't have any music. She (sic) say you have these three violation you have the seating, the awning, and you have too many seats, the awning, live music you know, so the best thing for me that time was to sign live music, cause I need the seating, I need the awning. So I sign a consent order said no music." (Transcript, page 59-60)

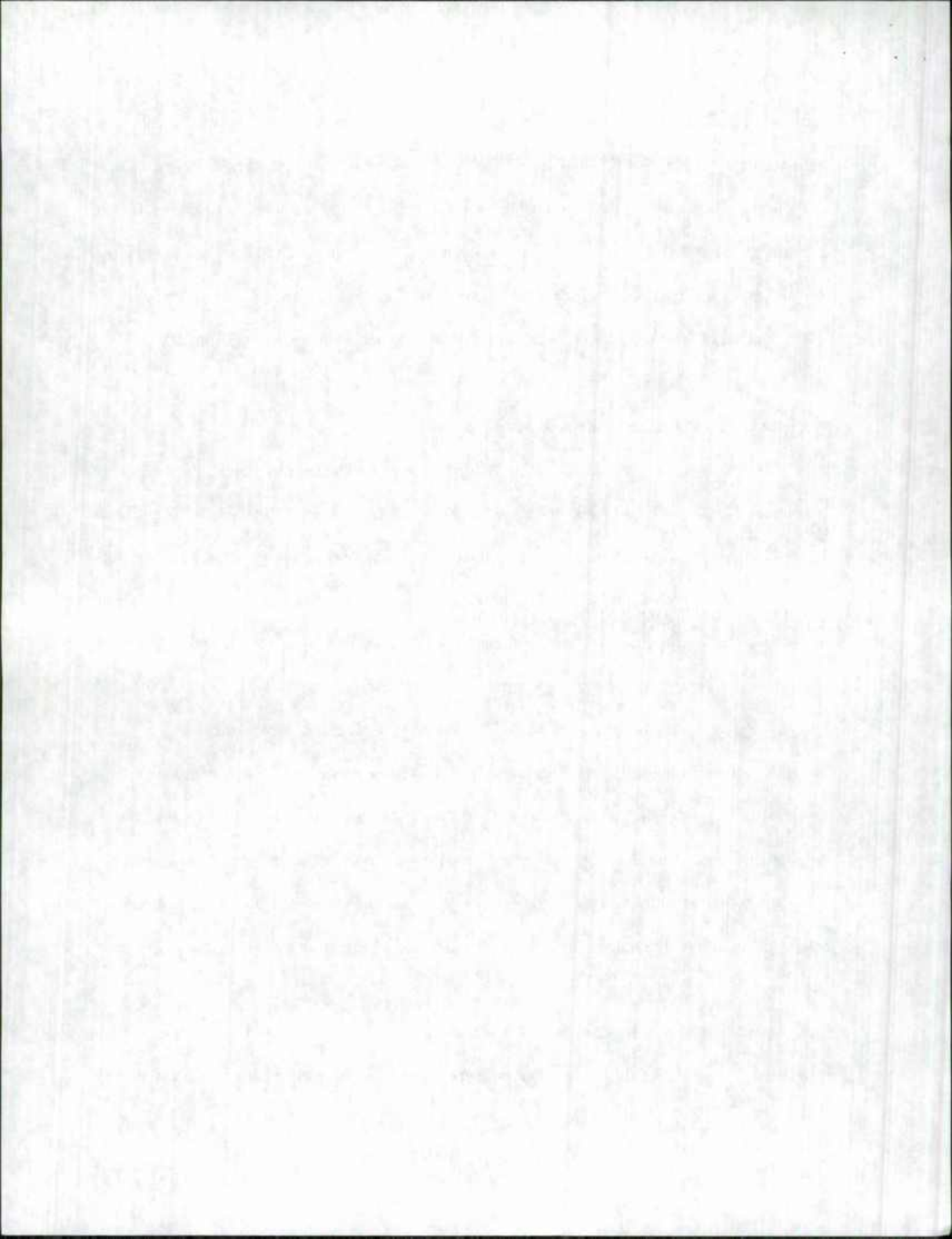
In effect, Mr. Chew elected to sign the Consent Order to better position himself to be able to obtain permission to increase the number of restaurant seats from 100 to 275, and to better



position himself for permission to keep the awnings constructed closer to the water without a variance or a building permit. On July 7, 2008, Mr. Chew did just that when he relied on the existence and validity of the Consent Order to foreclose a line of inquiry from the Board concerning the issue of outdoor music, and because of that Consent Order that line of inquiry was not pursued. Based in part upon the existence of the Consent Order this Board on July 7, 2008, decided to amend the special exception to increase the restaurant seating from 100 to 275, and, therefore, Mr. Chew and the Restaurant, received the very benefit that Mr. Chew positioned himself to receive by agreeing to the Consent Order.

Mr. Chew made no attack on the validity of that Consent Order before the Board on November 24, 2008, claiming he only played outdoor music once, on August 23, 2008, and that he regretted that "mistake." The clear import of his testimony and the position he has taken before this Board, both at the July 7, 2008 hearing, and at the November 24, 2008 hearing, is that he will not play outdoor music at the Restaurant in the future. The Board took into consideration and relied upon the existence of the Consent Order in reaching its initial decision on July 7, 2008, issued on September 11, 2008, and also in reaching its decision of November 24, 2008, as set forth in these minutes. During the July 7 hearing, the existence and validity of that Consent Order was offered by the Applicant to the Board as an assurance that any concerns relating to outdoor music need not be explored or addressed by the Board, and the Board accepted and relied upon that assurance. As of July 7, 2008, the Consent Order had never been appealed, amended, modified, or changed in any respect, and was in effect and not under any appellate challenge.

But as of November 24, 2008, the record contains a copy of the Applicant's pleading "*Motion to Dismiss and Response to Petition for Contempt*" filed on or about September 22,

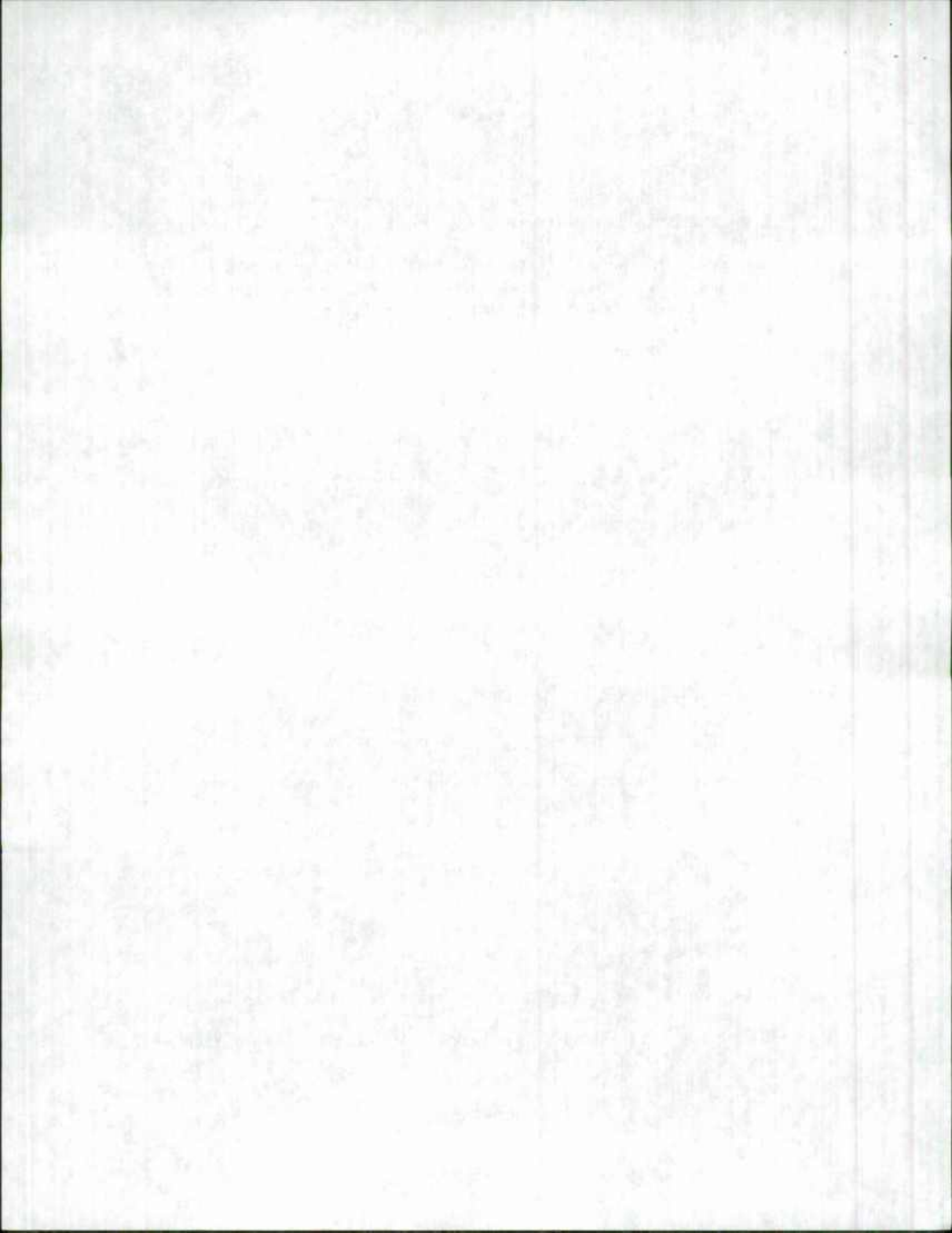


2008, in the Circuit Court for Talbot County, Case No. 20-C-07-006072, in which the Applicant asserted:

"...Petitioner [Talbot County], through its agents, confronted Respondents [Mark Chew and Bay Hundred Restaurant, Inc.] in the summer of 2007 regarding outdoor music at Bay Hundred. Petitioner, through its agents, stated to Respondents, who were unrepresented, that their actions were "illegal" and that Bay Hundred would be closed down unless Respondents agreed to sign a Consent Order. Faced with the threat of business closure, and under duress, Respondents signed the "Consent Order" in July 2007." *Motion to Dismiss and Response to Petition for Contempt*, Page 3, ¶ 10.

In Circuit Court, Applicant has attacked the very Consent Order on which the Applicant relied at the July 7, 2008 hearing before this Board. Yet, before this Board Mr. Chew offered no testimony to indicate that the Consent Order was induced or procured by fraud or duress, and made no claim in this proceeding either through his testimony or through his counsel that it was invalid or without effect according to its terms, for any reason. The Applicants testimony on November 24, 2008 concerning the reasons why he executed the Consent Order was wholly devoid of any facts that could conceivably support the claim Applicant has asserted in Circuit Court. There was no testimony that Bay Hundred would be "closed down," no evidence of any threat of business closure, and no evidence of any supposed *quid pro quo* that Applicants signing the Consent Order was extracted in exchange for any promise or forbearance from the County. Having affirmatively relied on that Consent Order before this Board to support its request for relief and having obtained that relief, the Applicant cannot attack the Consent Order before this Board.

Mr. Chew testified the Restaurant has two outdoor speakers in the back and two in the front that play "Muzak" outdoors when there is no live music, and that during the summer most of his music is piped outdoors through those speakers. He testified that his understanding of the

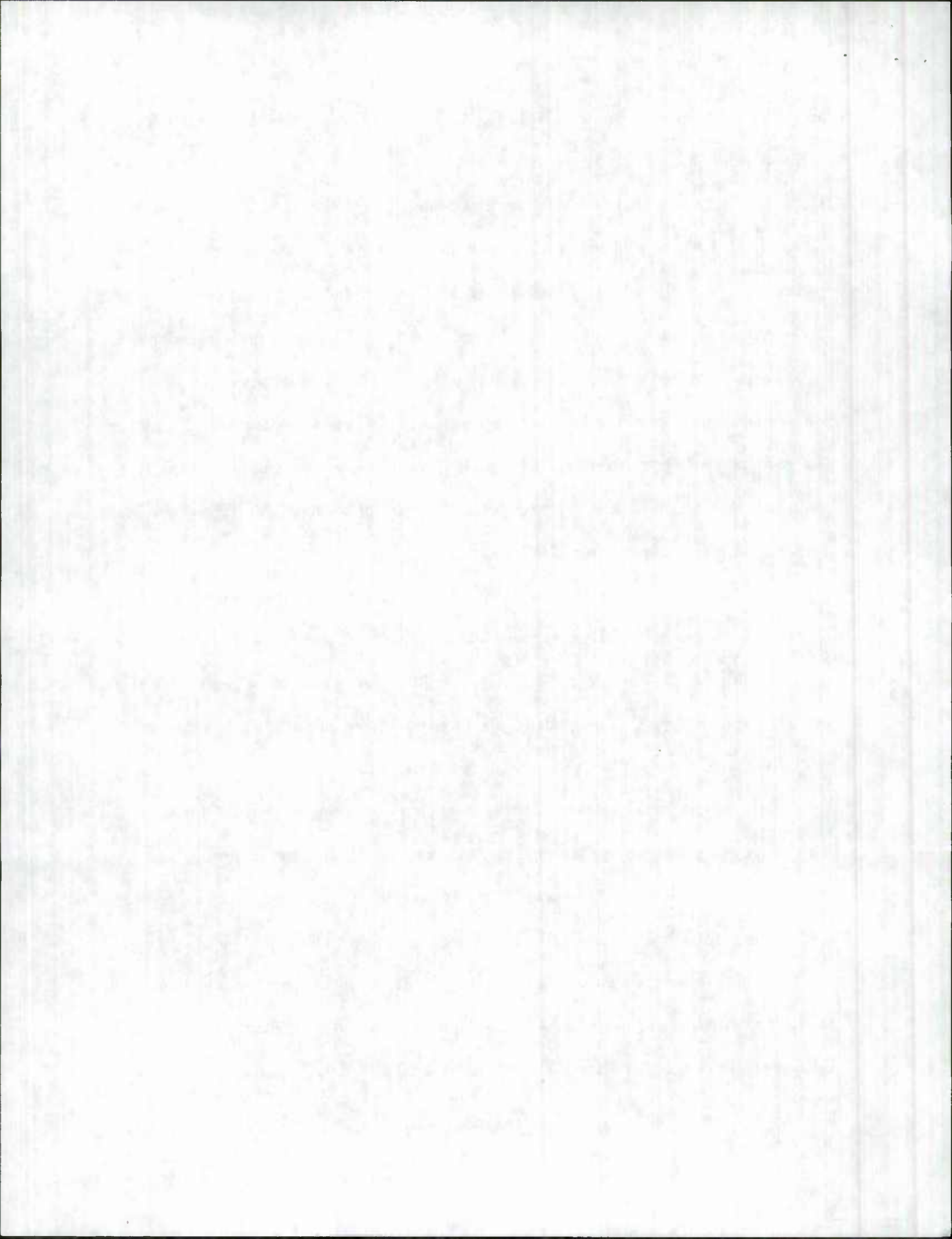


July 30, 2007 Consent Order and the Board's July 7, 2008 decision was the prohibition of *live* outdoor music.

Mr. Chew testified he built the northeast corner of the deck without a permit, moving the deck closer to the water without a variance and extending it over the property line of the adjacent parcel. A variance of the side yard setback and a variance of the prohibition against moving an existing structure closer to the water would be required prior to the Applicant being eligible for a building permit to construct the deck in its present location. The illegal construction of the deck without the required permit and variances brings this case within the House Bill 1253, limiting Talbot County's authority to issue "after-the-fact" variances and permits to legalize existing violations in the Critical Area, and subjects the Applicant to imposition of civil monetary penalties and other requirements of that legislation.

Mr. Mark Julyan, the Applicant's landlord's manager, testified that he was aware of the Consent Order and his understanding was that it prohibited live, outside music, but did not prohibit music coming through the speakers of the Restaurant's "Muzak" system. The Board indicated that, with the Consent Order in the record testimony about a party's or a witness's subjective understanding of its meaning would not be relevant.

The express condition of the grant of the special exception to increase the number of seats above 100 is that the Applicant not play outdoor music at the Restaurant. The reason for this restriction is to eliminate disturbances to the surrounding residential neighborhood caused by outdoor music from the Restaurant. The Board is unwilling to grant the amendment to the special exception to increase the number of seats unless the Applicant *accepts this condition*, as he represented to this Board he had, and would, through continued compliance with the existing Consent Order dated July 30, 2007. This condition, although initially based on the



representation of the Applicant at the July 7, 2008 hearing that the Consent Order had been executed, was in effect, and prohibited outdoor music at the Restaurant, is being imposed as a condition of the approval for granting amendment of the special exception under this Board's authority in Talbot County Code § 20-20 F., which provides that:

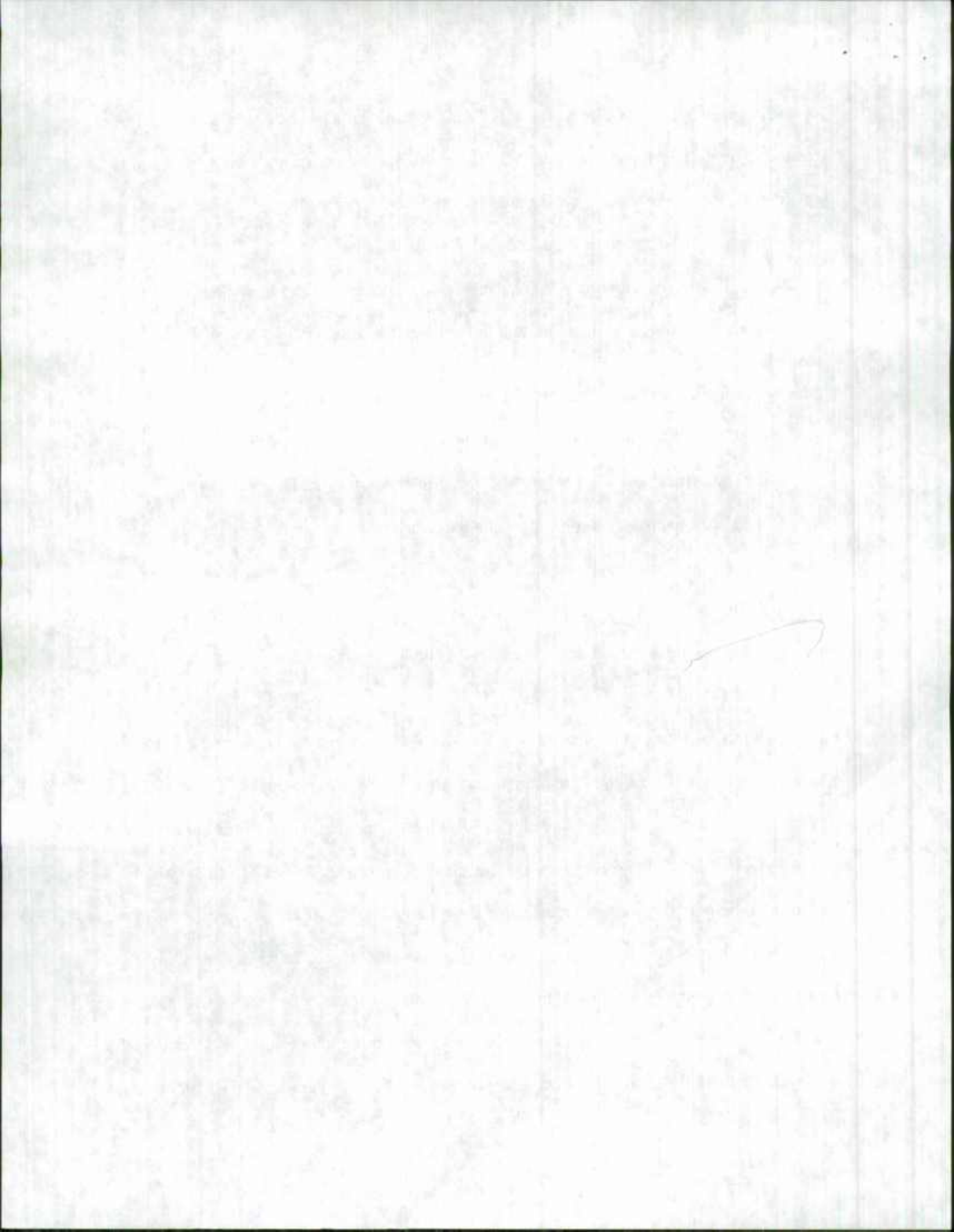
The Board may prescribe additional conditions, restrictions, and limitations upon any approval. All approvals shall be implemented in accordance with, and subject to, such conditions, restrictions, and limitations. Violation of any such condition, restriction, or limitation shall be grounds for revocation of the approval.

If the Applicant is unwilling to accept this condition, the Board is unwilling to amend the special exception to increase the number of seats at the Restaurant.

The amendment to the special exception approved on July 7, 2008 was an "after-the-fact" request to legalize intensification of an existing special exception use in the Critical Area. As such, it is subject to the requirements of House Bill 1253, including, without limitation, the imposition of civil monetary penalties. This condition is imposed as part of the approval resulting from the July 7, 2008 and November 24, 2008 hearings, and the September 11, 2008 decision as modified herein.

Subject to those conditions, the Board affirms the amendment to the special exception to allow the number of seats at the Restaurant to increase from 100 to a maximum of 275.

The Board revokes the variance for the deck based on additional information developed at the November 24, 2008 hearing showing that the deck, as constructed by Mr. Chew without a variance or permit, extends over the adjacent property line and does not possess required variances for side yard setbacks. The County has no authority to issue a building permit to allow a structure to extend over a property line between properties not in common ownership. To the extent it has been extended by Mr. Chew without a variance or building permit, the deck must be removed. The removal is to occur in accordance with the terms of this decision no later than 60



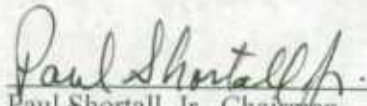
days after the date this decision becomes final. If Mr. Chew wants to reconstruct the deck, he and the adjacent property owner must apply for the necessary variances from the side yard setback and from the prohibition on extending an existing structure closer to the water.

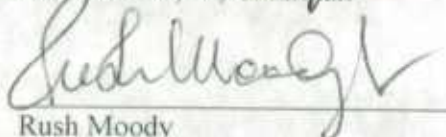
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the previously approved expansion of the seating capacity of the restaurant from 100 to 275 is reaffirmed with the condition that that there be no outside music, live or recorded; and it is further RESOLVED, that the previously approved variance for the expansion of the deck is revoked. The vote of the Board was 5 to 0 approving both actions.

GIVEN OVER OUR HANDS, this 1ST day of APRIL, 2009.

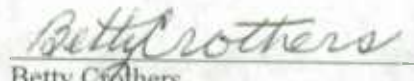
TALBOT COUNTY BOARD OF APPEALS


Paul Shortall, Jr., Chairman

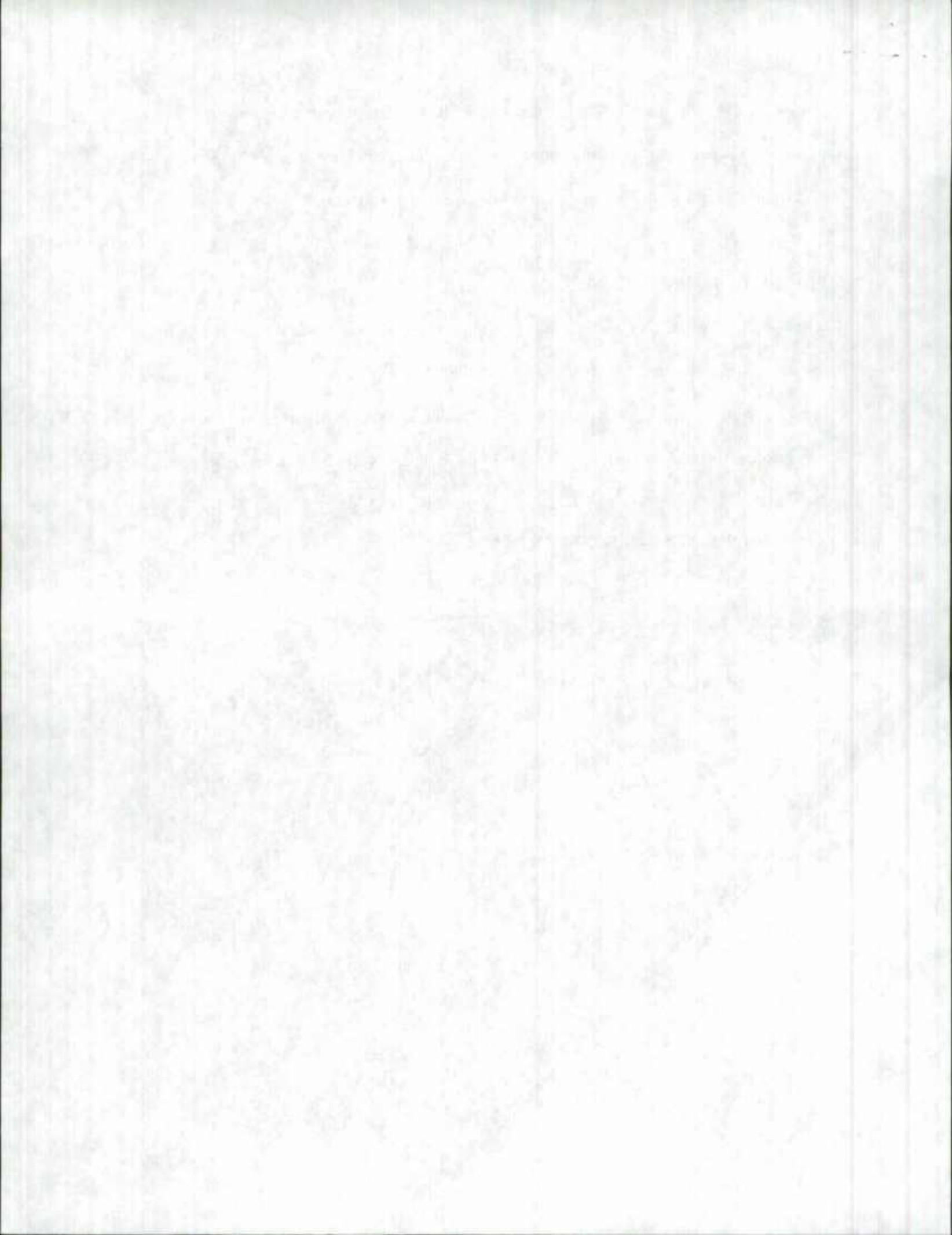

Rush Moody


John Sewell


Phillip Jones, Vice Chairman


Betty Crothers

Board of Appeals/1510.CoachesIslandAllegation



369.08



TALBOT COUNTY BOARD OF APPEALS

28712 GLEBE ROAD, SUITE 2
EASTON, MARYLAND 21601

PHONE: 410-770-8040

FAX: 410-770-8043
TTY: 410-822-8735

September 12, 2008

Critical Area Commission
Nick Kelly
1804 West Street
Annapolis, MD 21401

RE: DECISION ON BOARD OF APPEALS #1493 Bay Hundred Restaurant, Inc.

Dear Mr. Kelly,

Enclosed please find a copy of the signed Board of Appeals decision on the above referenced project. Please note that there is a 30 day appeal period with the Circuit Court from the date the decision was signed.

Should you have any questions in reference to this appeal please call the Board of Appeals office.

Sincerely,

A handwritten signature in blue ink that reads "Chris Corkell".

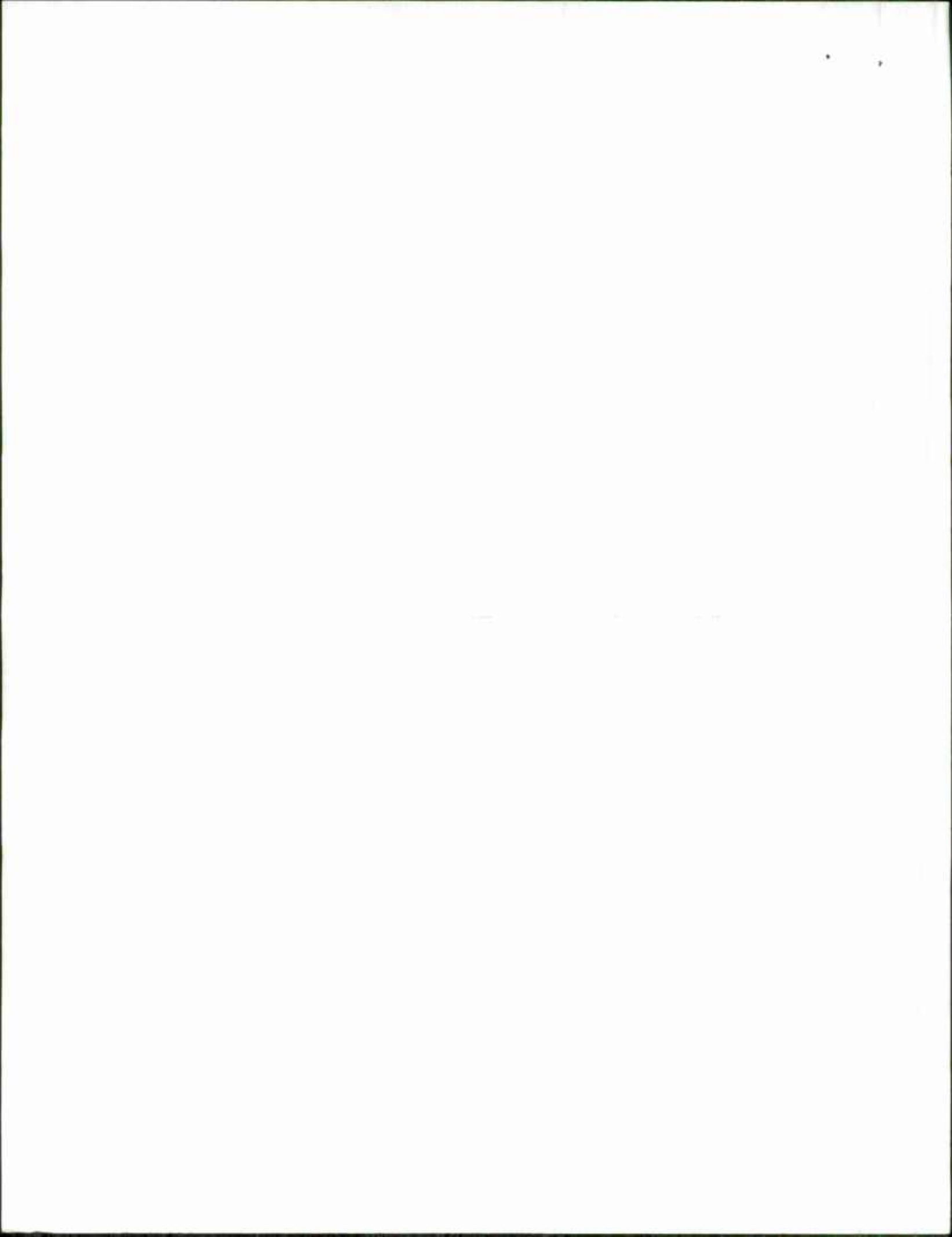
Chris Corkell
Administrative Assistant

Enclosure

RECEIVED

SEP 15 2008

CRITICAL AREA COMMISSION



DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 1493

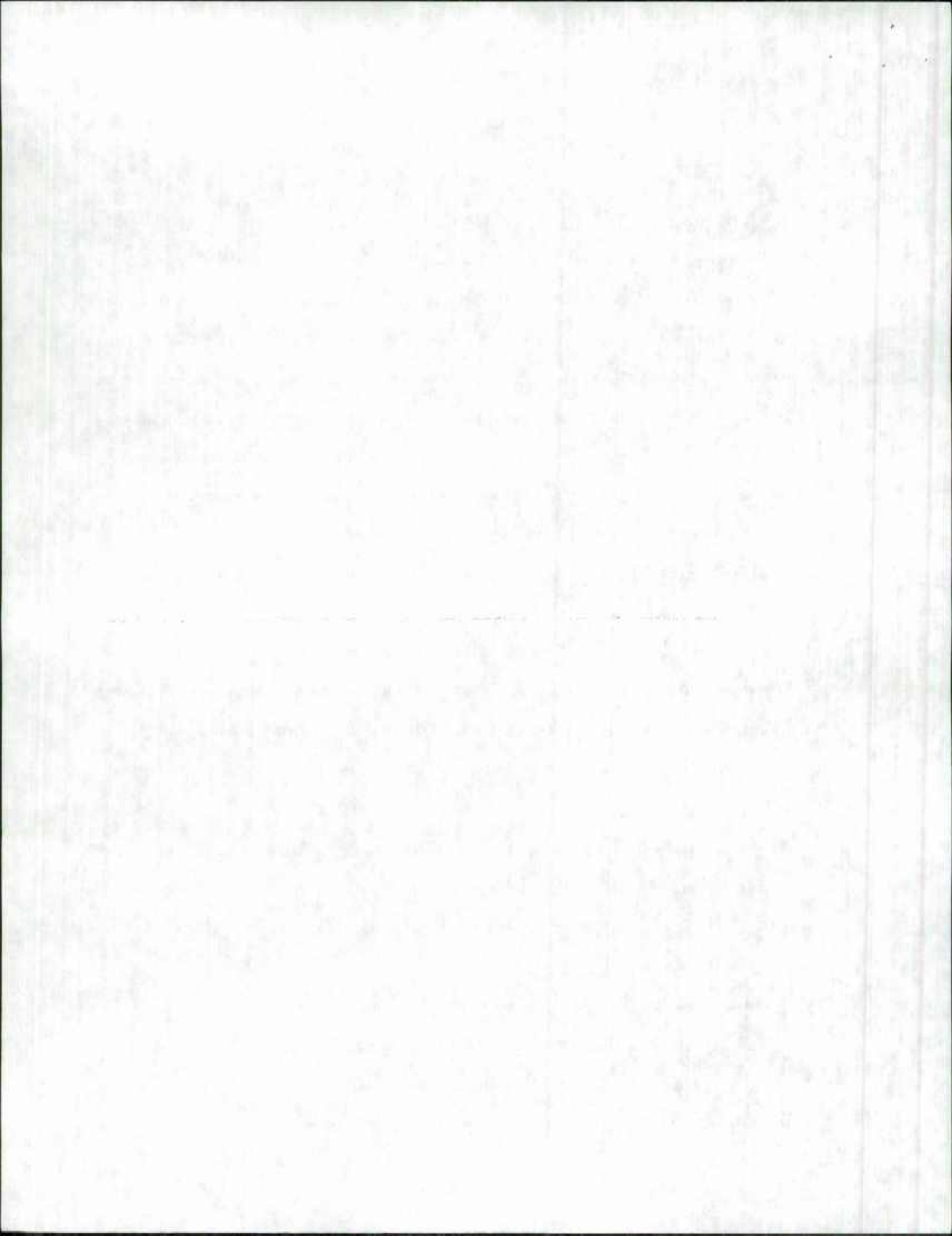
Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., July 7, 2008, on the application of **BAY HUNDRED RESTAURANT, INC.** ("Applicant"). The Applicant is seeking a special exception to authorize seasonal seating at the restaurant in excess of 100 seats and to permit the seasonal outdoor service bar, grill, and outdoor crab steaming to the extent these uses and accessory structures are considered expansion of a special exception use. In addition, the Applicant is requesting three variances from the 100-foot shoreline development buffer: (1) for an existing awning located on the southwest side of the restaurant with the closest point being 3.6 feet from mean high water; (2) for an existing awning located on the northwest side of the restaurant with the closest point being 25.4 feet from mean high water; and (3) for an existing wood deck on the northwest side of the building located 5.2 feet from mean high water at the closest point. The property is located at 6176 Tilghman Island Road, Tilghman, Maryland 21672. It is in the Village Center/Critical Area (VC/CA) zone. The property owner is Back Creek II, LLC. The request is made in pursuant to Chapter 190 Zoning, Article X, §190-61D3 and Article XIV, §190-104 and §190-105E of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Rush Moody, Betty Crothers, and John Sewell. The Applicant was represented by David R. Thompson, Esquire, P.O. Box 1747, Easton, Maryland 21601. Glenn D. Klakring was the attorney for the Board of Appeals.

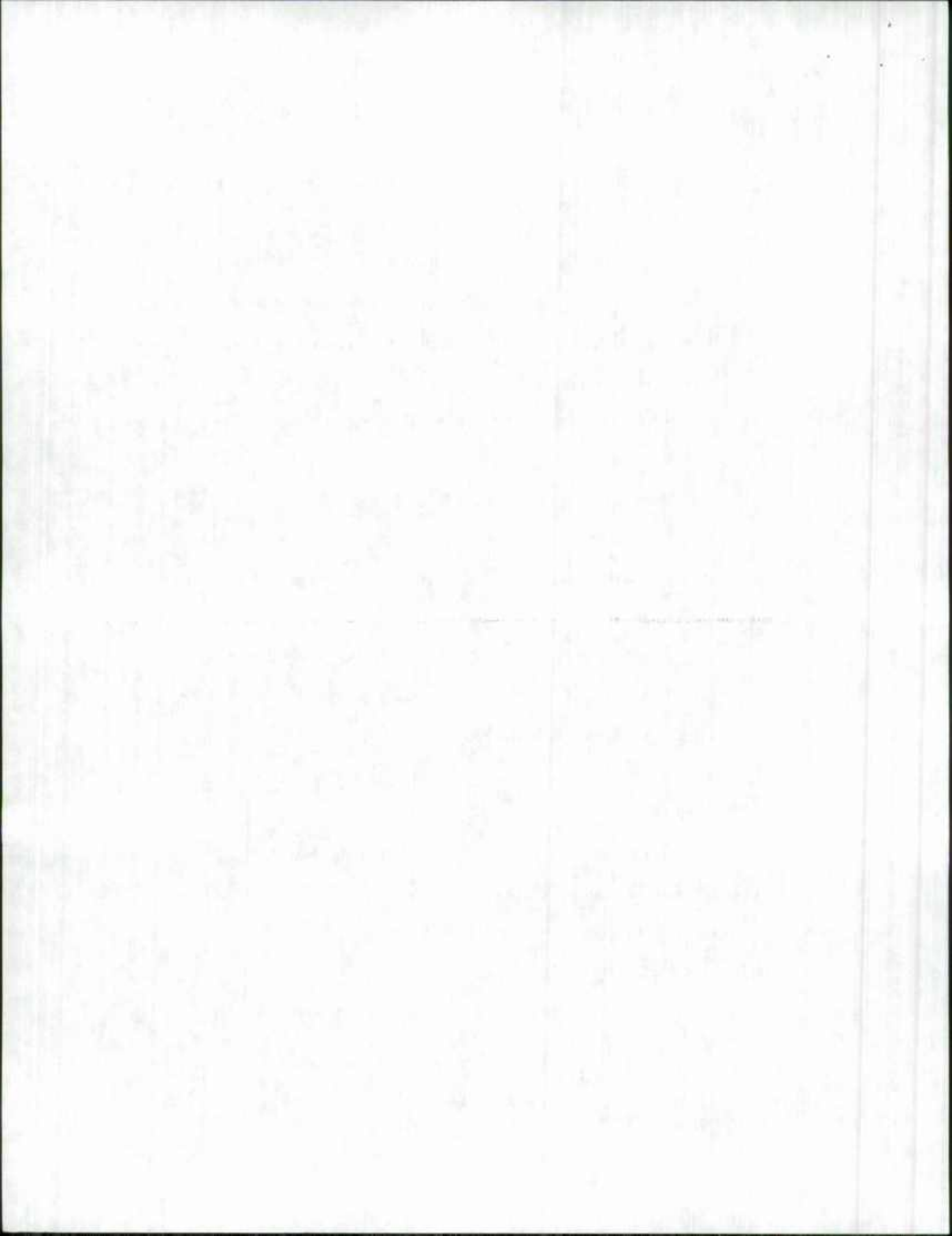
It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Applications for special exception and variances.



2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the Star-Democrat.
5. Notice of hearing with a list of nearby property owners attached thereto.
6. Copy of special exception requirements from the Code with the Applicant's response to each applicable requirement.
7. Copy of variance requirements from the Code with the Applicant's response to each applicable requirement.
8. Staff Memorandum.
9. Planning Commission comments.
10. Critical Area Commission letter, dated June 24, 2008. The Critical Area Commission did not oppose the special exception provided it was in conformance with the Code. Regarding the variance requests the Commission suggested alternative approaches or several conditions should the variance requests be granted. The Commission did not appear at the hearing on the matter.
11. Sign maintenance agreement.
12. Site plan.
13. Minutes from Board of Appeals on July 12, 1982, Appeal No. 482.
14. Letter from Michele La Rocca, dated June 24, 2008.
15. Letter from Bobby Marshall, dated June 25, 2008.
16. Letter from Levin Harrison, IV, dated July 7, 2008.
17. Letter from Levin Harrison, IV, dated July 7, 2008, on Council letterhead.



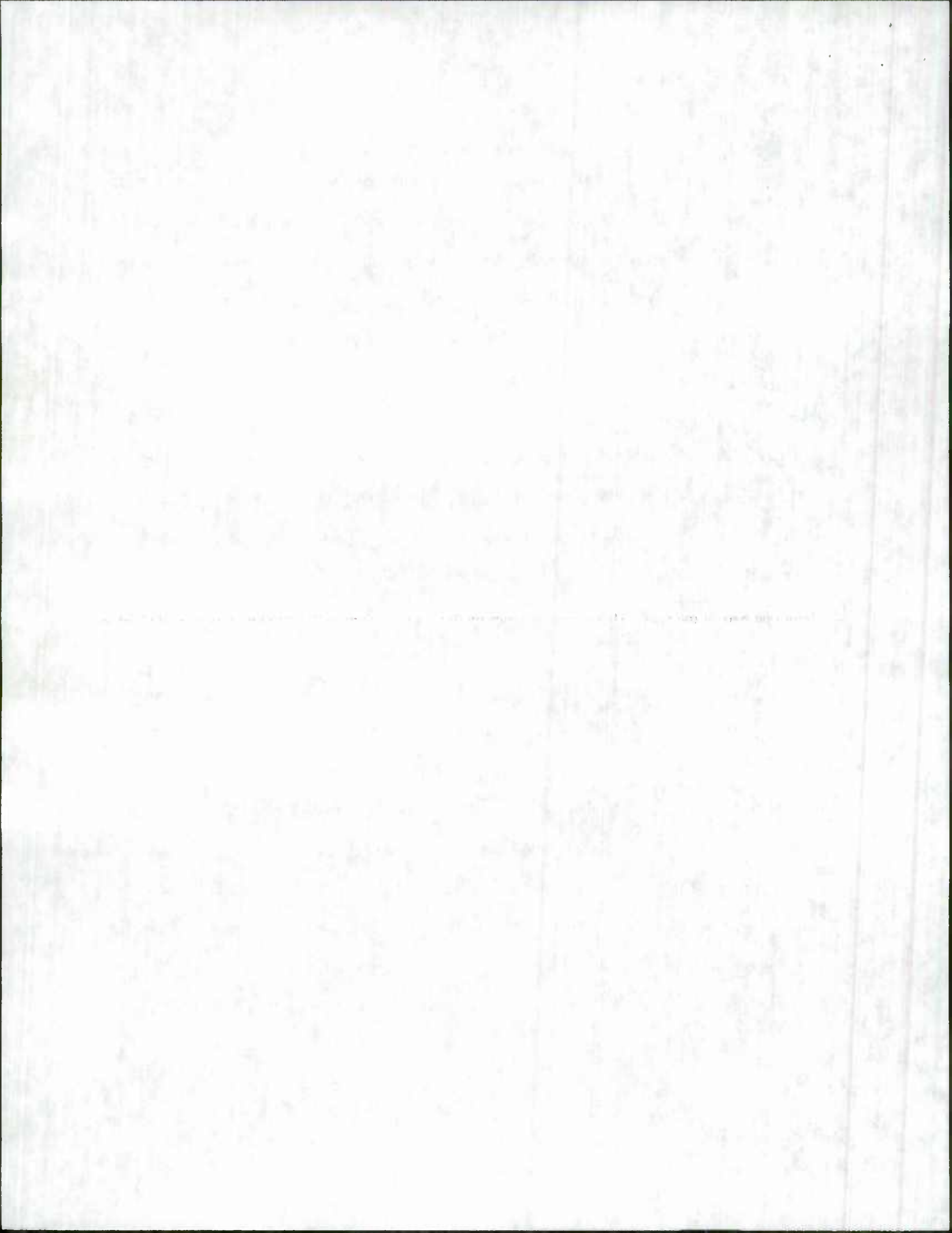
In his opening statement Mr. Thompson said that this appeal was the result of a noise complaint from a competitor about outdoor music. Responding to the complaint the zoning inspector noted existing awnings and a deck area that appeared to have been constructed without a building permit. Mr. Thompson said the Planning Commission voted to approve the special exception request. He also said Tilghman has been changing from a fishing community to a hospitality community.

Mr. Thompson offered a copy of the cover of the December 1967 issue of *National Geographic* and a copy of an aerial photograph of Knapps Narrows included in that issue. They were admitted as Applicant's Exhibit No. 1. The building and property that became a part of the present day restaurant was in the aerial photograph. He also offered two more recent photographs of the restaurant building showing that it had previously had awnings on the Knapps Narrows side of the building. They were admitted as Applicant's Exhibit No. 2.

He said that earlier owners of the restaurant were granted a special exception for a deck in Appeal No. 290 and for an expansion of the restaurant into a screened porch area in 1982.

Mr. Thompson offered two historic photographs of the building. They were admitted as Applicant's Exhibits No. 3 and No. 4. He offered a current photograph of the deck on the side of the restaurant. It was admitted as Applicant's Exhibit No. 5. A view of the current parking lot was offered and admitted as Applicant's Exhibit No. 6. Finally, a view of the side of the restaurant showing the present day awning was offered and admitted as Applicant's Exhibit No. 7.

The first witness was Tom Lane, Lane Engineering, Inc., P.O. Box 1767, Easton, Maryland 21601. He testified that he assisted in the 2001 subdivision of the restaurant portion of the property from other portions of the property when it was owned by Mr. Huntington. He said that other than the larger awnings the building has not been enlarged. The new deck and the awnings cover what was previously



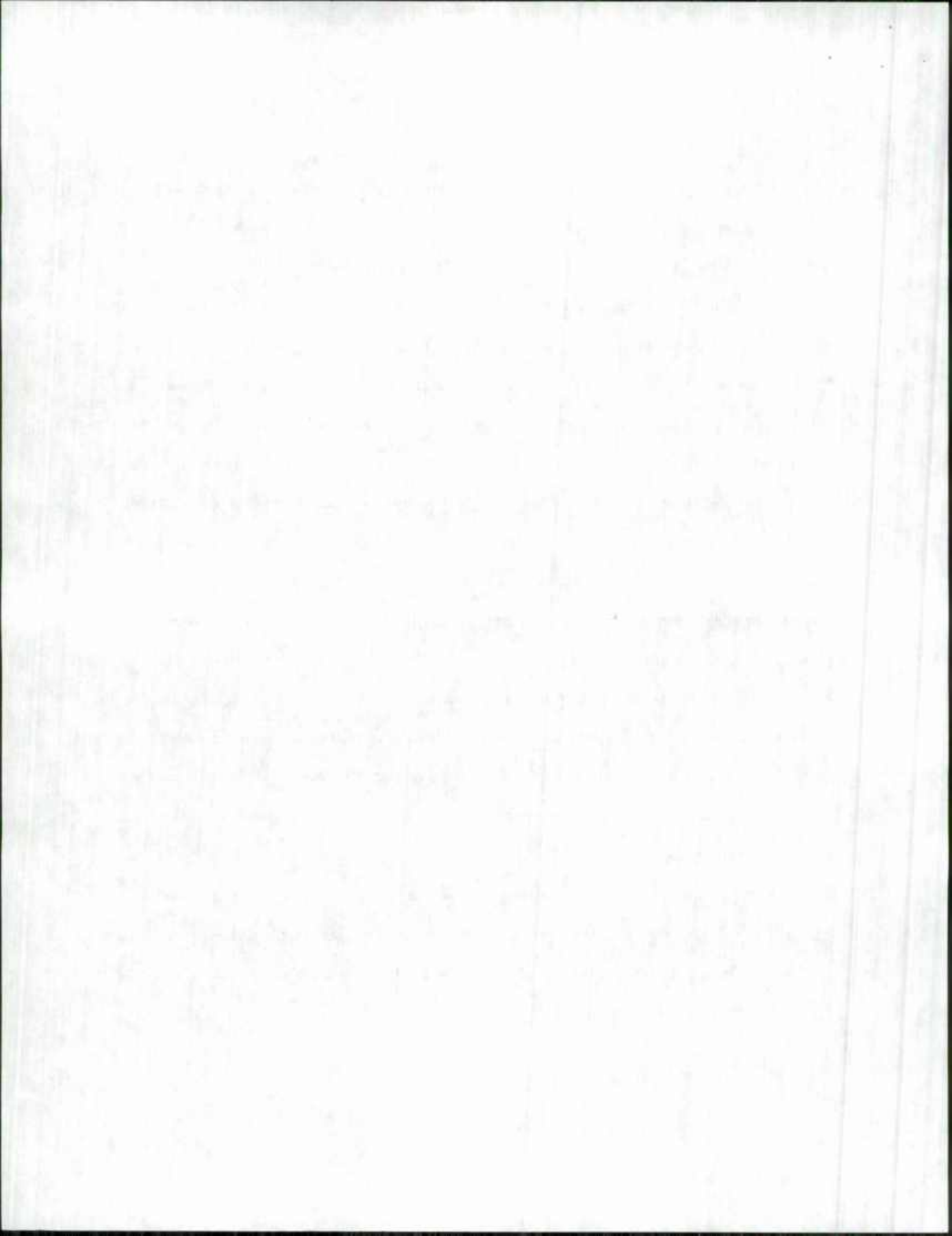
an impervious parking area. He said the 2001 subdivision required the owner to pay compensation in lieu of reforestation. He said the deck and awnings did not increase runoff from the property.

Mr. Lane said that the current use of the restaurant is consistent with the Comprehensive Plan. He recalled that the restaurant has historically had some form of outdoor seating. Outdoor seating at restaurants is a common use in the area. For example, the Bridge Restaurant across the Narrows has outdoor seating. The surrounding area is mostly commercial with little residential use. The current use of the property is compatible with other development activity in the area. The restaurant is served by a public sewer. It has no impact on traffic in the area and the restaurant does not occupy a wildlife habitat.

The next witness was James V. Monahan, 8340 Jane Lowe Road, Wittman, Maryland 21676. He testified that he was a co-owner of the restaurant from 1984 to 1997. He said that they had about 100 seats inside the restaurant during that time. He also said that they had outside seating on picnic tables about one half of the year. There were awnings on the Narrows side of the building but they were not as large as the present awnings.

Mark F. Julyan, 6176 Tilghman Island Road, Tilghman, Maryland, Manager of the Knapps Narrows Marina since 1997, testified that there have been three restaurant owners since Mr. Monahan left. There is more than adequate parking for the expanded size of the restaurant. He has never heard a complaint about the operation of the restaurant. Its operation does not detract from the value of surrounding properties.

Mr. Julyan said that each successive owner of the restaurant has expanded the outside seating capacity of the restaurant. Each owner has had outdoor seating with some form of shading for the tables and seats. He said that the present owner was told by the Planning and Zoning Office that a building permit was not required for the awning.



The next witness was the present owner of the restaurant, Mark Cheu, 6178 Tilghman Island Road, Tilghman, Maryland. Mr. Cheu said he has owned the restaurant since December 1, 2007, but he was working there eight months before then. He said that the current awning replaces the existing awning and the deck replaced an existing small wooden platform. He said he upgraded the tables and seats. The number of tables is the same but there are additional seats. He said the restaurant can accommodate up to about 250 patrons but he has never had that many at one time.

Thomas Geary, 21752 Camper Circle, Tilghman, Maryland 21672, testified in support of the application. He said that it is nice to have an outdoor restaurant in the area and the Bay Hundred Restaurant has been a good neighbor.

William Fish, 9340 Macks Lane, McDaniel, Maryland, testified in support of the application. He said that he has run a charter boat in business for 21 years and his customers often patronize the Bay Hundred Restaurant. He said that the current owner has done an excellent job in improving the restaurant and the improvements have helped his charter business.

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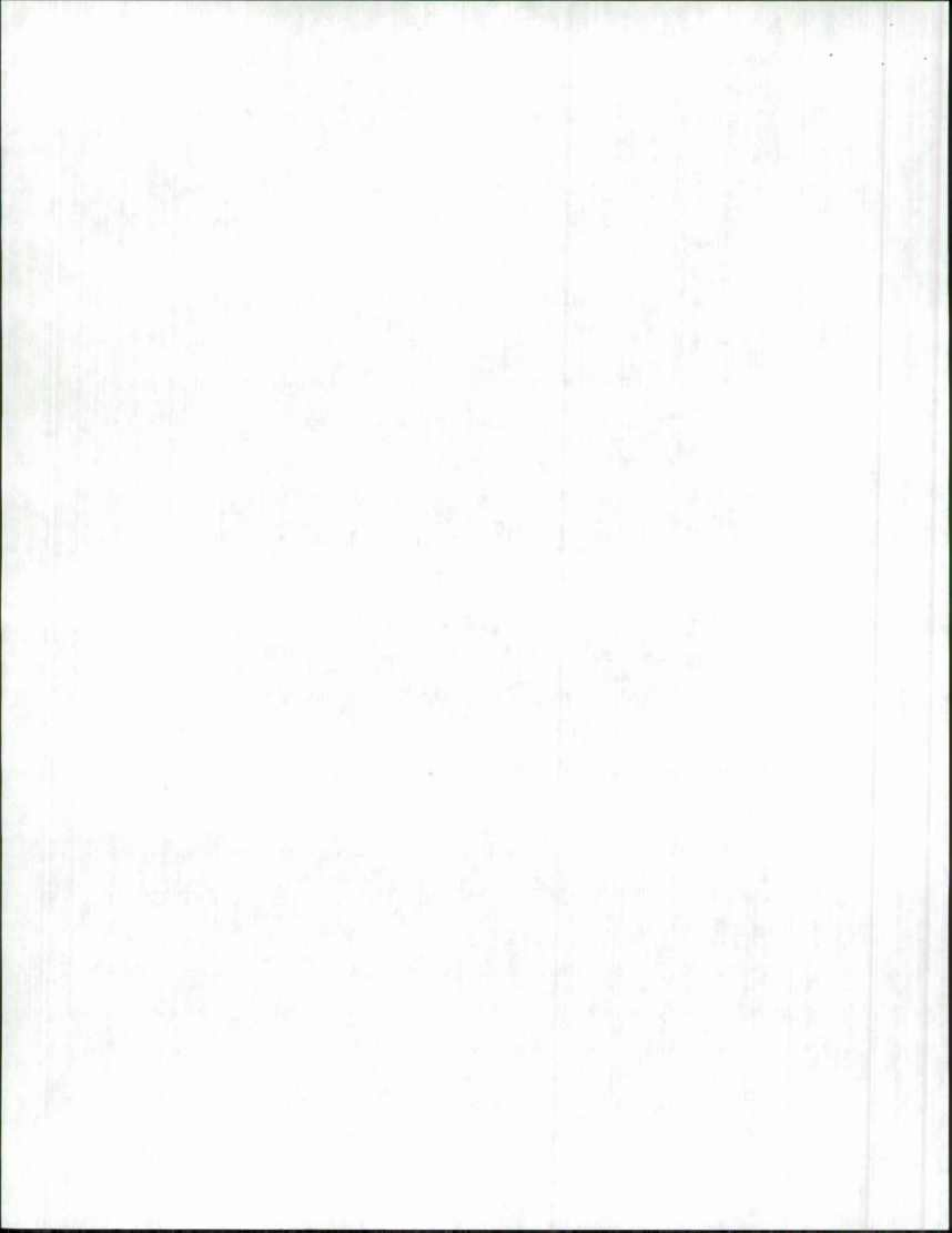
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Tom Lane said that there was a deck along the bulkhead and that the new decking crosses the property line between the restaurant property and neighboring property.

Thereafter there was a short discussion among Board members relating to the various aspects of the application. At the suggestion of a Board member the Board voted to meet in executive session with the Board's counsel to discuss certain legal issues raised by the application. The executive session lasted from 9:30 p.m. to 9:45 p.m. after which the Board again met in open session to discuss the merits of the application.

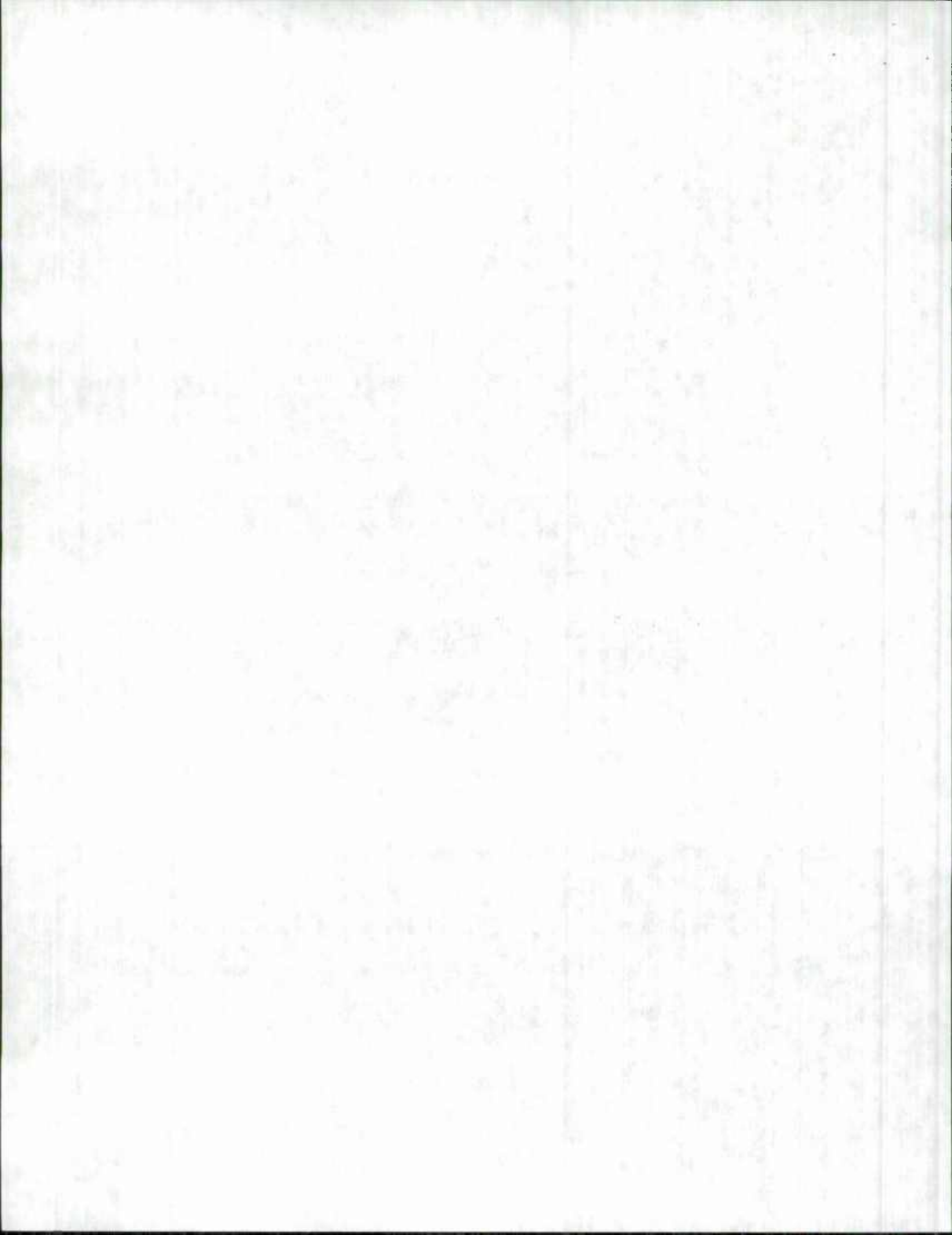
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the special exception. Mr. Shortall said that approval of the special exception should include an upper limit of 275 on the seating capacity of the restaurant.

Upon motion duly made and seconded, the Board made the following findings of fact and law in regarding the requested special exception:

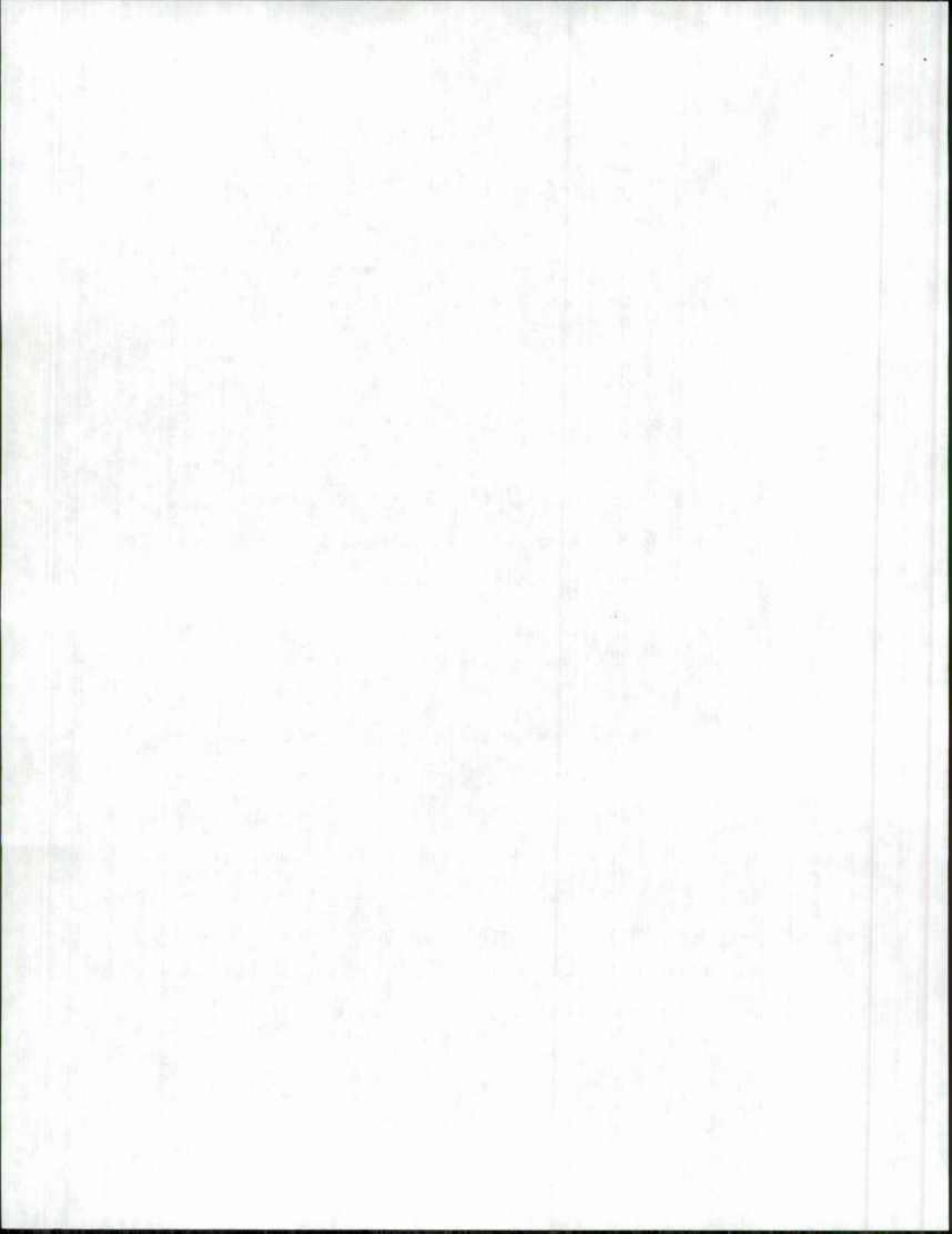
1. All legal requirements pertaining to a public meeting were met.
2. The proposed use is consistent with the purposes and intent of the Talbot County Comprehensive Plan and complies with the standards of the land use district in which it is located. The restaurant, like many other restaurants in Tilghman and other waterfront areas of the County, relies on outdoor seating during times of favorable weather.
3. The proposed use is designed to be compatible in terms of scale, bulk and general appearance with adjacent land uses and with existing and potential uses in its general area.
4. The proposed use provides for the avoidance of significant adverse impacts on the surrounding area with regard to trash, odors, noise, glare, vibration, air and water pollution and other health and safety factors or environmental disturbances. Part of the surrounding area is commercial but a residential area exists on the opposite side of Tilghman Island Road. This condition is only met so long as the Applicant continues its policy of no outdoor music as well as taking steps to avoid other adverse and offensive impacts on the surrounding area.
5. The proposed use is compatible with the pattern of existing developed land use in the vicinity and will not be detrimental to the use, peaceful enjoyment, or economic value of existing neighboring property.



6. The proposed use would not be such as to create a nuisance to other properties in the vicinity, or their occupants, nor would it be a hazard to public health, safety or welfare.
7. The proposed use would not have a significant adverse impact on public facilities of services including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services.
8. The proposed use would not have a significant adverse effect upon marine, pedestrian, or vehicular traffic.
9. The proposed use should not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County.
10. Vehicle access to off-street parking areas and drive-in facilities are designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic will not use a residential street or create a hazard to a developed residential area.
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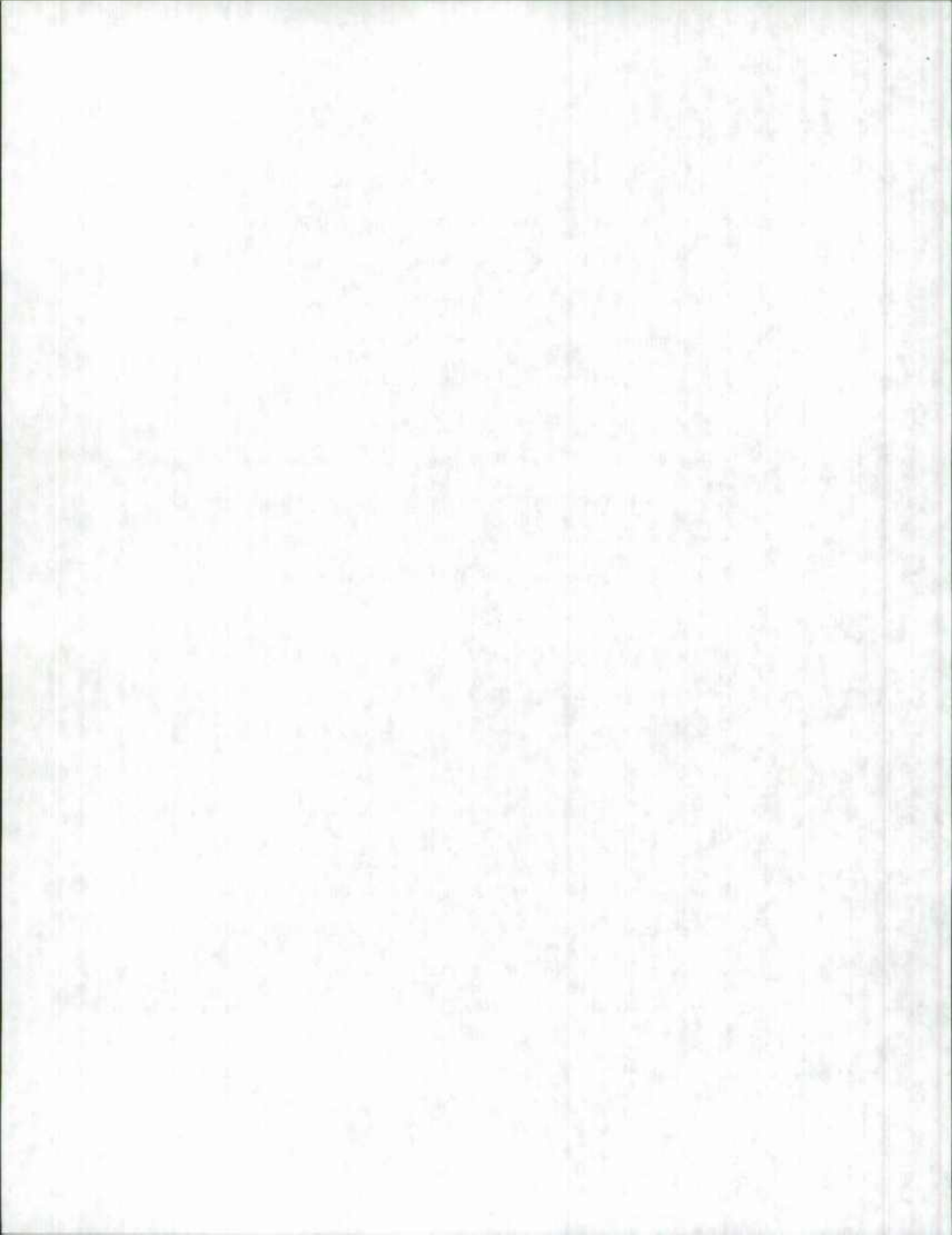
The vote was five to zero to approve the requested amendment to the special exception consistent with the evidence presented to the Board of Appeals. The seating capacity shall not exceed 275 seats.

The Board then considered the request for a variance for the decking. Upon motion made and seconded the Board made the following findings with regard to the decking:



1. There are special conditions or circumstances that are peculiar to the land or structure such that a literal enforcement of the Code would result in an unwarranted hardship to the property owner. The decking covers what was previously paved or graveled areas and adds no additional impervious surfaces. It has no additional impact on the buffer but it does improve the comfort and safety of customers and staff
2. A literal interpretation of the Ordinance would deprive the owner of rights commonly enjoyed by other property owners in the same zone.
3. The granting of the variance will not confer upon the property owner a special privilege that would be denied by the Code to other owners of lands in the same zone.
4. The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
5. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for a variance.
6. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.
7. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variance will be in harmony with the general intent of the Critical Area Law, the Talbot County Critical Area Program and the Critical Area provisions of the Code.

The vote was five to zero to approve the requested variance for the decking. The Applicant shall obtain proper permits for the decking and provide for mitigation at a ratio of 3:1 for the development activity completed without proper permits.



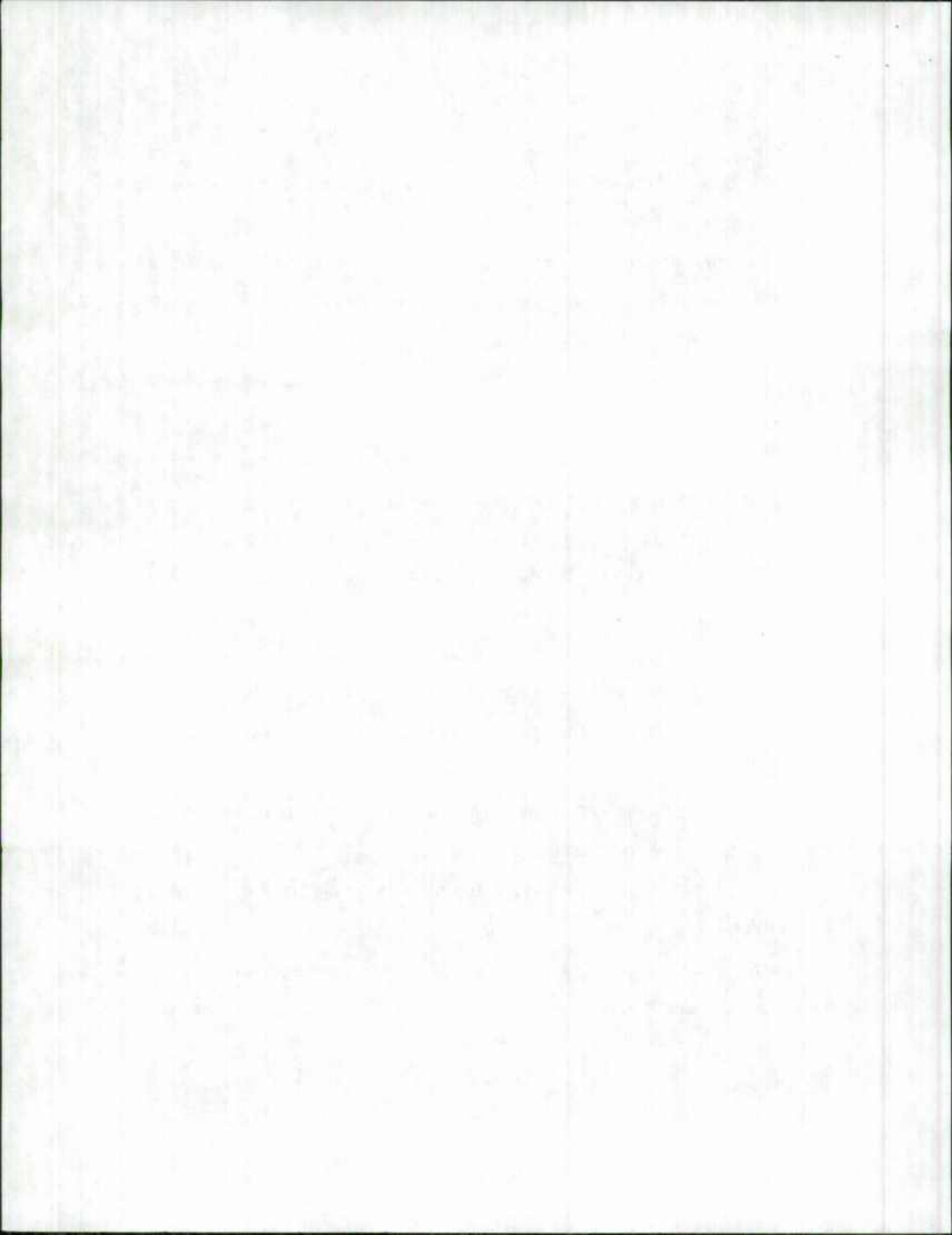
The Board then considered the request for a variance for the awning. Upon motion made and seconded the Board made the following findings:

1. The Board could not find from the evidence presented that there were special conditions or circumstances such that a literal enforcement of the provisions of the Code would result in an unwarranted hardship to the property owner. Rather than replace the previously installed awnings the new coverings over the outdoor dining areas are more permanent structures actually extending or enlarging the restaurant building.
2. A literal interpretation of the Code will not deprive the property owner of rights commonly enjoyed by other property owners in the same zone.
3. A granting of the variance would confer upon the property owner a special privilege that would be denied by the Code to other owners of lands or structures within the same zone.
4. The variance request is base on conditions or circumstances which are the result of actions by the property owner. The owner installed structural canopies covering a much larger area than the previously installed temporary awnings.

The vote of the Board was five to zero to deny the requested variance for the new awnings (or canopies).

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **BAY HUNDRED RESTAURANT, INC.** (Appeal No. 1493) is **GRANTED** the requested special exception consistent with the evidence presented to the Board of Appeals; **GRANTED** the requested variance for the decking consistent with the evidence presented to the Board of Appeals; and **DENIED** the requested variance for the awnings, all by vote as previously noted.



The special exception and variance granted by this Decision are for "after the fact" actions taken by the Applicant.

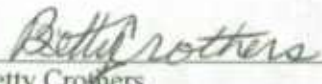
GIVEN OVER OUR HANDS, this 11th day of September, 2008.

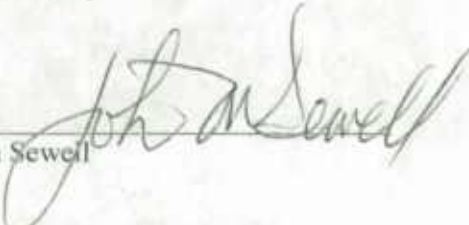
TALBOT COUNTY BOARD OF APPEALS


Paul Shortall, Jr., Chairman

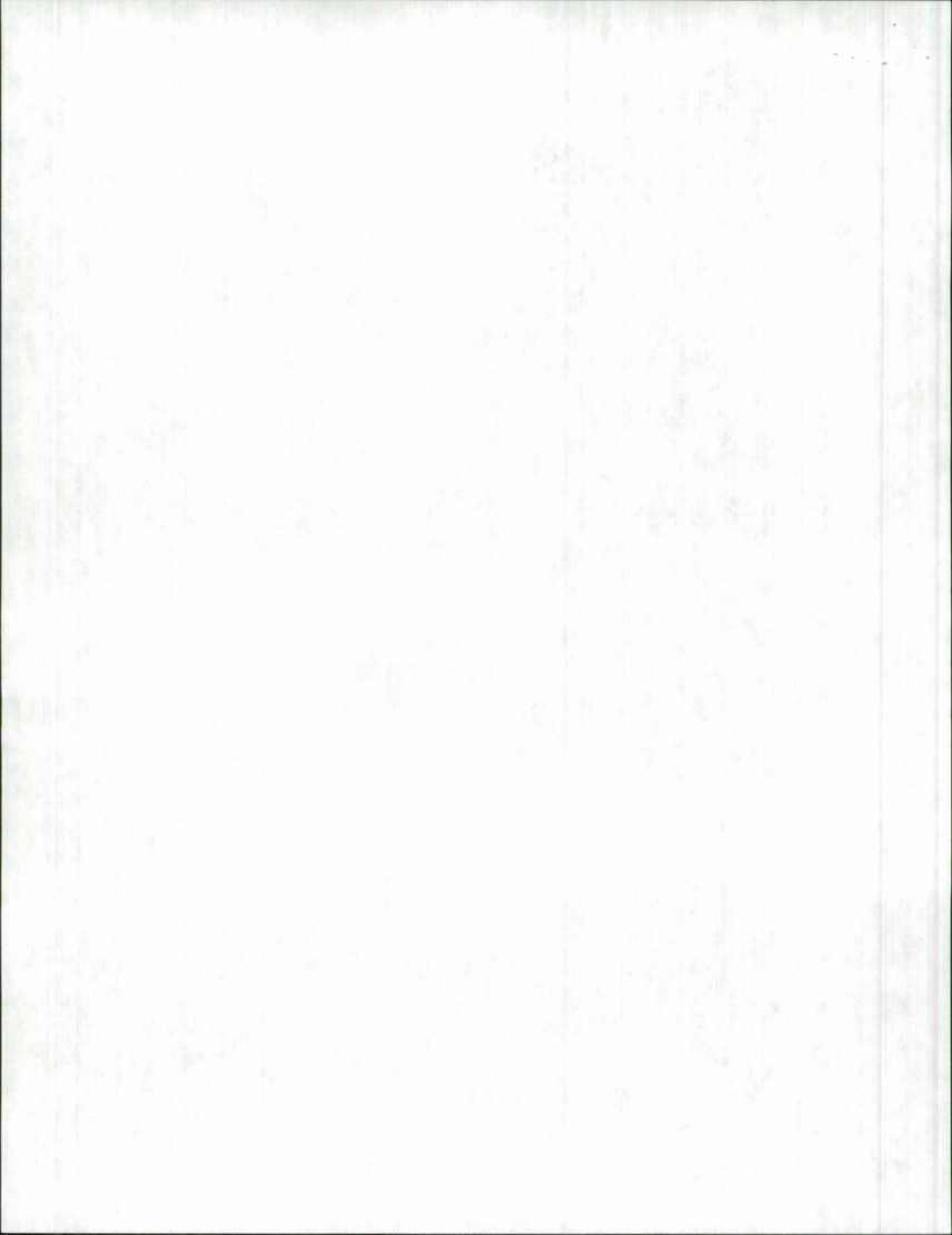

Phillip Jones, Vice Chairman

Unavailable for Signature
Rush Moody


Betty Crothers


John Sewell

Board of Appeals/1493.BayHundredRestaurantVarianceSpecialExceptionCA





TALBOT COUNTY BOARD OF APPEALS

28712 GLEBE ROAD, SUITE 2
EASTON, MARYLAND 21601

PHONE: 410-770-8040

FAX: 410-770-8043
TTY: 410-822-8735

October 3, 2008

Critical Area Commission
Attn: Nick Kelly
1804 West Street
Annapolis, MD 21401

RE: **Notice of Judicial Review**
Board of Appeals Case No. 1493
Bay Hundred Restaurant, Inc., Vs. Talbot County Board of Appeals

Dear Mr. Kelly,

Pursuant to Maryland Rule 7-202 (d) (3) you are hereby notified that on September 22, 2008 a Petition for Judicial Review was filed in the Circuit Court of Talbot County and assigned Civil Action No. 20-C-08-006476.

A party wishing to oppose the Petition must file a Response within 30 days after the date of this notice unless the Court shortens or extends the time.

Sincerely,
Talbot County Board of Appeals

Chris Corkell
Administrative Assistant

c: Michael Pullen, County Attorney



CIRCUIT COURT FOR TALBOT COUNTY

Mary Ann Shortall

Clerk of the Circuit Court

11 N. Washington Street

Suite 16

Easton, MD 21601

(410)-822-2611, TTY for Deaf: (410)-819-0909

MD Toll Free (1-800)339-3403 Fax (410)820-8168 Assignment Ofc (410)770-6809

CASE NUMBER: 20-C-08-006476 AA

Bay Hundred Restaurant, Inc Vs Talbot County Board Of Appeals

Talbot County Board Of Appeals
111 N. Washington Street
Easton MD 21601

NOTICE TO ADMINISTRATIVE AGENCY
OF JUDICIAL REVIEW

RECEIVED
SEP 24 2008

3:00 P.M.

You are advised that a petition for judicial review was filed on 09/22/2008 and assigned Civil Action No. 20-C-08-006476.

Pursuant to Maryland Rule 7-202(d)(1), a copy of the petition is enclosed for the agency.

Date Issued: 09/23/08

Mary Ann Shortall

Mary Ann Shortall
Clerk of the Circuit Court
of Talbot County



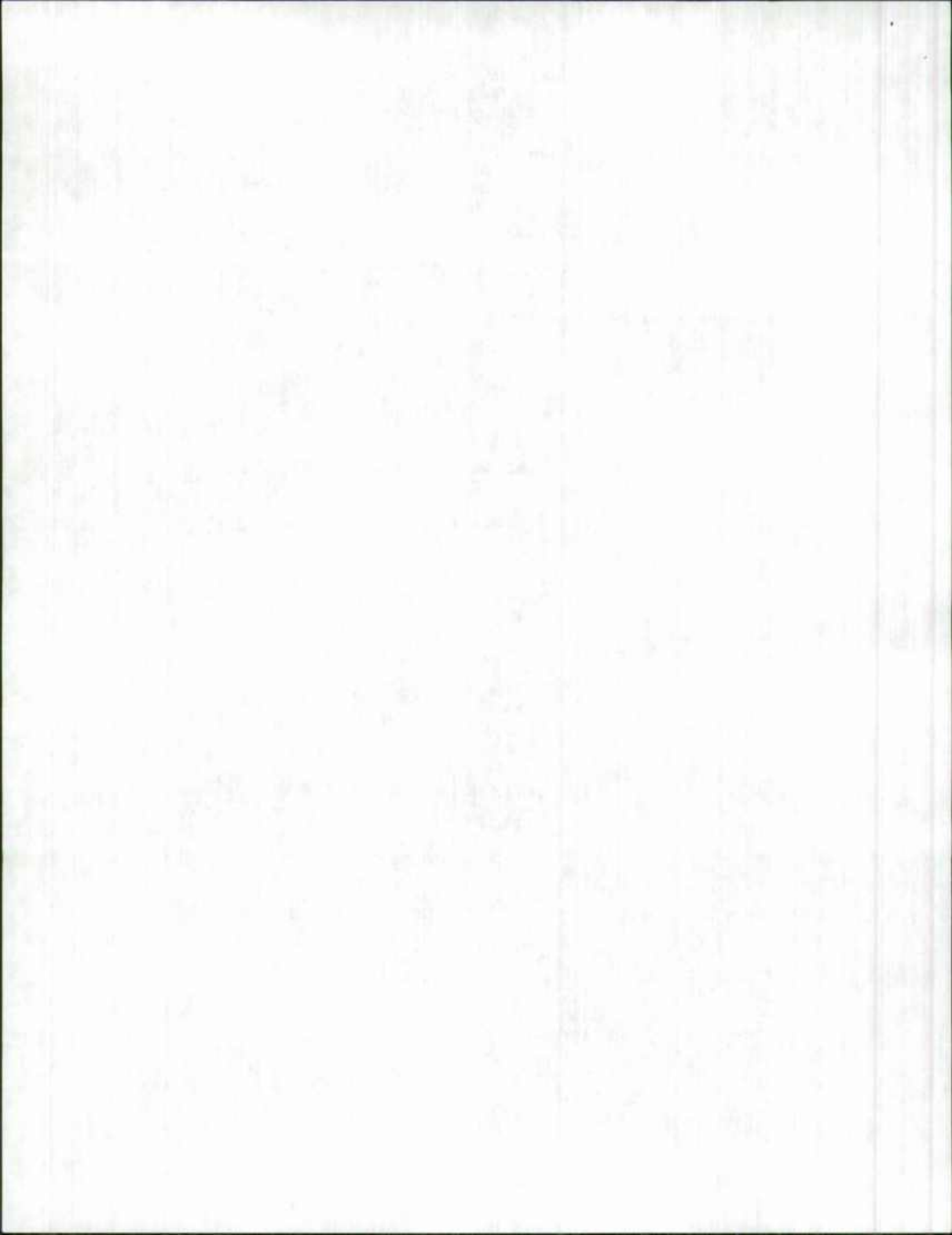
PLEASE DATE, SIGN AND RETURN TO THE COURT THE COPY OF THIS NOTICE

DATE RECEIVED:

Sept. 24, 2008

SIGNATURE:

Christina Gubel





IN THE CIRCUIT COURT FOR TALBOT COUNTY, MARYLAND

PETITION OF: *
BAY HUNDRED RESTAURANT, INC. *
6178 Tilghman Island Road, *
Tilghman, Maryland 21671 *

JUDICIAL REVIEW OF THE *
DECISION OF THE TALBOT COUNTY *
BOARD OF APPEALS *
111 N. Washington Street, *
Easton, Maryland 21601 *

IN THE CASE OF THE DECISIONS OF *
THE TALBOT COUNTY *
BOARD OF APPEALS IN BOARD *
OF APPEALS, CASE NO. 1493 *
REGARDING A SPECIAL EXCEPTION *
AND VARIANCES FOR *
BAY HUNDRED RESTAURANT, INC. *

* * * * *

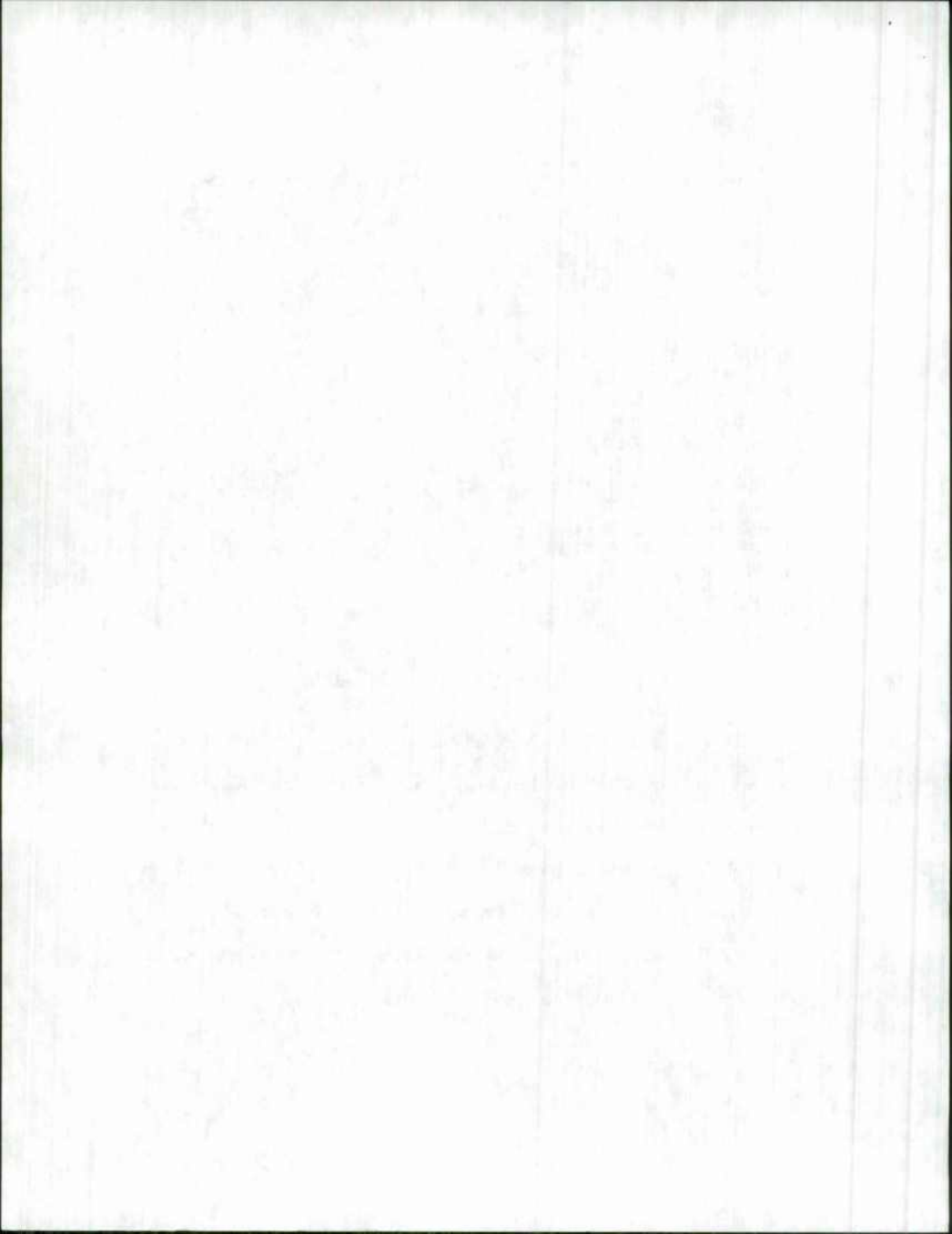
CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2008 SEP 22 PM 4 12

20C08-006476

PETITION FOR JUDICIAL REVIEW

Bay Hundred Restaurant, Inc., a Maryland corporation, by counsel, David R.
Thompson, Brynja M. Booth, and Derrick H. Dye, Cowdrey Thompson, P.C., pursuant to
Maryland Rule 7-202, files this Petition for Judicial Review of the Talbot County Board
of Appeals decisions in the above-referenced matter. The Board of Appeals rendered an
oral decision on July 7, 2008, and issued its written decision on September 11, 2008.

Bay Hundred Restaurant, Inc. respectfully requests judicial review of the attached
written decision of the Talbot County Board of Appeals.





David R. Thompson

Brynja M. Booth

Derrick H. Dye

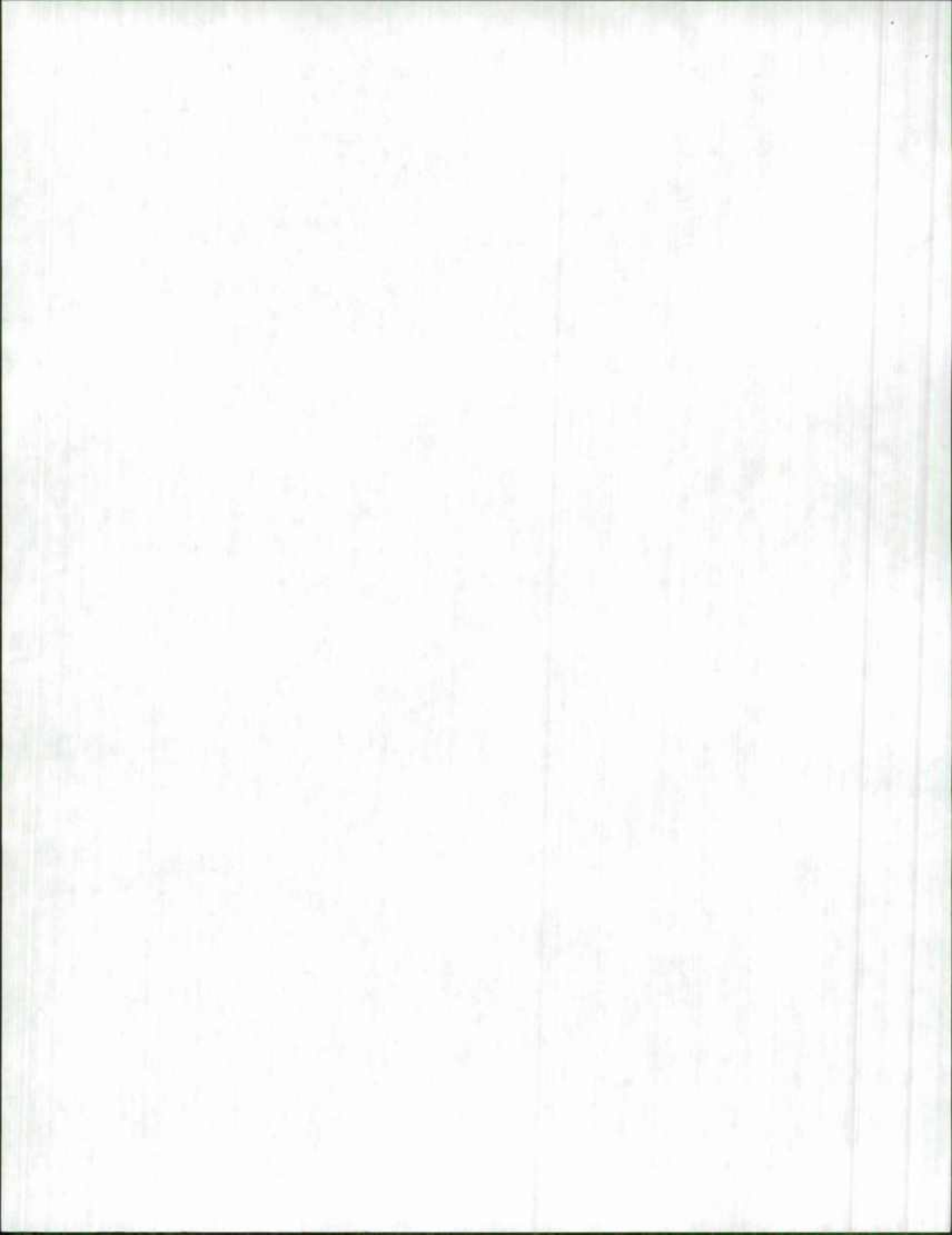
Cowdrey Thompson, P.C.

130 N. Washington Street,

Easton, MD 21601

(410) 822-6800

Attorneys for Bay Hundred Restaurant, Inc.



DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 1493

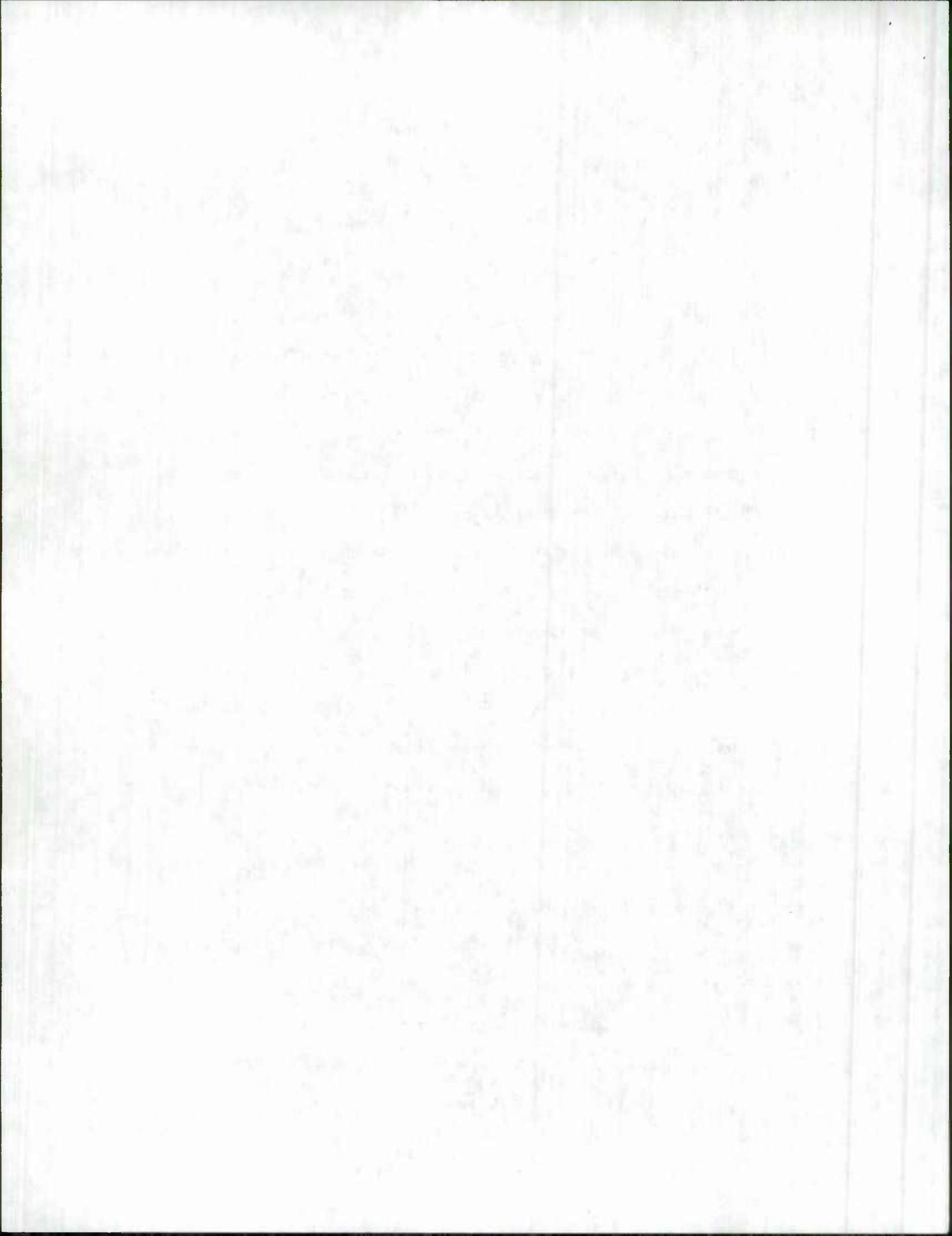
Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., July 7, 2008, on the application of **BAY HUNDRED RESTAURANT, INC.** ("Applicant"). The Applicant is seeking a special exception to authorize seasonal seating at the restaurant in excess of 100 seats and to permit the seasonal outdoor service bar, grill, and outdoor crab steaming to the extent these uses and accessory structures are considered expansion of a special exception use. In addition, the Applicant is requesting three variances from the 100-foot shoreline development buffer: (1) for an existing awning located on the southwest side of the restaurant with the closest point being 3.6 feet from mean high water; (2) for an existing awning located on the northwest side of the restaurant with the closest point being 25.4 feet from mean high water; and (3) for an existing wood deck on the northwest side of the building located 5.2 feet from mean high water at the closest point. The property is located at 6176 Tilghman Island Road, Tilghman, Maryland 21672. It is in the Village Center/Critical Area (VC/CA) zone. The property owner is Back Creek II, LLC. The request is made in pursuant to Chapter 190 Zoning, Article X, §190-61D3 and Article XIV, §190-104 and §190-105E of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Rush Moody, Betty Crothers, and John Sewell. The Applicant was represented by David R. Thompson, Esquire, P.O. Box 1747, Easton, Maryland 21601. Glenn D. Klakring was the attorney for the Board of Appeals.

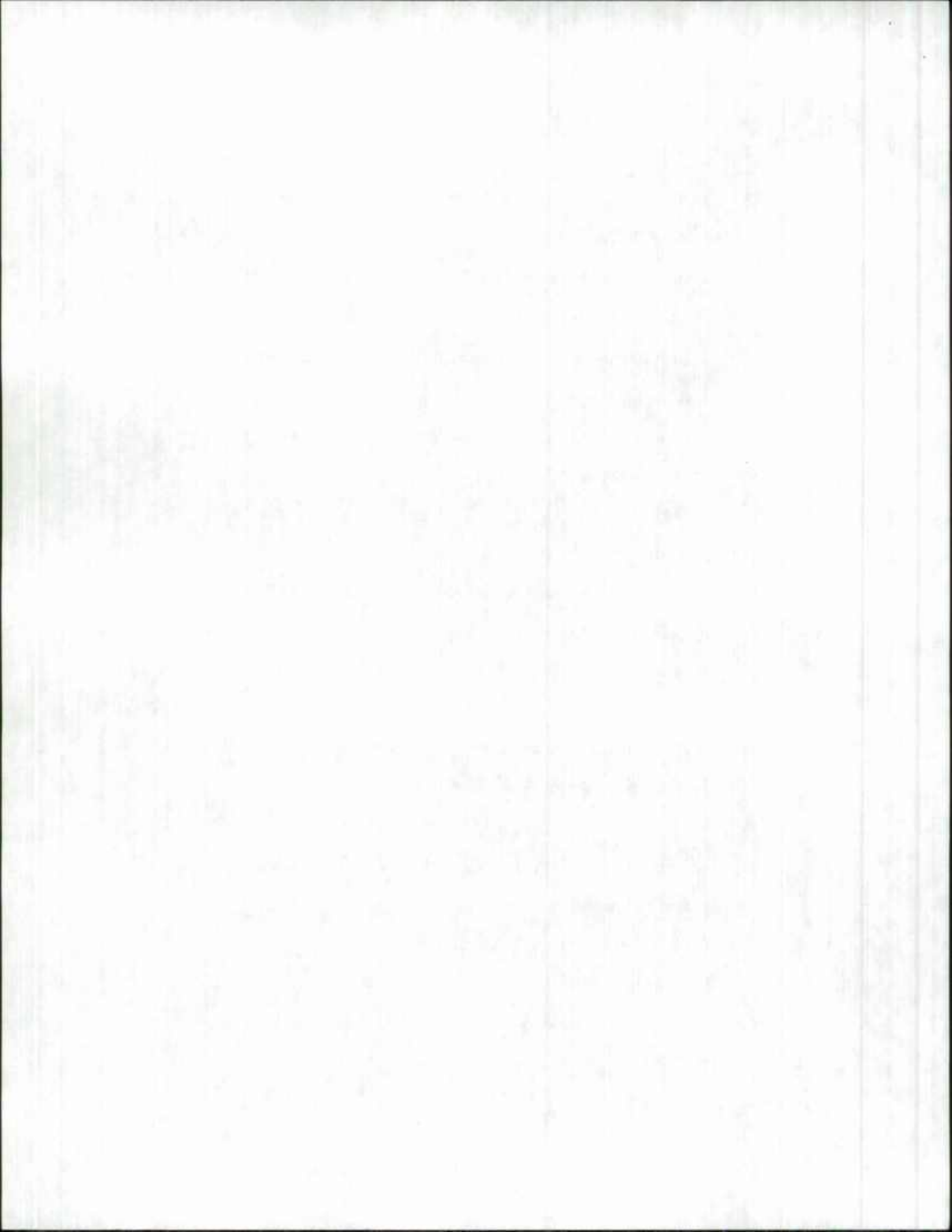
It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Applications for special exception and variances.



2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the Star-Democrat.
5. Notice of hearing with a list of nearby property owners attached thereto.
6. Copy of special exception requirements from the Code with the Applicant's response to each applicable requirement.
7. Copy of variance requirements from the Code with the Applicant's response to each applicable requirement.
8. Staff Memorandum.
9. Planning Commission comments.
10. Critical Area Commission letter, dated June 24, 2008. The Critical Area Commission did not oppose the special exception provided it was in conformance with the Code. Regarding the variance requests the Commission suggested alternative approaches or several conditions should the variance requests be granted. The Commission did not appear at the hearing on the matter.
11. Sign maintenance agreement.
12. Site plan.
13. Minutes from Board of Appeals on July 12, 1982, Appeal No. 482.
14. Letter from Michele La Rocca, dated June 24, 2008.
15. Letter from Bobby Marshall, dated June 25, 2008.
16. Letter from Levin Harrison, IV, dated July 7, 2008.
17. Letter from Levin Harrison, IV, dated July 7, 2008, on Council letterhead.



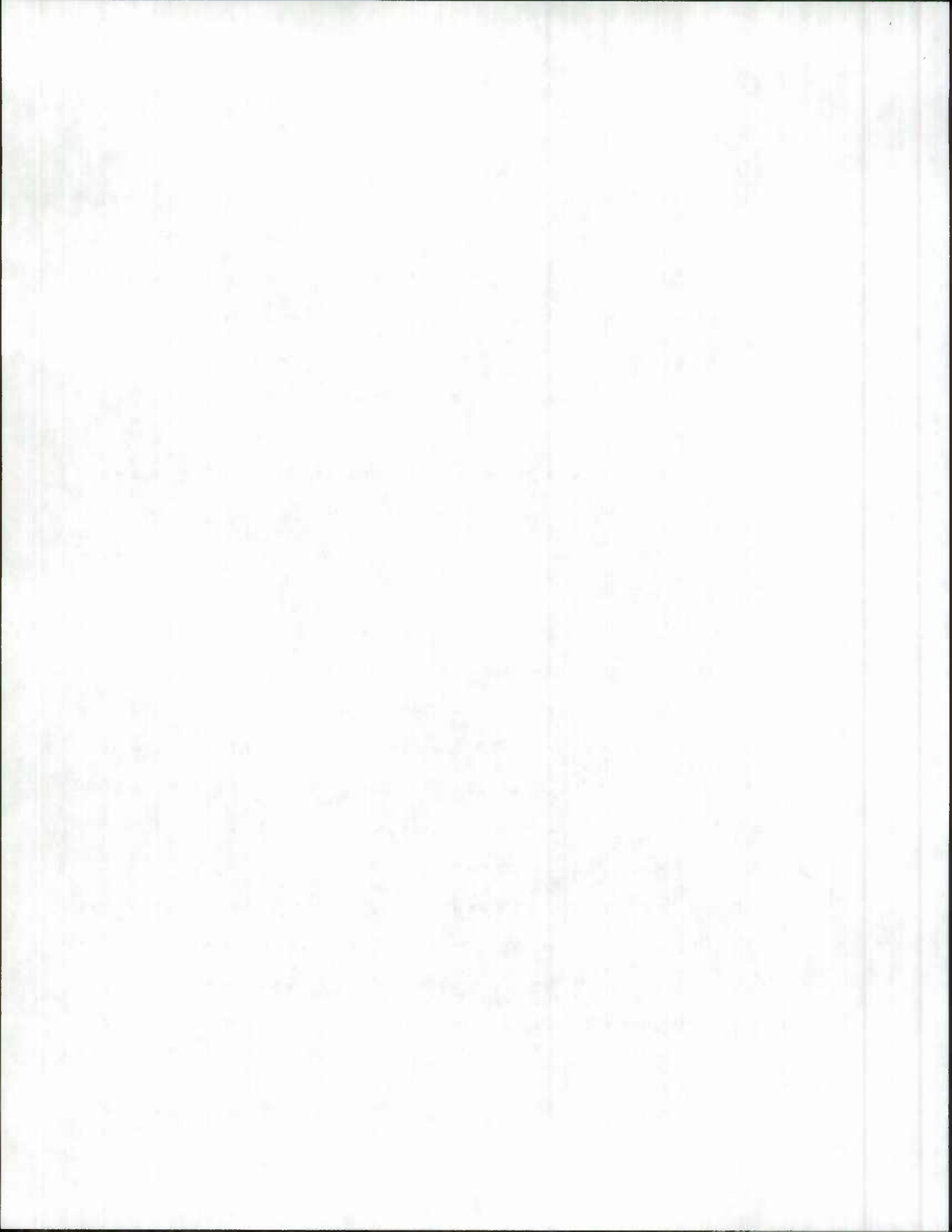
In his opening statement Mr. Thompson said that this appeal was the result of a noise complaint from a competitor about outdoor music. Responding to the complaint the zoning inspector noted existing awnings and a deck area that appeared to have been constructed without a building permit. Mr. Thompson said the Planning Commission voted to approve the special exception request. He also said Tilghman has been changing from a fishing community to a hospitality community.

Mr. Thompson offered a copy of the cover of the December 1967 issue of *National Geographic* and a copy of an aerial photograph of Knapps Narrows included in that issue. They were admitted as Applicant's Exhibit No. 1. The building and property that became a part of the present day restaurant was in the aerial photograph. He also offered two more recent photographs of the restaurant building showing that it had previously had awnings on the Knapps Narrows side of the building. They were admitted as Applicant's Exhibit No. 2.

He said that earlier owners of the restaurant were granted a special exception for a deck in Appeal No. 290 and for an expansion of the restaurant into a screened porch area in 1982.

Mr. Thompson offered two historic photographs of the building. They were admitted as Applicant's Exhibits No. 3 and No. 4. He offered a current photograph of the deck on the side of the restaurant. It was admitted as Applicant's Exhibit No. 5. A view of the current parking lot was offered and admitted as Applicant's Exhibit No. 6. Finally, a view of the side of the restaurant showing the present day awning was offered and admitted as Applicant's Exhibit No. 7.

The first witness was Tom Lane, Lane Engineering, Inc., P.O. Box 1767, Easton, Maryland 21601. He testified that he assisted in the 2001 subdivision of the restaurant portion of the property from other portions of the property when it was owned by Mr. Huntington. He said that other than the larger awnings the building has not been enlarged. The new deck and the awnings cover what was previously



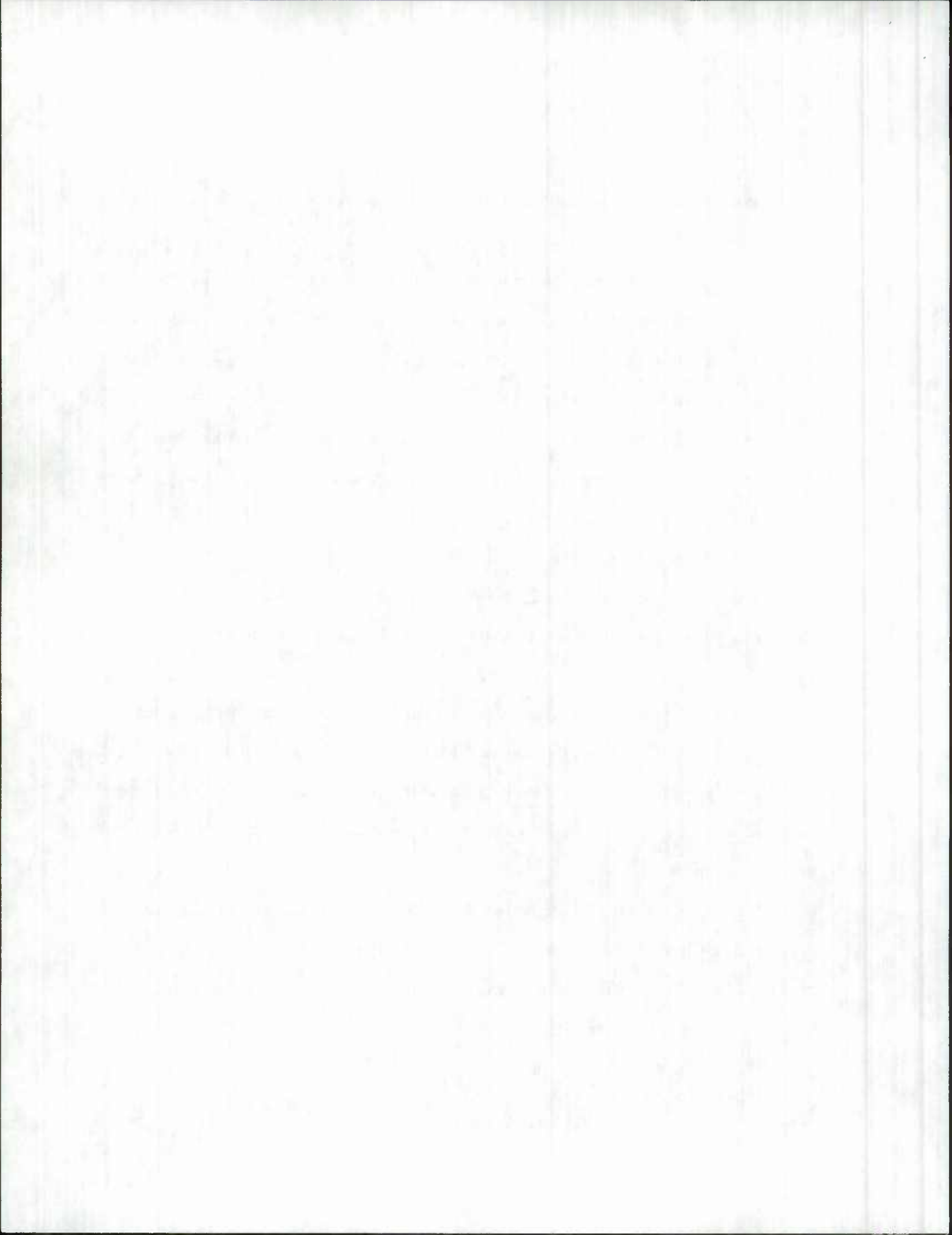
an impervious parking area. He said the 2001 subdivision required the owner to pay compensation in lieu of reforestation. He said the deck and awnings did not increase runoff from the property.

Mr. Lane said that the current use of the restaurant is consistent with the Comprehensive Plan. He recalled that the restaurant has historically had some form of outdoor seating. Outdoor seating at restaurants is a common use in the area. For example, the Bridge Restaurant across the Narrows has outdoor seating. The surrounding area is mostly commercial with little residential use. The current use of the property is compatible with other development activity in the area. The restaurant is served by a public sewer. It has no impact on traffic in the area and the restaurant does not occupy a wildlife habitat.

The next witness was James V. Monahan, 8340 Jane Lowe Road, Wittman, Maryland 21676. He testified that he was a co-owner of the restaurant from 1984 to 1997. He said that they had about 100 seats inside the restaurant during that time. He also said that they had outside seating on picnic tables about one half of the year. There were awnings on the Narrows side of the building but they were not as large as the present awnings.

Mark F. Julyan, 6176 Tilghman Island Road, Tilghman, Maryland, Manager of the Knapps Narrows Marina since 1997, testified that there have been three restaurant owners since Mr. Monahan left. There is more than adequate parking for the expanded size of the restaurant. He has never heard a complaint about the operation of the restaurant. Its operation does not retract from the value of surrounding properties.

Mr. Julyan said that each successive owner of the restaurant has expanded the outside seating capacity of the restaurant. Each owner has had outdoor seating with some form of shading for the tables and seats. He said that the present owner was told by the Planning and Zoning Office that a building permit was not required for the awning.



The next witness was the present owner of the restaurant, Mark Cheu, 6178 Tilghman Island Road, Tilghman, Maryland. Mr. Cheu said he has owned the restaurant since December 1, 2007, but he was working there eight months before then. He said that the current awning replaces the existing awning and the deck replaced an existing small wooden platform. He said he upgraded the tables and seats. The number of tables is the same but there are additional seats. He said the restaurant can accommodate up to about 250 patrons but he has never had that many at one time.

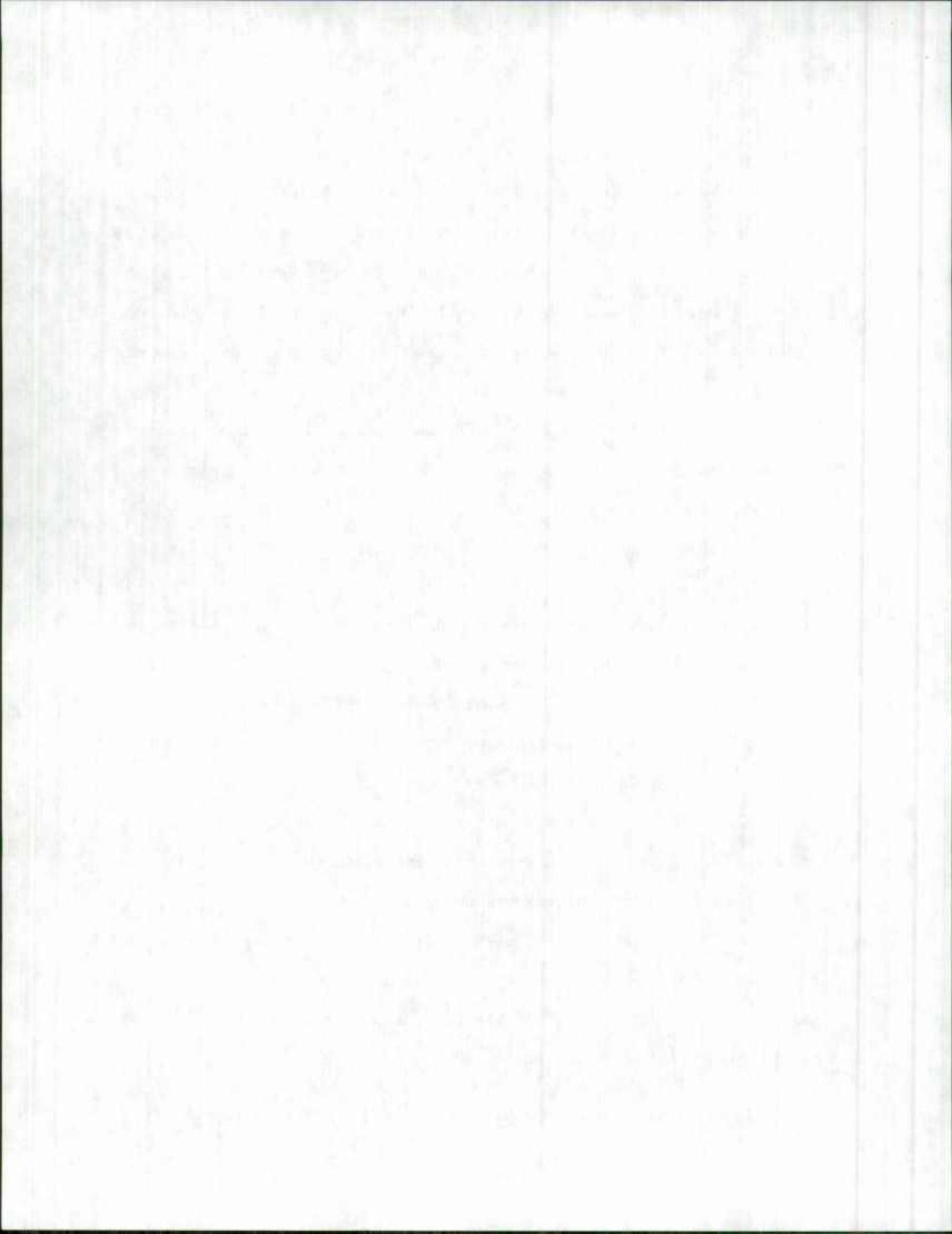
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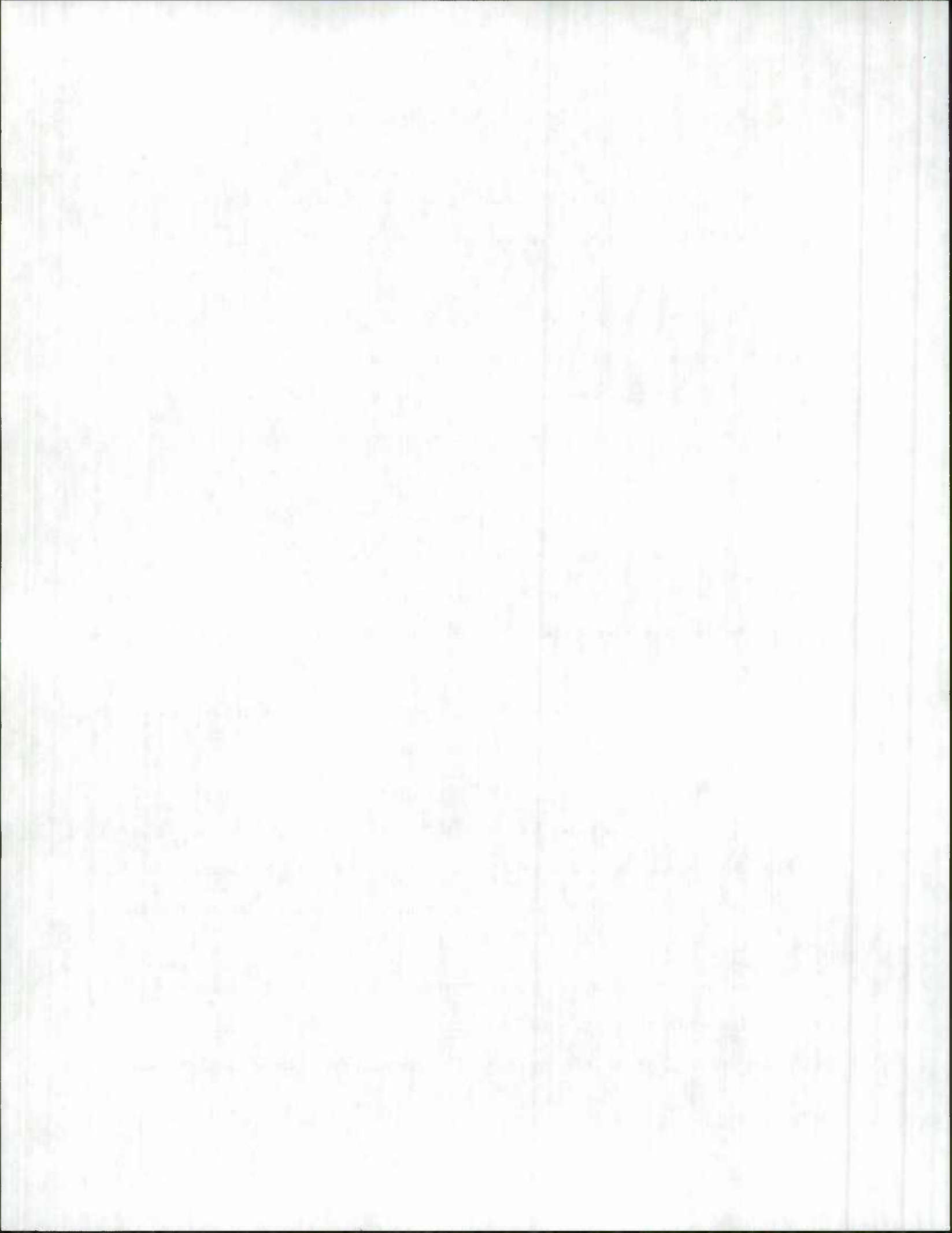
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Thereafter there was a short discussion among Board members relating to the various aspects of the application. At the suggestion of a Board member the Board voted to meet in executive session with the Board's counsel to discuss certain legal issues raised by the application. The executive session lasted from 9:30 p.m. to 9:45 p.m. after which the Board again met in open session to discuss the merits of the application.

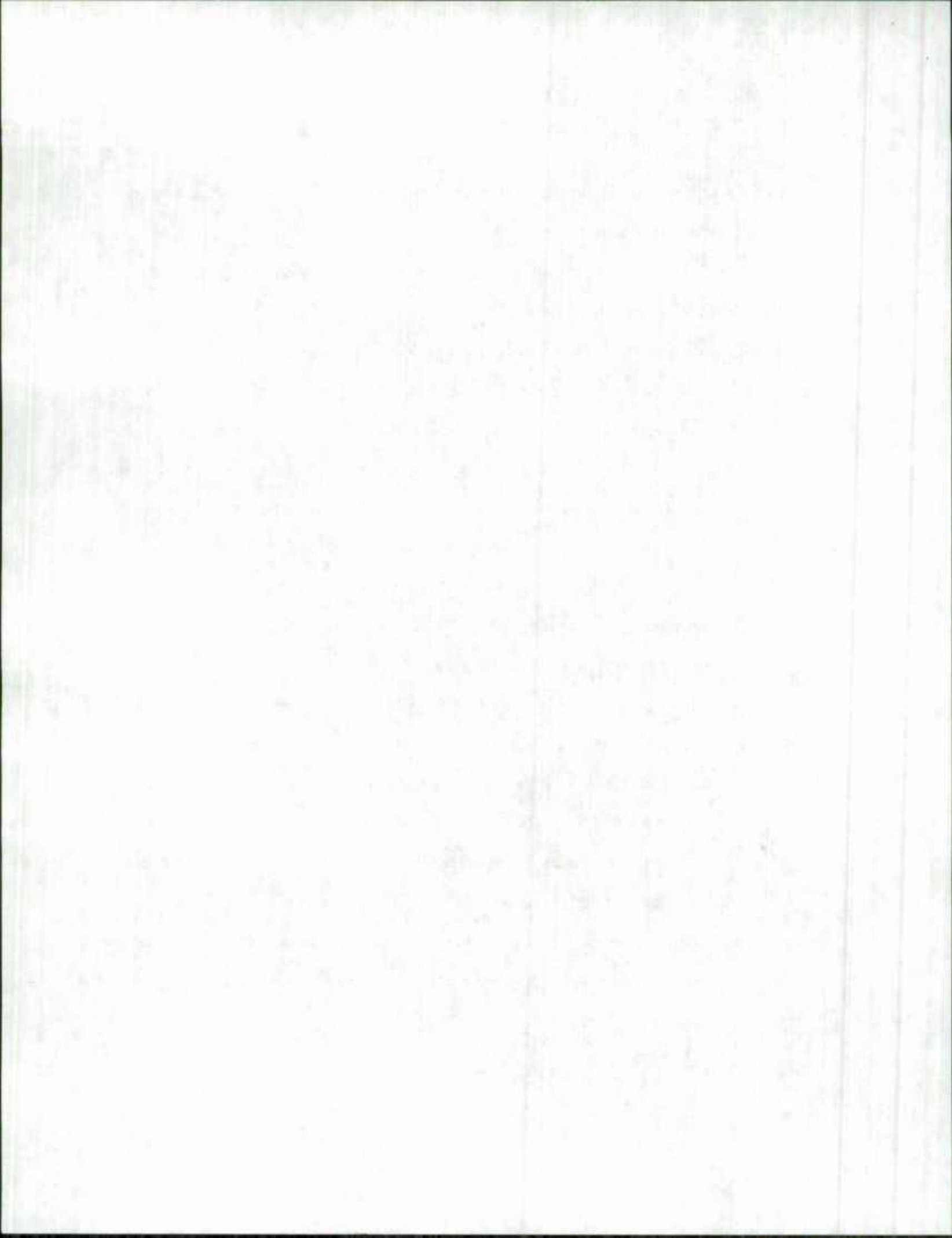
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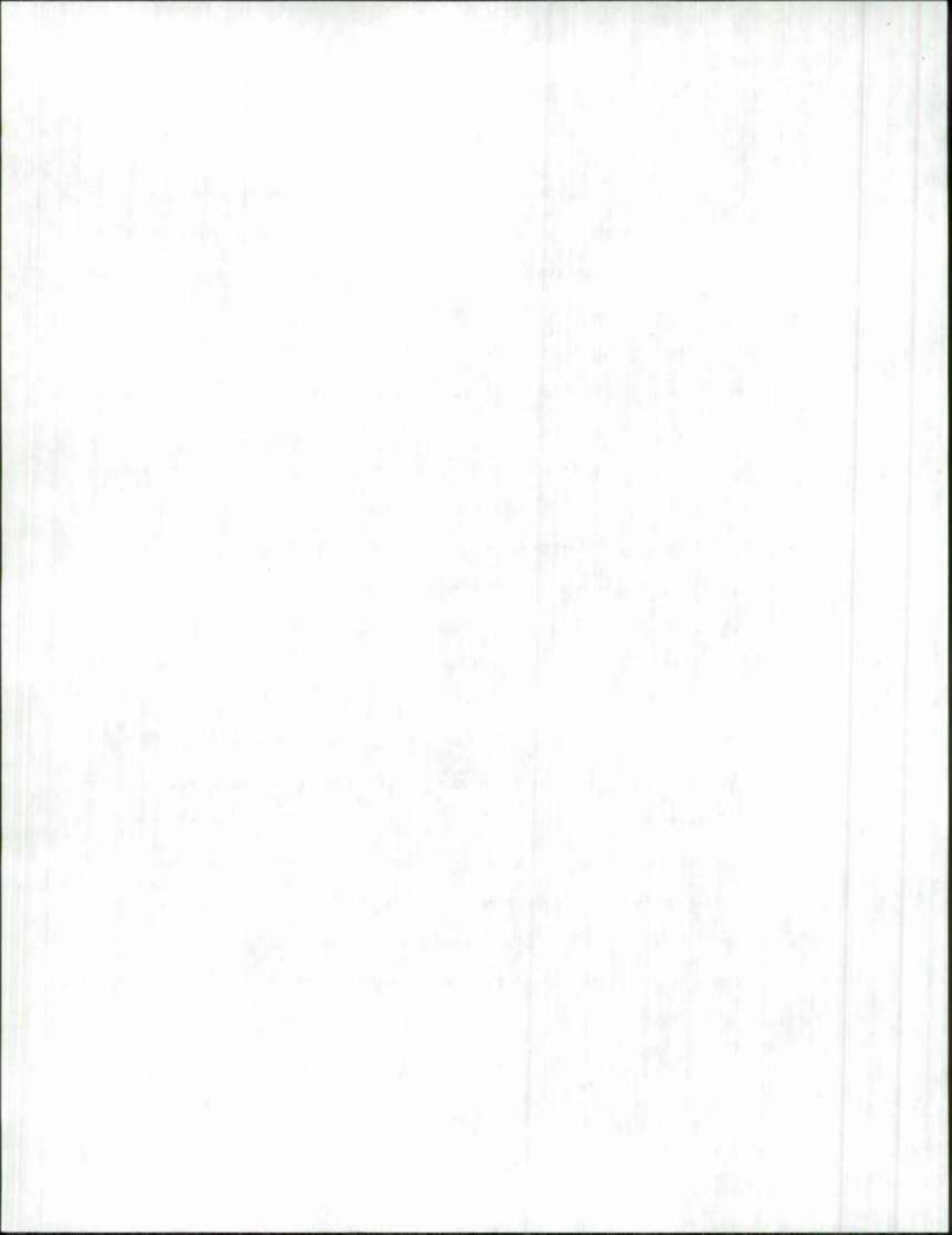
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2. The proposed use is consistent with the purposes and intent of the Talbot County Comprehensive Plan and complies with the standards of the land use district in which it is located. The restaurant, like many other restaurants in Tilghman and other waterfront areas of the County, relies on outdoor seating during times of favorable weather.
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The Board then considered the request for a variance for the decking. Upon motion made and seconded the Board made the following findings with regard to the decking:



1. There are special conditions or circumstances that are peculiar to the land or structure such that a literal enforcement of the Code would result in an unwarranted hardship to the property owner. The decking covers what was previously paved or graveled areas and adds no additional impervious surfaces. It has no additional impact on the buffer but it does improve the comfort and safety of customers and staff
2. A literal interpretation of the Ordinance would deprive the owner of rights commonly enjoyed by other property owners in the same zone.
3. The granting of the variance will not confer upon the property owner a special privilege that would be denied by the Code to other owners of lands in the same zone.
4. The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
5. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for a variance.
6. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.
7. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variance will be in harmony with the general intent of the Critical Area Law, the Talbot County Critical Area Program and the Critical Area provisions of the Code.

The vote was five to zero to approve the requested variance for the decking. The Applicant shall obtain proper permits for the decking and provide for mitigation at a ratio of 3:1 for the development activity completed without proper permits.



The Board then considered the request for a variance for the awning. Upon motion made and seconded the Board made the following findings:

1. The Board could not find from the evidence presented that there were special conditions or circumstances such that a literal enforcement of the provisions of the Code would result in an unwarranted hardship to the property owner. Rather than replace the previously installed awnings the new coverings over the outdoor dining areas are more permanent structures actually extending or enlarging the restaurant building.
2. A literal interpretation of the Code will not deprive the property owner of rights commonly enjoyed by other property owners in the same zone.
3. A granting of the variance would confer upon the property owner a special privilege that would be denied by the Code to other owners of lands or structures within the same zone.
4. The variance request is base on conditions or circumstances which are the result of actions by the property owner. The owner installed structural canopies covering a much larger area than the previously installed temporary awnings.

The vote of the Board was five to zero to deny the requested variance for the new awnings (or canopies).

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **BAY HUNDRED RESTAURANT, INC.** (Appeal No. 1493) is **GRANTED** the requested special exception consistent with the evidence presented to the Board of Appeals; **GRANTED** the requested variance for the decking consistent with the evidence presented to the Board of Appeals; and **DENIED** the requested variance for the awnings, all by vote as previously noted.



The special exception and variance granted by this Decision are for "after the fact" actions taken by the Applicant.

GIVEN OVER OUR HANDS, this 11th day of September, 2008.


TALBOT COUNTY BOARD OF APPEALS


Paul Shortall, Jr., Chairman

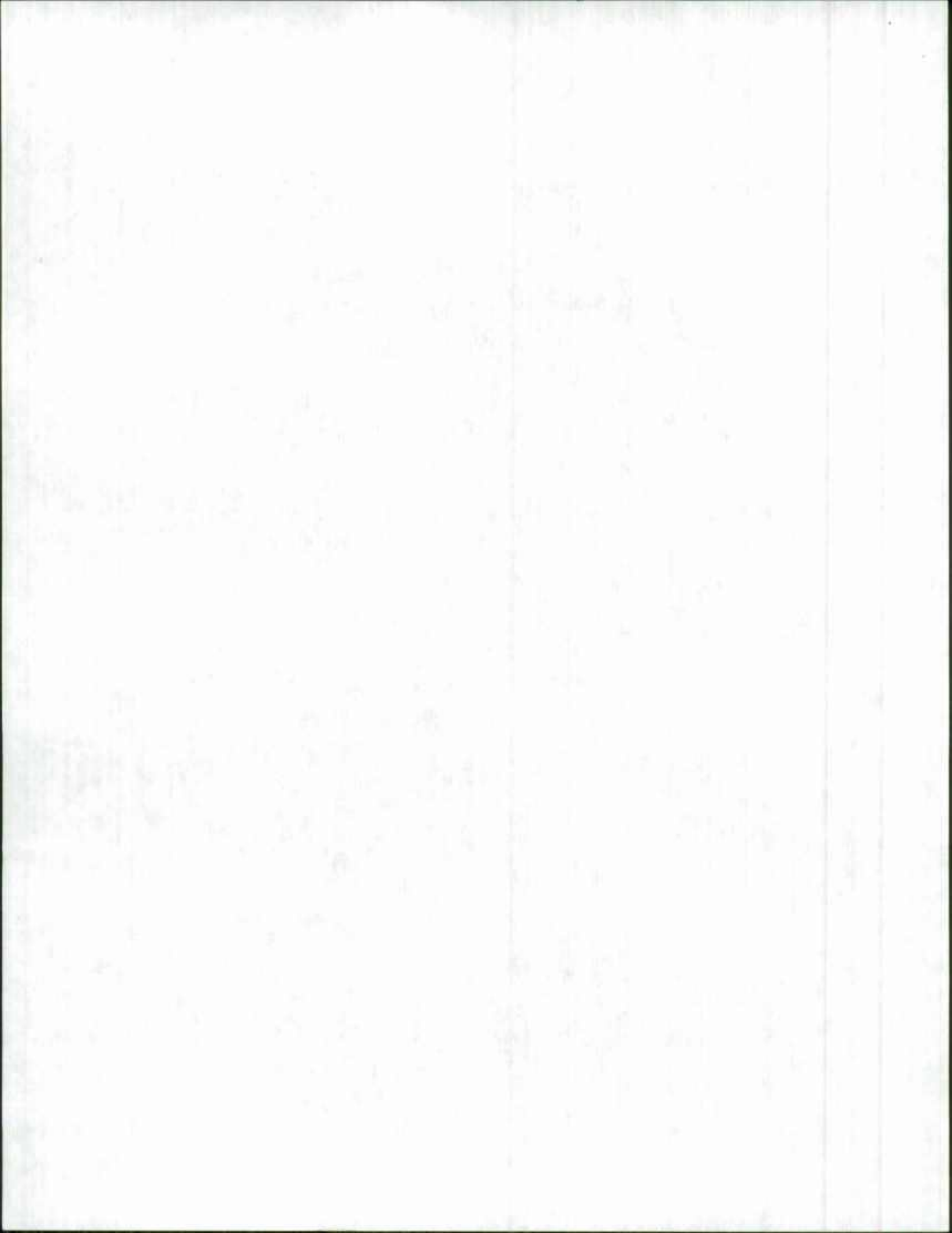

Phillip Jones, Vice Chairman

Unavailable for Signature
Rush Moody


Betty Crothers


John Sewell

Board of Appeals/1493.BayHundredRestaurantVarianceSpecialExceptionCA



COPY

2008 SEP 23
CIRCUIT COURT
OF BALTIMORE COUNTY
EASTON, MARYLAND

Circuit Court for _____
City or County

CIVIL-NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY: PLAINTIFF DEFENDANT CASE NUMBER: _____ (Click to insert)

CASE NAME: Petition of Bay Hundred Restaurant v None

JURY DEMAND: Yes No Anticipated length of trial: _____ hours or _____ days

RELATED CASE PENDING? Yes No If yes, Case #(s), if known: 20-1-08-006476

Special Requirements? Interpreter/communication impairment Which language _____
(Attach Form 1-332 if Accommodation or Interpreter Needed) Which dialect _____
 ADA accommodation: _____

NATURE OF ACTION
(CHECK ONE BOX)

DAMAGES/RELIEF

TORTS		LABOR		A. TORTS	
<input type="checkbox"/> Motor Tort	<input type="checkbox"/> Premises Liability	<input type="checkbox"/> Workers' Comp.	<input type="checkbox"/> Wrongful Discharge	<input type="checkbox"/> Under \$7,500	<input type="checkbox"/> Medical Bills
<input type="checkbox"/> Assault & Battery	<input type="checkbox"/> Product Liability	<input type="checkbox"/> EEO	<input type="checkbox"/> Other	<input type="checkbox"/> \$7,500 - \$50,000	\$ _____
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Wrongful Death	CONTRACTS		<input type="checkbox"/> \$50,000 - \$100,000	<input type="checkbox"/> Property Damages
<input type="checkbox"/> Business & Commercial	<input type="checkbox"/> Libel & Slander			<input type="checkbox"/> Over \$100,000	\$ _____
<input type="checkbox"/> False Arrest/Imprisonment	<input type="checkbox"/> Nuisance	REAL PROPERTY		<input type="checkbox"/> Wage Loss	\$ _____
<input type="checkbox"/> Toxic Torts	<input type="checkbox"/> Fraud			<input type="checkbox"/> Judicial Sale	<input type="checkbox"/> Under \$10,000
<input type="checkbox"/> Malicious Prosecution	<input type="checkbox"/> Lead Paint	<input type="checkbox"/> Condemnation	<input type="checkbox"/> \$10,000 - \$20,000	<input type="checkbox"/> Declaratory Judgment	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Other	<input type="checkbox"/> Landlord Tenant	<input type="checkbox"/> Over \$20,000	<input type="checkbox"/> Injunction	
<input type="checkbox"/> Other		<input type="checkbox"/> Other		<input type="checkbox"/> Other	

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

A. Mediation Yes No
B. Arbitration Yes No
C. Settlement Conference Yes No
D. Neutral Evaluation Yes No

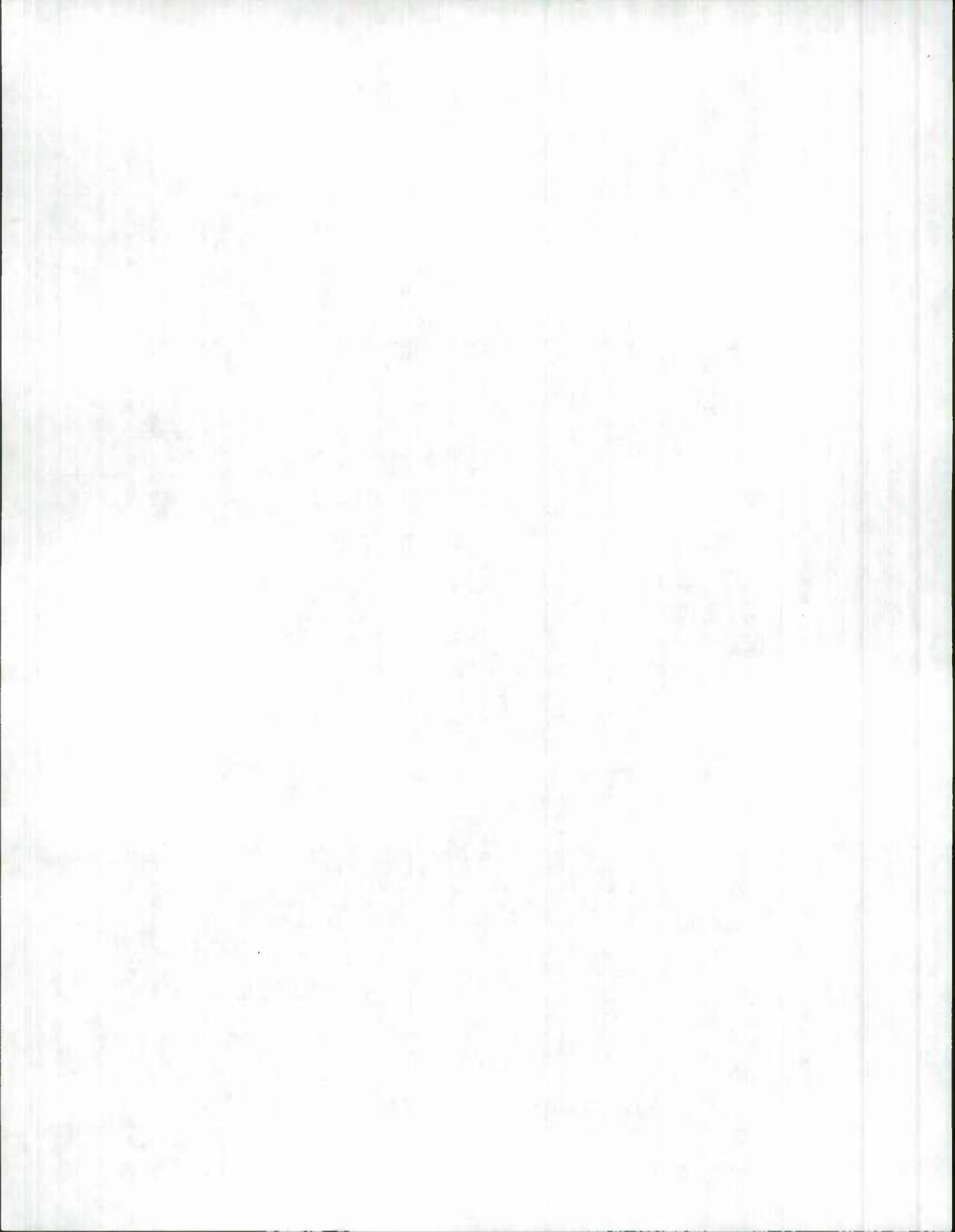
TRACK REQUEST

With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

1/2 day of trial or less
 1 day of trial time
 2 days of trial time
 3 days of trial time
 More than 3 days of trial time

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY.

Date 9/22/08 Signature [Signature]



BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.

Expedited
Trial within 7 months of
Defendant's response

Standard
Trial - 18 months of
Defendant's response

EMERGENCY RELIEF REQUESTED _____
Signature *Date*

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (check only one)

- Expedited Trial 60 to 120 days from notice. Non-jury matters.
- Standard-Short Trial seven months from Defendant's response. Includes torts with actual damages up to \$7,500; contract claims up to \$20,000; condemnations; injunctions and declaratory judgments.
- Standard-Medium Trial 12 months from Defendant's response. Includes torts with actual damages over \$7,500 and under \$50,000, and contract claims over \$20,000.
- Standard-Complex Trial 18 months from Defendant's response. Includes complex cases requiring prolonged discovery with actual damages in excess of \$50,000.
- Lead Paint Fill in: Birthdate of youngest plaintiff _____.
- Asbestos Events and deadlines set by individual judge.
- Protracted Cases Complex cases designated by the Administrative Judge.

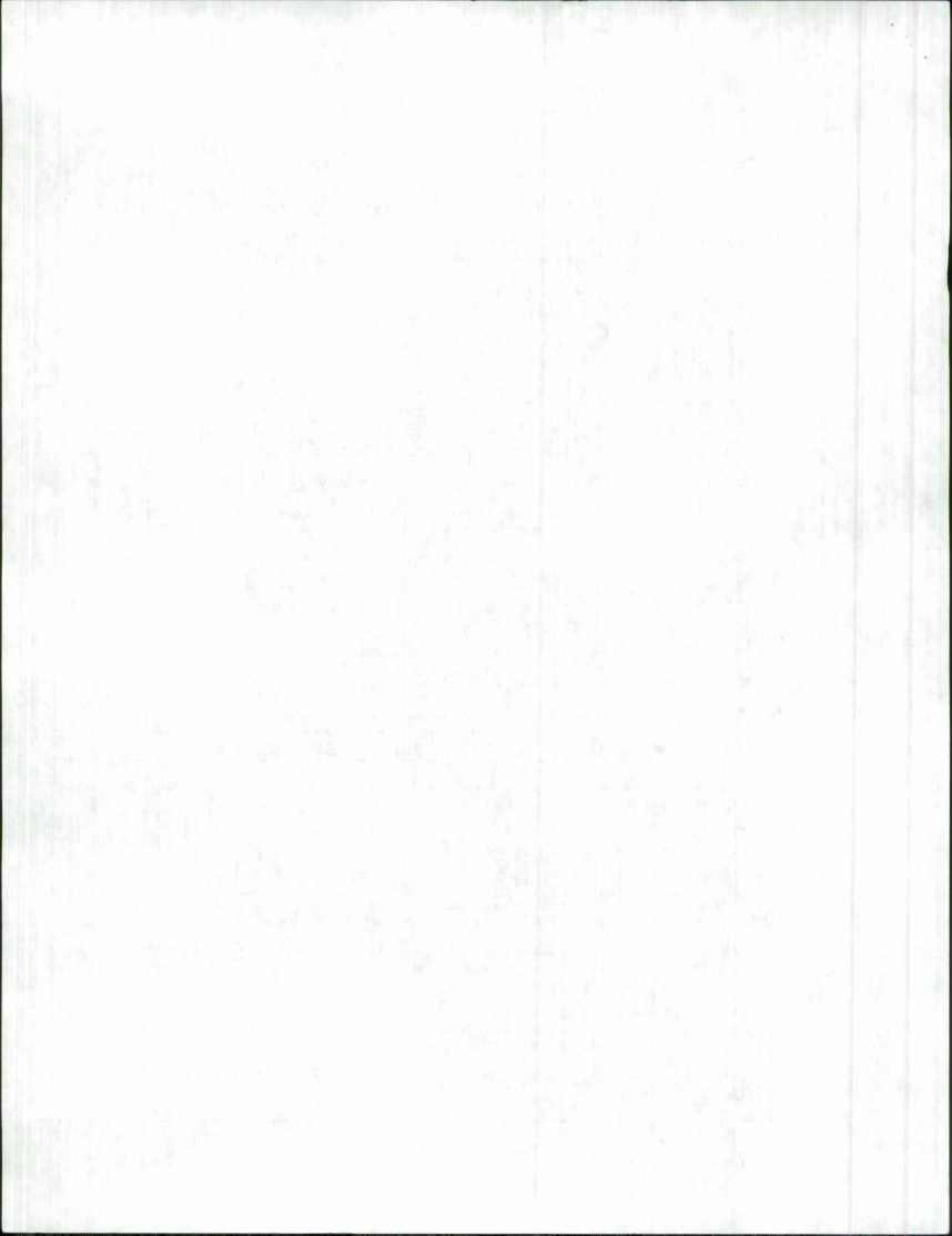
CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.

- Liability is conceded.
- Liability is not conceded, but is not seriously in dispute.
- Liability is seriously in dispute.

CIRCUIT COURT FOR BALTIMORE COUNTY

- Expedited Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, (Trial Date-90 days) District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
- Standard Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud (Trial Date-240 days) and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
- Extended Standard Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury (Trial Date-345 days) Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
- Complex Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product (Trial Date-450 days) Liabilities, Other Complex Cases.





Talbot County Board of Appeals

Revise Staff Memorandum

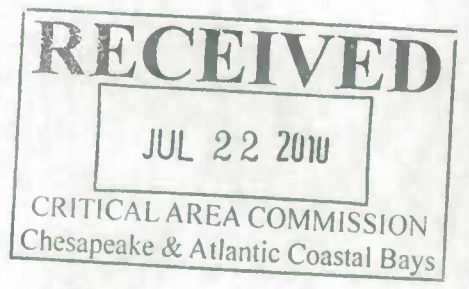
Prepared by: Brett Ewing
 Date: July 20, 2010
 Appeals Case #: 10-1533
 BOA Meeting Date: September 13, 2010

General Information:

Owner: Back Creek II, LLC
 Applicant: Back Creek II, LLC c/o Willard C. Parker, II, Esquire
 Requested Action: Special Exception
 Variance

Purpose: The applicant is requesting to amend previously approved special exception case #290 to increase the total seating for the "Small Restaurant" from 100 seats to 240 seats. Also, the applicant is requesting two (2) variances from the 100 foot Shoreline Development Buffer: (1) To construct an awning on the southwest side of the restaurant with the closest point located at 3.6 feet from Mean High Water; and (2) to construct an awning on the northwest side of the restaurant with the closest point located at 25.4 feet from Mean High Water.

Existing Zoning: VC – Village Center
 Tax Map No: Map 44A, Parcel 362
 Location: 6178 Tilghman Island Rd.
 Tilghman, MD 21671
 Property Size: .83 Acres



RECEIVED

1905

NOV 21

Comprehensive Plan
Classification:

Village Center Area- Villages should maintain their unique "sense of place" as identified by their existing architectural character, scale, mix of uses and density of development.

Related Zoning History:

2/27/78 – Variance to construct deck 11 ft. from MHW and Special Exception for "Small Restaurant" 100 seats.

5/14/07 - "Notice of Violation/ Order to Abate" case # ZV-07-4826-CRE sent to property owner regarding the construction of two (2) illegal awnings.

7/7/08/ Decision 9/11/08 - BOA case #1493, applicant denied variance request for the construction of the two (2) applicable awnings. Granted Variance for deck in the buffer. Granted the special exception amendment to exceed 100 seats to 275.

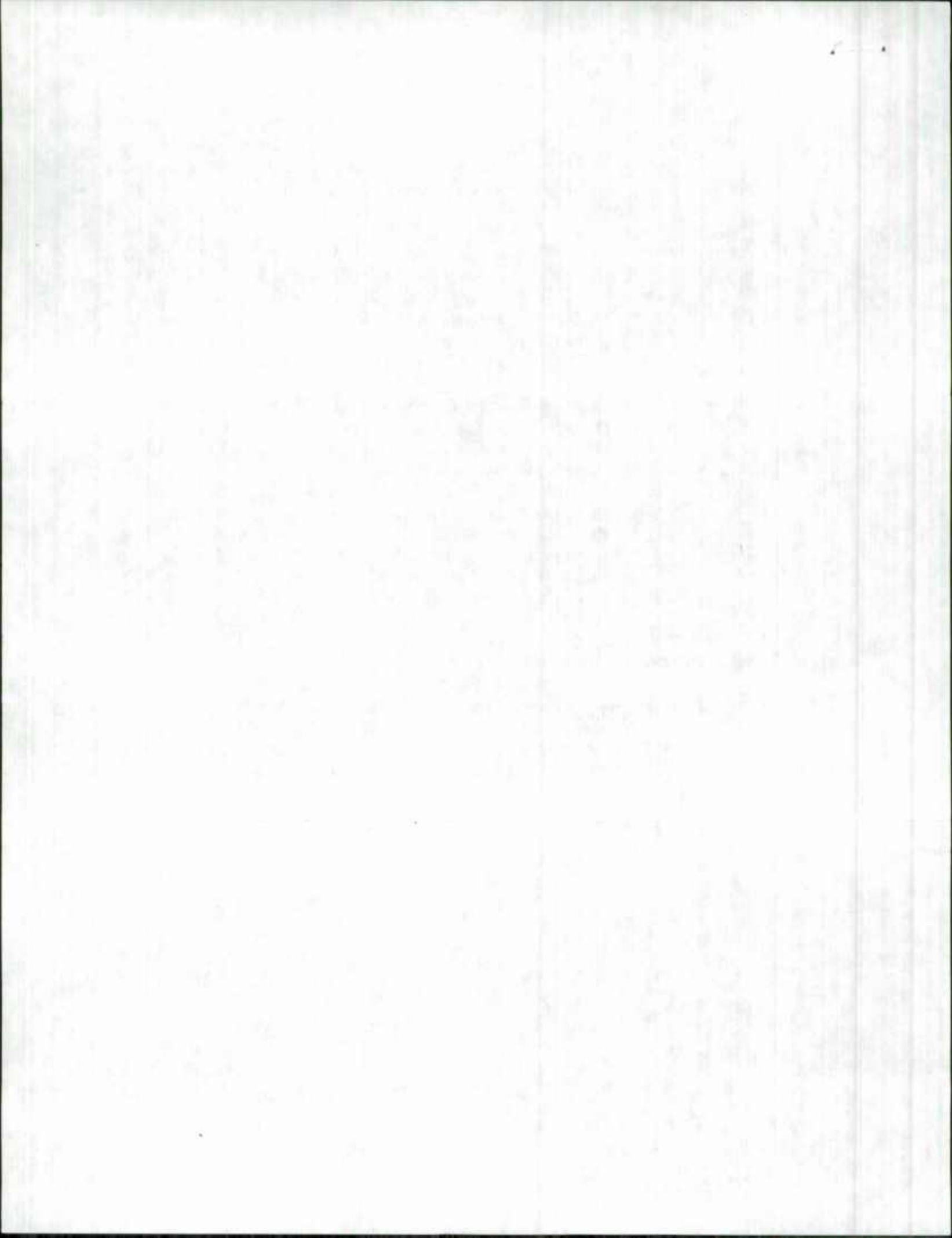
11/24/08 – Board revocation hearing of case #1493, Revoked variance for deck in buffer.

05/10/10 - BOA case #1493-R, revocation hearing for case #1493 to revoke the amendment to a special exception authorizing an increase from 100- 275 seats. Special exception previously granted in Appeal 1493, by decision dated 09/11/08 and affirmed by decision dated 04/01/09 is hereby revoked.

06/24/10 – Applicant appealed decision to Talbot County Circuit Court.

Staff Recommendation:

- 1) The applicant shall apply for a Pre-Application meeting prior to submitting for a Major Site Plan review for the two steel framed awnings, Talbot County Code section 190-184.
- 2) Upon Major Site Plan approval, proper permits shall be obtained from the Department of Permits and Inspections for all variances granted by the Board of Appeals.
- 3) If additional disturbance occurs in the 100' shoreline Development Buffer, the mitigation ratio shall be performed at a 3:1 ratio. This can be addressed during the site plan review process.





Talbot County Board of Appeals

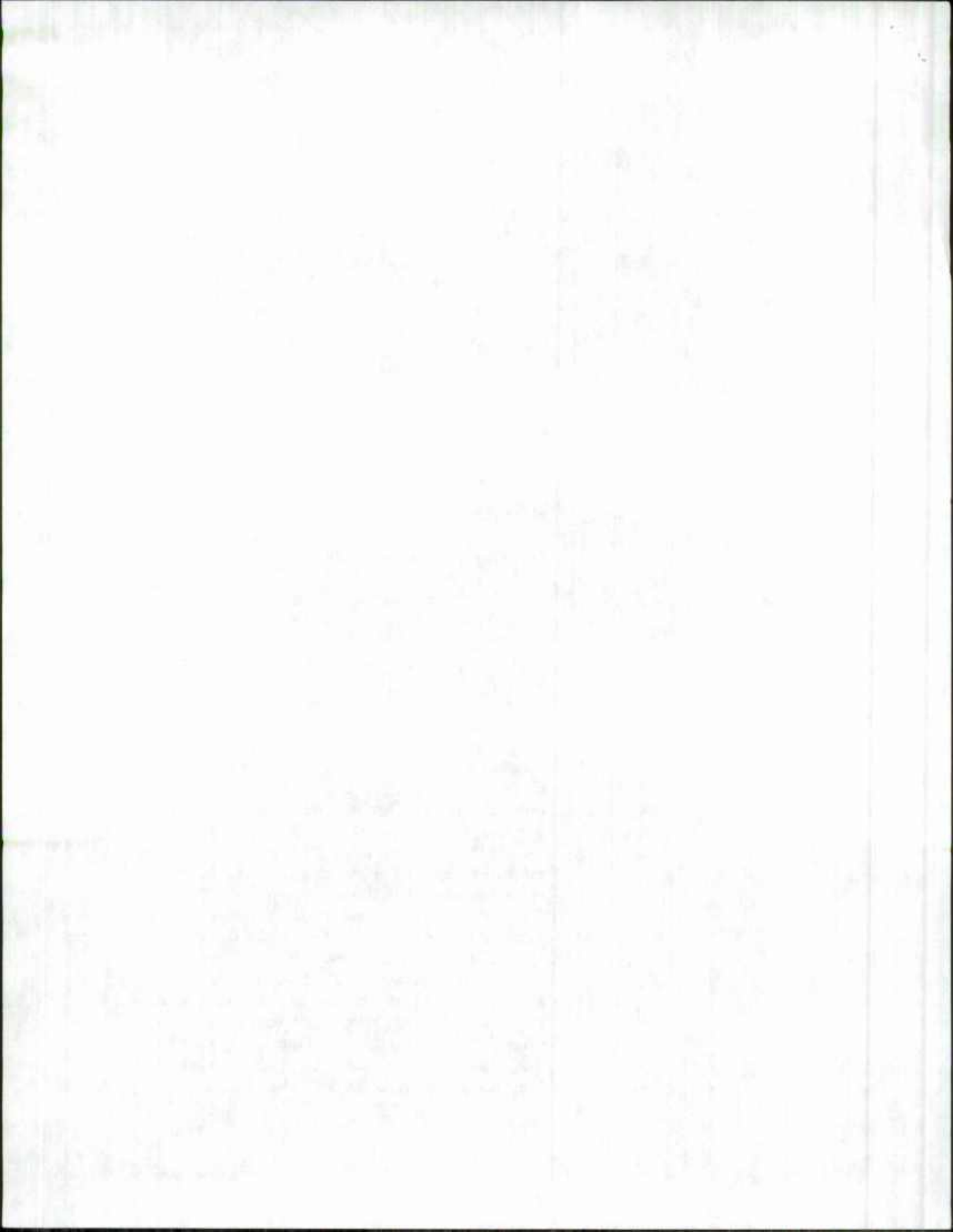
STAFF MEMORANDUM

Prepared by: Shawn Leidy
Date: June 16, 2008
Appeals Case #: 1493
BOA Meeting Date: July 7, 2008

General Information:

Owner: Back Creek II, LLC
Applicant: Bay Hundred Restaurant
Requested Action: Special Exception
Variance

Purpose: Applicant, Bay Hundred Restaurant, Inc. is seeking a special exception amendment to authorize seasonal outdoor seating at the restaurant in excess of 100 seats and to permit the seasonal outdoor service bar, grill, outdoor crab steaming to the extent these uses and accessory structures are considered expansions of a special exception use. In addition, the applicant is requesting three variances from the 100 foot Shoreline Development Buffer: (1) for an existing awnings located on the southwest side of the restaurant with the closest point being 3.6 feet from Mean High Water; (2) for an existing awning located on the northwest side of the restaurant with the closest point being 25.4 feet from Mean High Water; and (3) for an existing wood deck on the northwest side of the building



located 5.2 feet from Mean High Water at the closest point.

Existing Zoning:

VC - Village Center

Tax Map No:

Map 44A, Parcel 362

Location:

6176 Tilghman Island Rd.
Tilghman, MD 21671

Property Size:

.83 Acres

Comprehensive Plan:

Restaurants in the VC zone are not inconsistent with the Comprehensive Plan.

Zoning History:

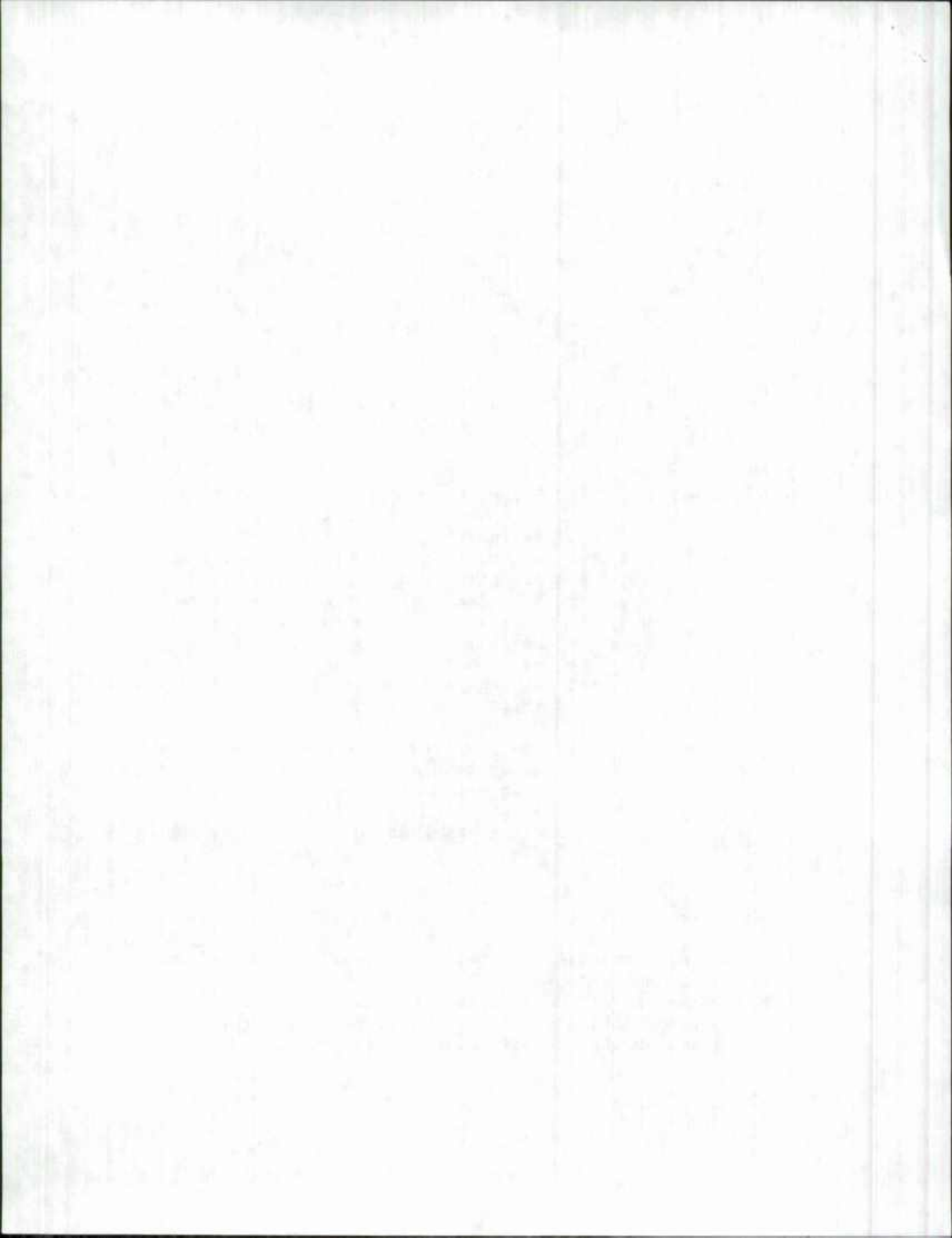
A special exception was granted in 1978 to operate a small restaurant. A variance was also granted for an outside deck (#290). Another special exception and variance was granted in 1982 for the addition of a roofed screened porch to an already existing restaurant (#482). A special exception was granted again in 1986 for the expansion of an existing commercial marina and restaurant (#610).

Staff Comments:

The property is located in the "Buffer Management Area" however it has not yet been established. If a BMA were to be established, the setback from Mean High Water (MHW) would be no closer than 50 feet.

Staff Recommendation:

- 1) Proper permits shall be obtained for all variances granted by the Board of Appeals.
- 2) Mitigation shall be performed at a ratio of 3:1 for development activity without proper permits. This can be addressed during the site plan review process.





TALBOT COUNTY BOARD OF APPEALS

"CRITICAL AREA VARIANCE STANDARDS" . 09/13/10

Appeal No. 10-1533

Hearing Date: 04/05/10 5/17/10

Chapter 190 Zoning – Talbot County Code

Talbot County Board of Appeals – see Chapter 20
Article IX, § 190-182 - Variances

Variances: To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance shall not be granted unless and until the applicant has demonstrated that:

The applicant for a variance shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion to all questions of fact, which are to be determined by the Board of Appeals.

In order to grant a variance to the Critical Area provisions of Chapter 190, the Planning Director or Board of Appeals must determine that the application meets all of the following criteria:

- (a) Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this chapter would result in unwarranted hardship.

Applicant Response: SEE ATTACHED ADDENDUM

Four horizontal lines for handwritten response.

- (b) A literal interpretation of the Critical Area requirements of this chapter will deprive the property owner of rights commonly enjoyed by other property owners in the same zoning district.

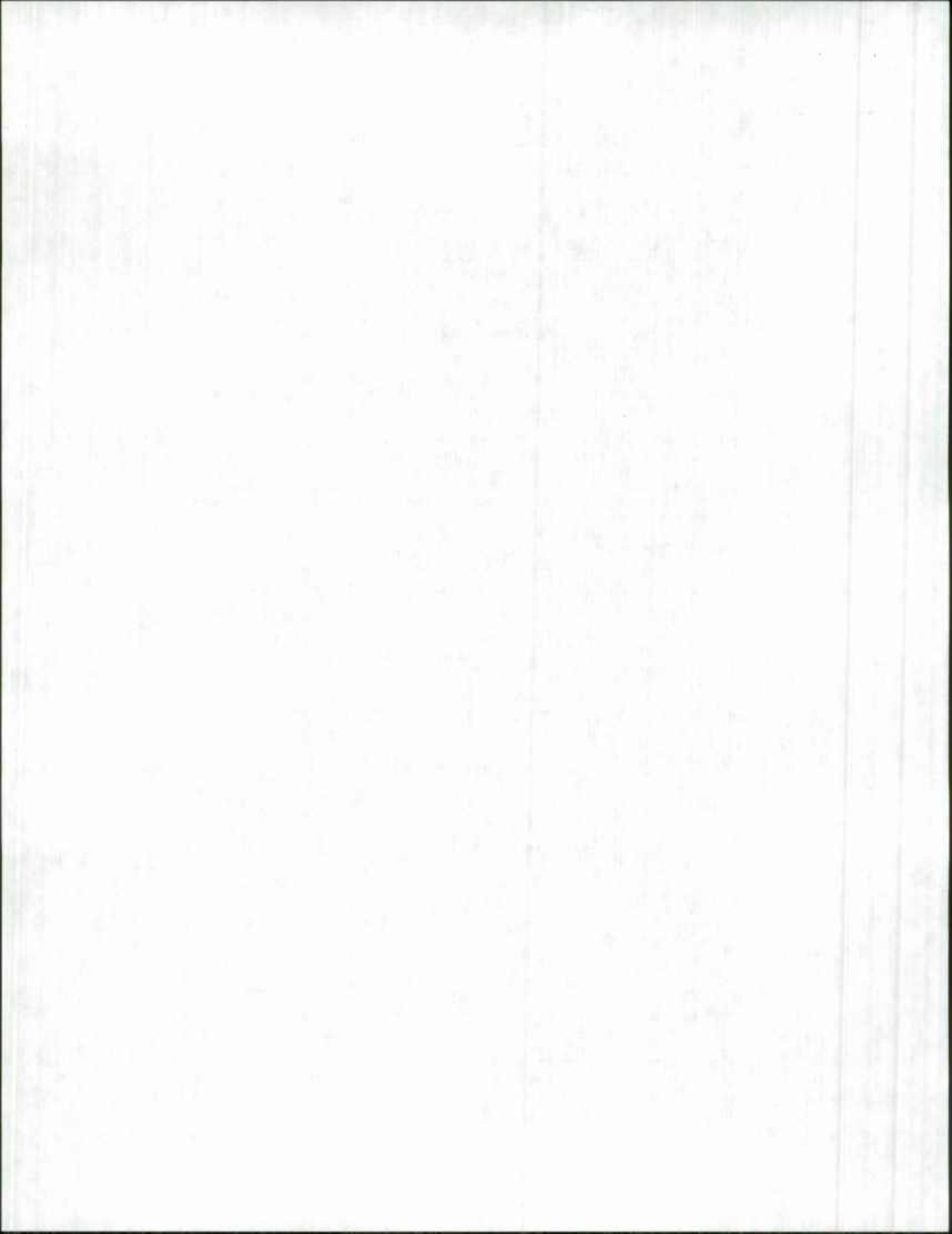
Applicant Response: SEE ATTACHED ADDENDUM

Four horizontal lines for handwritten response.

- (c) The granting of a variance will not confer upon the property owner any special privilege that would be denied by this chapter to other owners of lands or structures within the same zoning district.

Applicant Response: SEE ATTACHED ADDENDUM

Four horizontal lines for handwritten response.



(d) The variance request is not based on conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

Applicant Response:

SEE ATTACHED ADDENDUM

(e) The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program.

Applicant Response:

SEE ATTACHED ADDENDUM

(f) The variance shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

Applicant Response:

SEE ATTACHED ADDENDUM

(g) If the need for a variance to a Critical Area provision is due partially or entirely because the lot is a legal nonconforming lot that does not meet current area, width or location standards, the variance should not be granted if the nonconformity could be reduced or eliminated by combining the lot, in whole or in part, with an adjoining lot in common ownership.

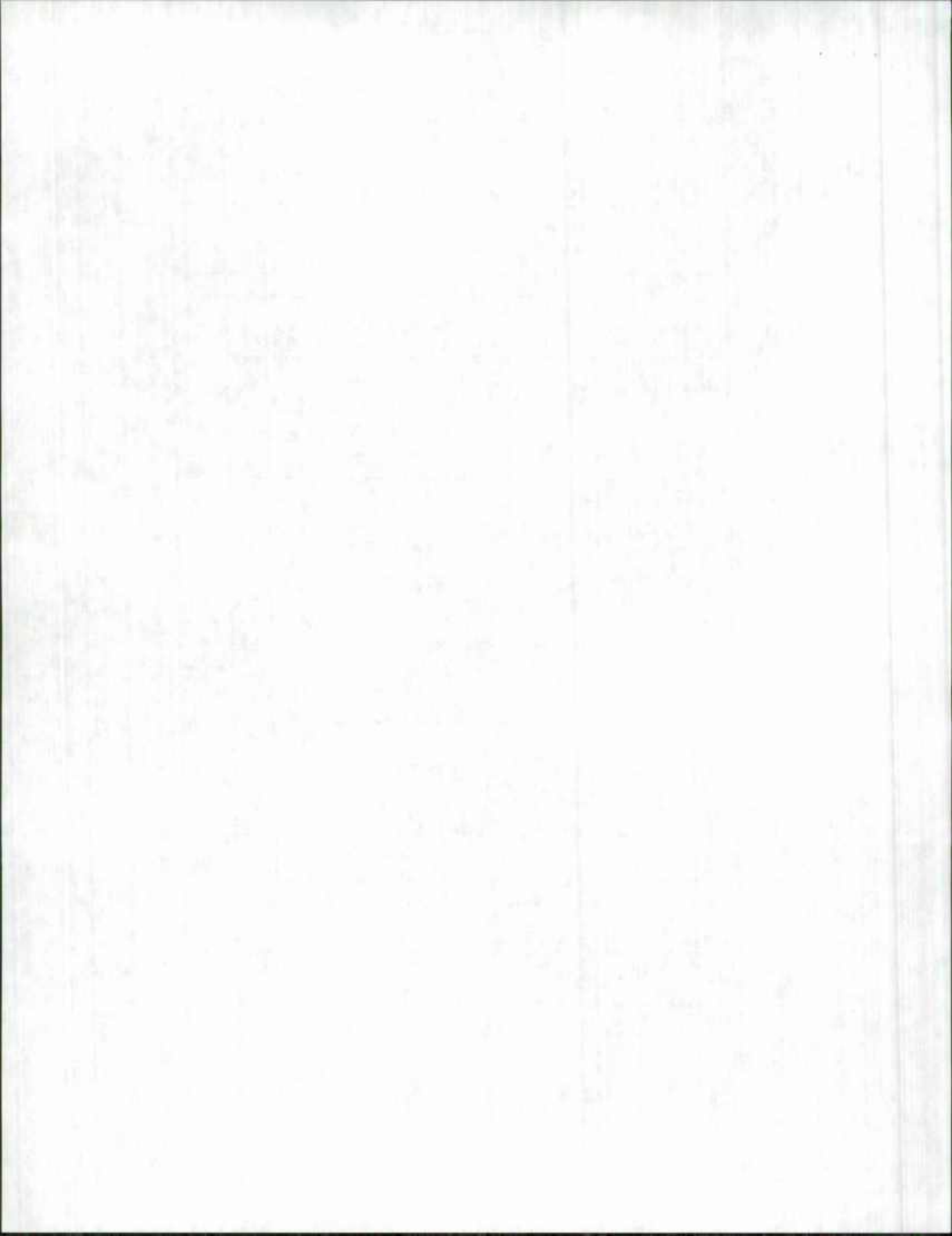
Applicant Response:

SEE ATTACHED ADDENDUM

Note: Within the Critical Area, if a request for a variance arises regarding nonconforming lots of record, the applicant must demonstrate and the Board of Appeals must find that criteria [a] through [g] above have been met and further that, due to the pattern of lot ownership, it is not possible to reconfigure or consolidate lots so as to permit compliance with this Ordinance.

All standards above must be addressed, do not leave any questions unanswered.

County action will be predicated upon the applicant's compliance with the above.



The Applicant shall provide evidence of compliance with Chapter 190, Article II, Regulations for specific land uses and § 190-147, as applicable.

The Applicant is responsible for providing compliance with each finding and requirement, and consistency with Chapter 190 of the Talbot County Code and the intent of the critical area law.

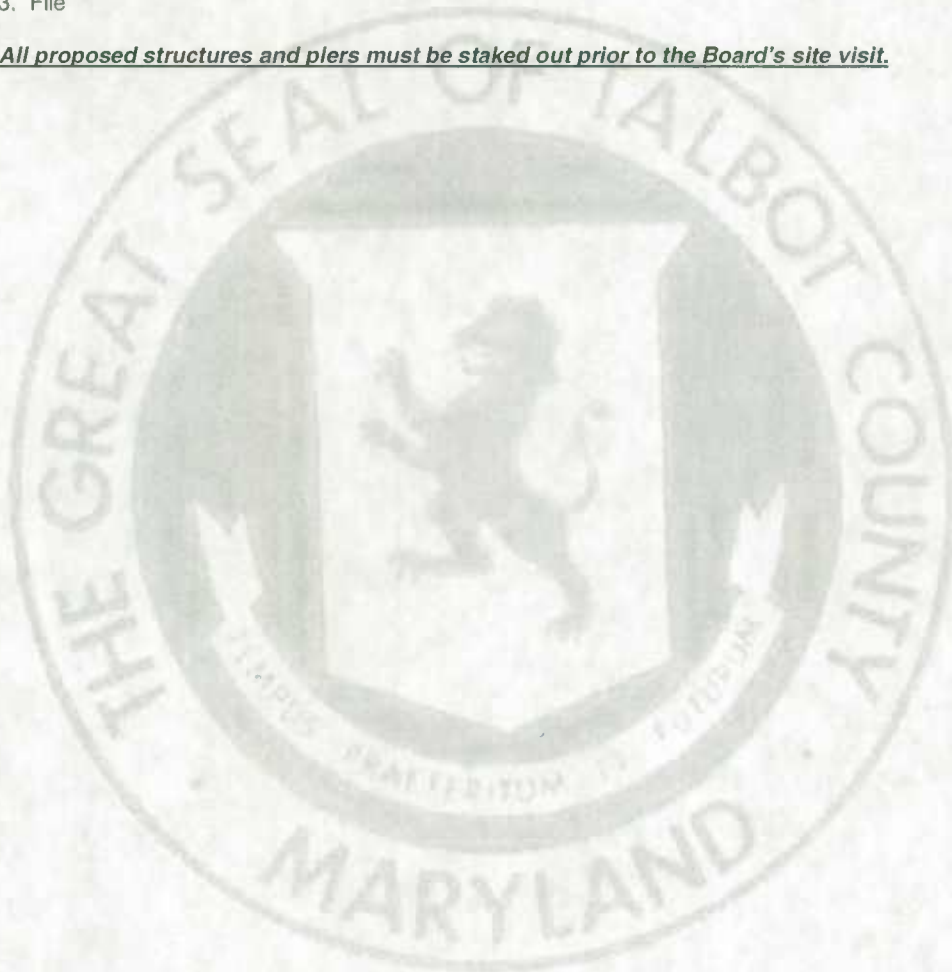
1/5/2010
Date


Signature of Applicant or Designated Agent

References:

1. Talbot County Comprehensive Plan
2. Talbot County Code
3. File

All proposed structures and plers must be staked out prior to the Board's site visit.





Variance Requirements

Back Creek II, LLC

(a) Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this chapter would result in unwarranted hardship.

Applicant Response:

The areas over which the awnings will be erected are long standing impervious surfaces having been paved or graveled at least fifty (50) years ago, long before Applicant purchased the property. The awnings do not add any new impervious coverage to the site, but merely enhance the comfort and safety of customers and staff. To the extent the awnings are structures, they do not impact the buffer at this location in any way.

(b) A literal interpretation of the Critical Area requirements of this chapter will deprive the property owner of rights commonly enjoyed by other property owners in the same zoning district.

Applicant Response:

Property owners in the same zoning district are able to use pre-existing lot coverage and impervious surfaces for uses and structures contemplated by the Zoning Ordinance.

(c) The granting of a variance will not confer upon the property owner any special privilege that would be denied by this chapter to other owners of lands or structures within the same zoning district.

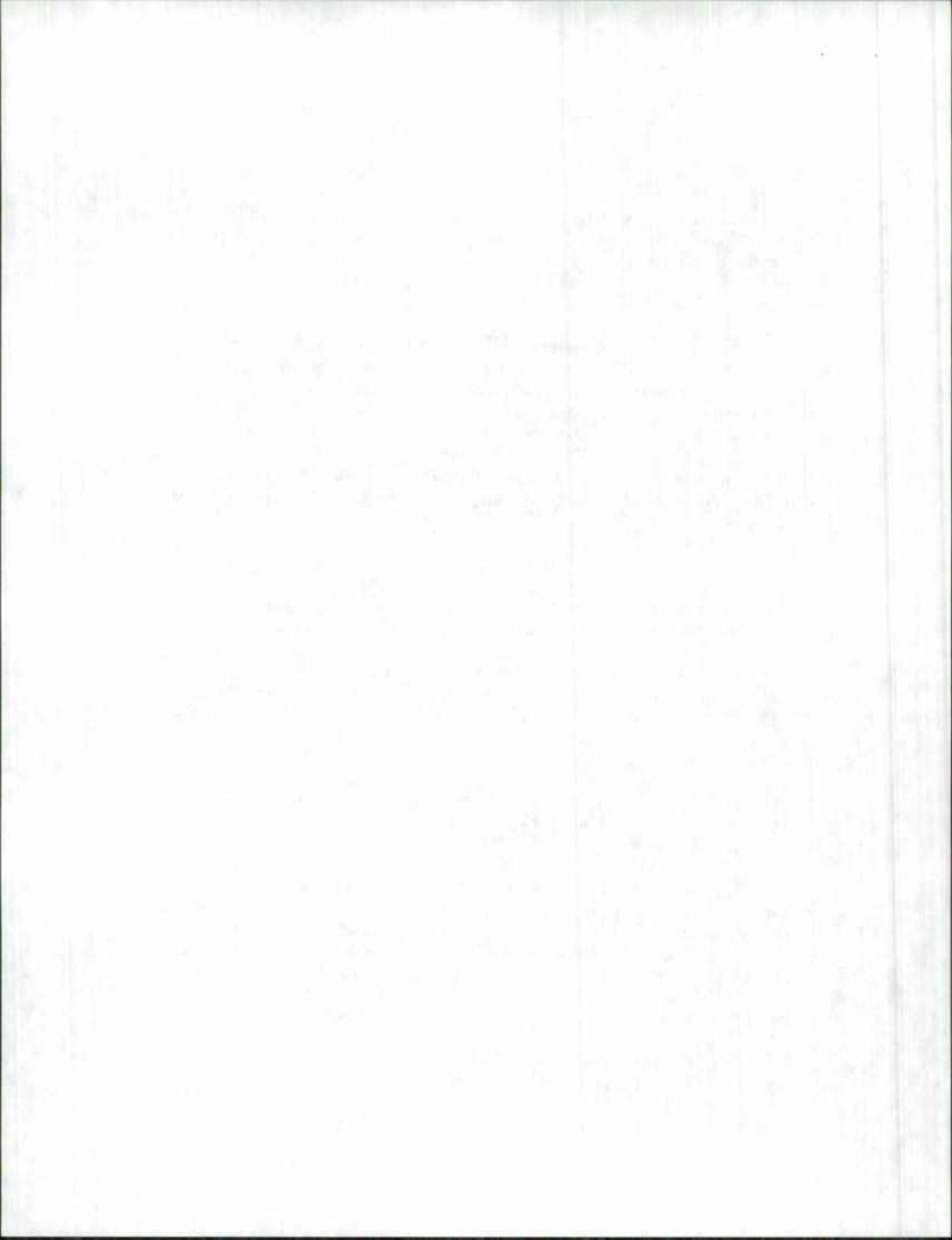
Applicant Response:

No special privileges are involved. Applicant wishes to continue to use an area that has been used for the same or similar purposes for years, just like other owners are permitted to use their properties for pre-existing uses.

(d) The variance request is not based on conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or noneonforming, on any neighboring property.

Applicant Response:

The variance application is filed at the request of the Planning and Zoning staff. It is related to pre-existing lot coverage and the historical use of the site.



(e) The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program.

Applicant Response:

The proposed variance will have no impact upon water quality or fish and wildlife habitat, and is in harmony with the intent of local and state laws to permit the continued use of established properties in a reasonable manner. Applicant proposes to construct micro-bio-retention structures in the form of both raised landscape planter boxes and in-ground micro-retention which will result in a net benefit to runoff leaving the site.

(f) The variance shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

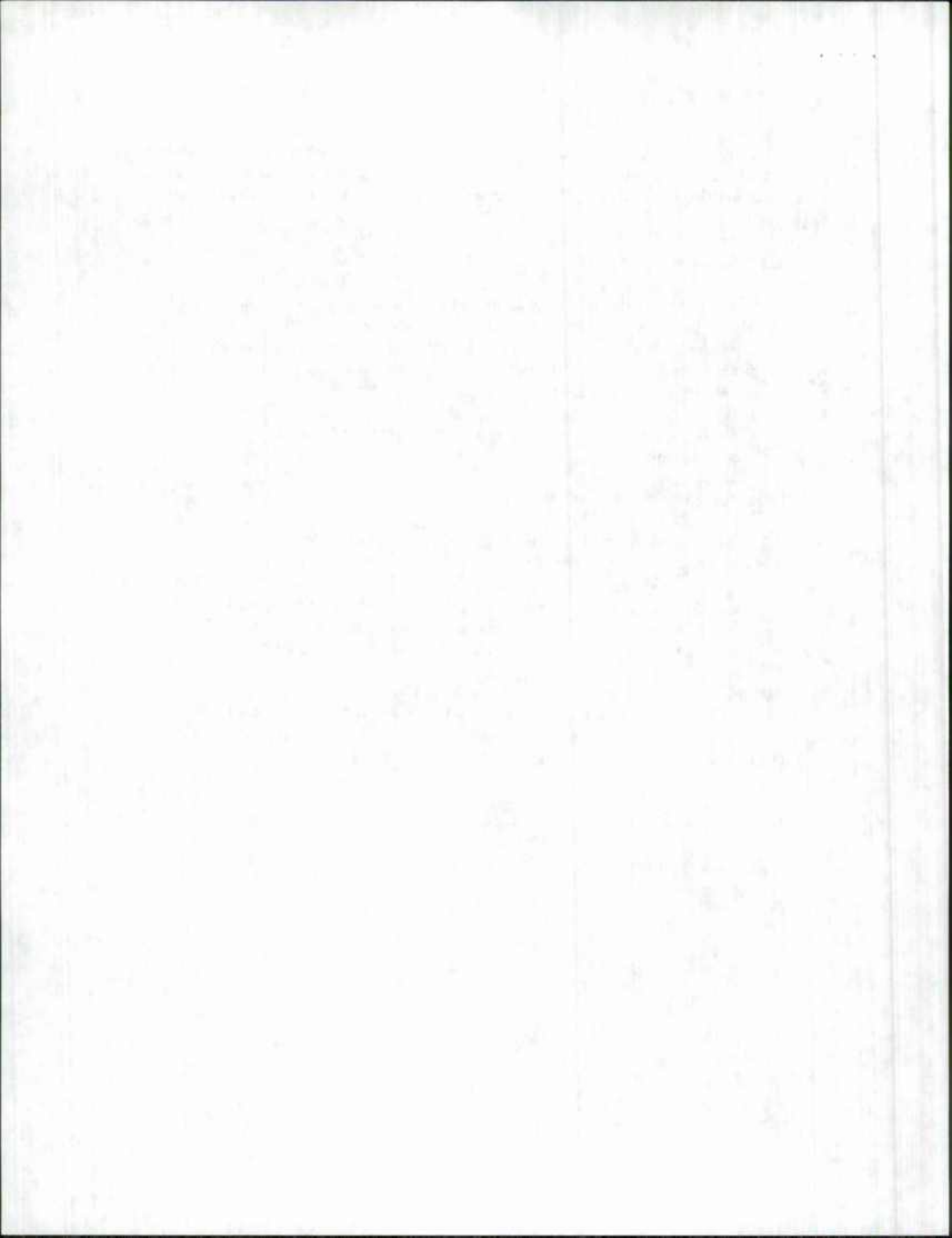
Applicant Response:

The unwarranted hardship relates to the reality of this site's development and history. The Applicant proposes to install fixed metal awnings over an impervious area which has been impervious for at least 50 years. There will be no net increase in impervious area. The awnings will not impact the waterways of the State and will provide increased safety and comfort to patrons and staff who would be using the same area for the same uses. Allowing the awnings by variance, if a variance is necessary, is the minimum adjustment necessary.

(g) If the need for a variance to a Critical Area provision is due partially or entirely because the lot is a legal nonconforming lot that does not meet current area, width, or location standards, the variance should not be granted if the nonconformity could be reduced or eliminated by combining the lot, in whole or in part, with an adjoining lot in common ownership.

Applicant Response:

The need for a variance to the Critical Area provision is not due to a legally nonconforming lot.





TALBOT COUNTY BOARD OF APPEALS

APPEAL NO. 10-1533
HEARING DATE 09-13-10
PLANNING COMMISSION REVIEW DATE 09-01-10

"SPECIAL EXCEPTION STANDARDS"

Chapter 190 Zoning – Talbot County Code

Talbot County Board of Appeals – see Chapter 20
Article IX, § 190-180 - Special Exception

Special Exception – Burden of Proof

The applicant for a special exception shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion to all questions of fact, which are to be determined by the Board of Appeals.

A Special Exception may be granted only when the Board of Appeals finds from a preponderance of the evidence proposed use will satisfy all of the following standards:

- (1) The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan.

Applicant Response:

SEE ATTACHMENT B

- (2) The use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance.

Applicant Response:

SEE ATTACHMENT B

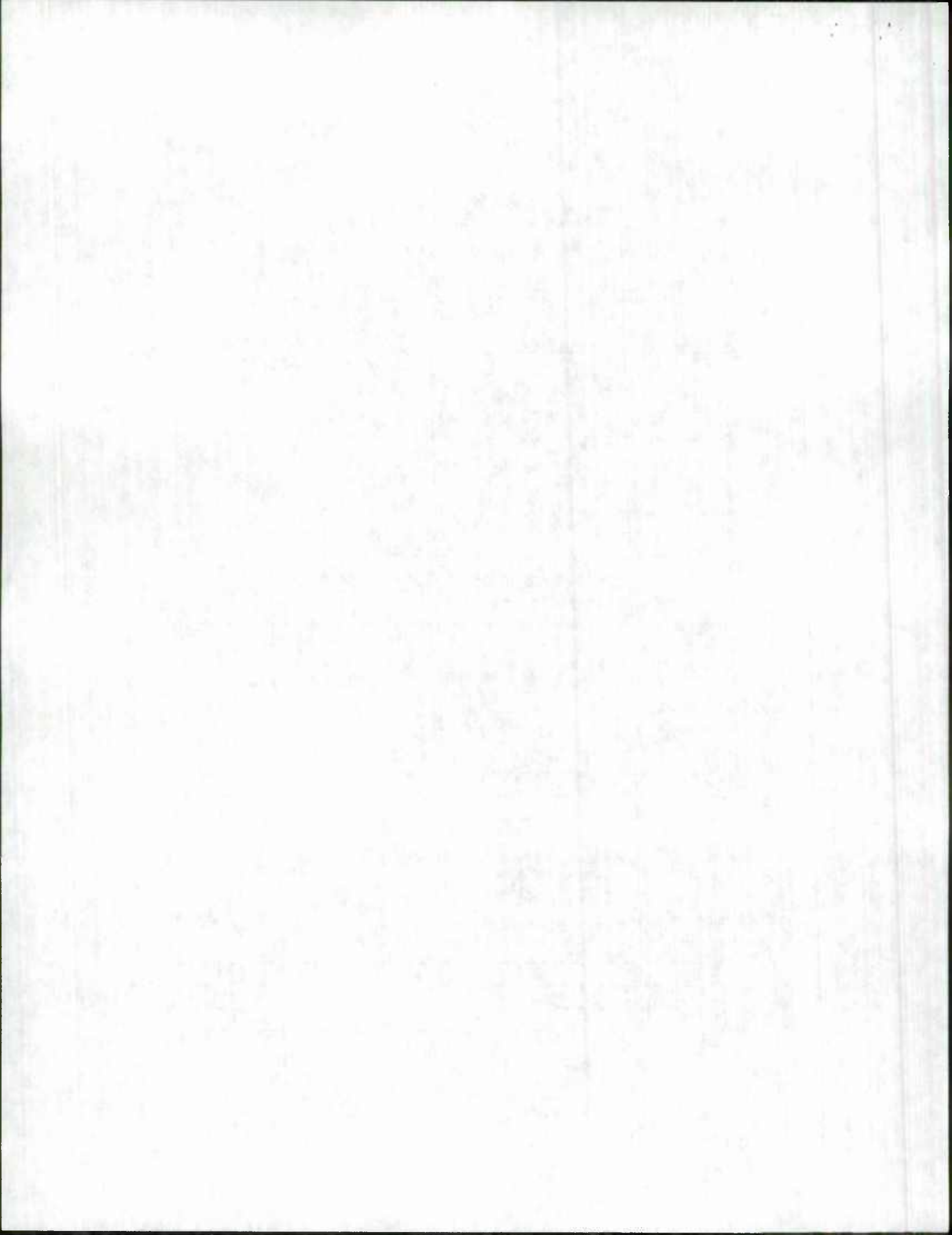
- (3) The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of neighboring property.

Applicant Response:

SEE ATTACHMENT B

Revised: 04/28/09

- (4) The use will not constitute a nuisance to other properties and will not have



significant, adverse impacts on the surrounding area due to trash, orders, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances.

Applicant Response:

SEE ATTACHMENT B

- (5) The use will not have significant adverse impact on public facilities or services including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services.

Applicant Response:

SEE ATTACHMENT B

- (6) The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic.

Applicant Response:

SEE ATTACHMENT B

- (7) The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other Applicable standards for road capacity.

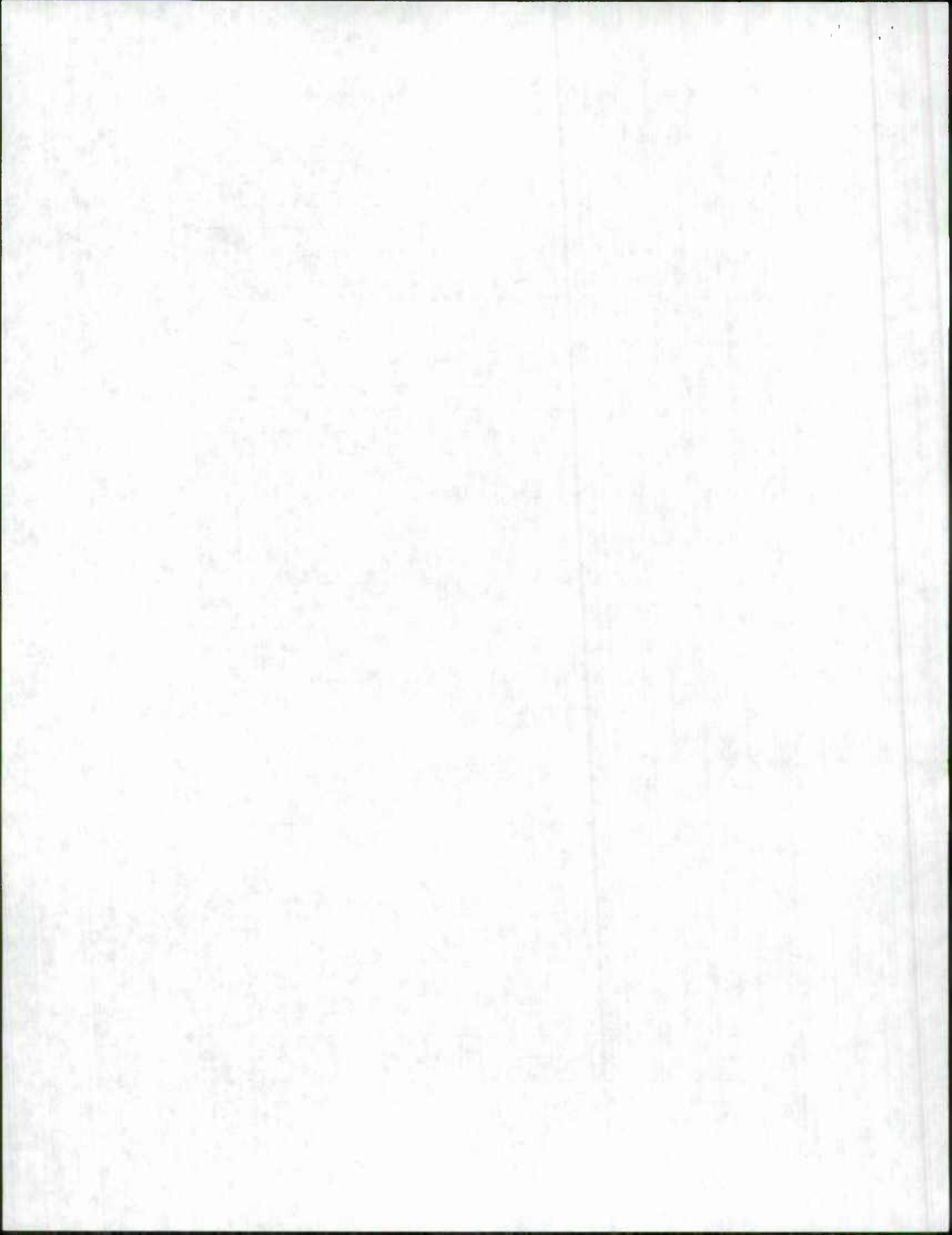
Applicant Response:

SEE ATTACHMENT B

- (8) Any vehicle access to proposed off street parking areas and drive in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic should not use a residential street nor create a hazard to a developed residential area.

Applicant Response:

SEE ATTACHMENT B



(9) Any use will not significantly adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife.

Applicant Response:

SEE ATTACHMENT B

(10) The use will not significantly adversely affect adjacent existing agricultural uses.

Applicant Response:

SEE ATTACHMENT B

All standards above must be addressed, do not leave any questions unanswered.

County action will be predicated upon the applicant's compliance with the above.

The Applicant shall provide evidence of compliance with Chapter 190, Article II, Regulations for specific land uses and § 190-147, as applicable.

The Applicant is responsible for providing compliance with each finding and requirement, and consistency with Chapter 190 of the Talbot County Code and the intent of the critical area law.

Date

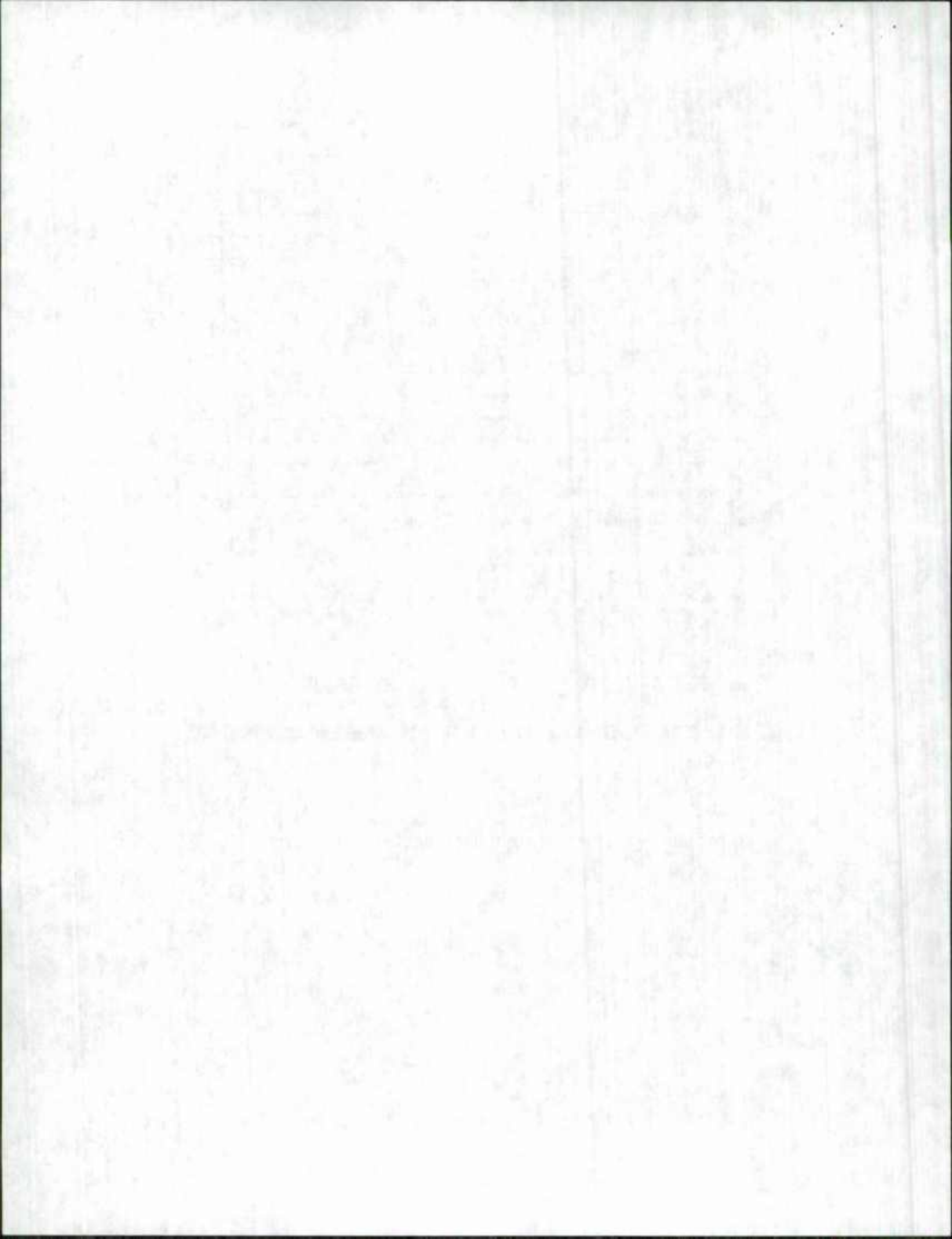
7/1/10

Signature of Applicant or Designated Agent

References:

1. Talbot County Comprehensive Plan
2. Talbot County Code
3. File

All proposed structures and piers must be staked out prior to the Board's site visit.



SPECIAL EXCEPTION MODIFICATION
ATTACHMENT B

1. The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan.

Applicant Response:

The Knapps Narrows area of the Tilghman Village Center is recognized as a business area oriented towards tourism. The Comprehensive Plan recognizes the importance of tourism related economic benefits such as employment. Waterfront restaurants attracting boaters, charter fishing parties and motorists alike are attractive destinations for tourists visiting the County generally and Tilghman Island in particular.

2. The use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance.

Applicant Response:

The property has had an operating restaurant for nearly 50 years seating up to 275 persons and will comply with the standards of the VC zoning district as modified by the expanded seating requested by this application.

3. The scale bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of the neighboring property.

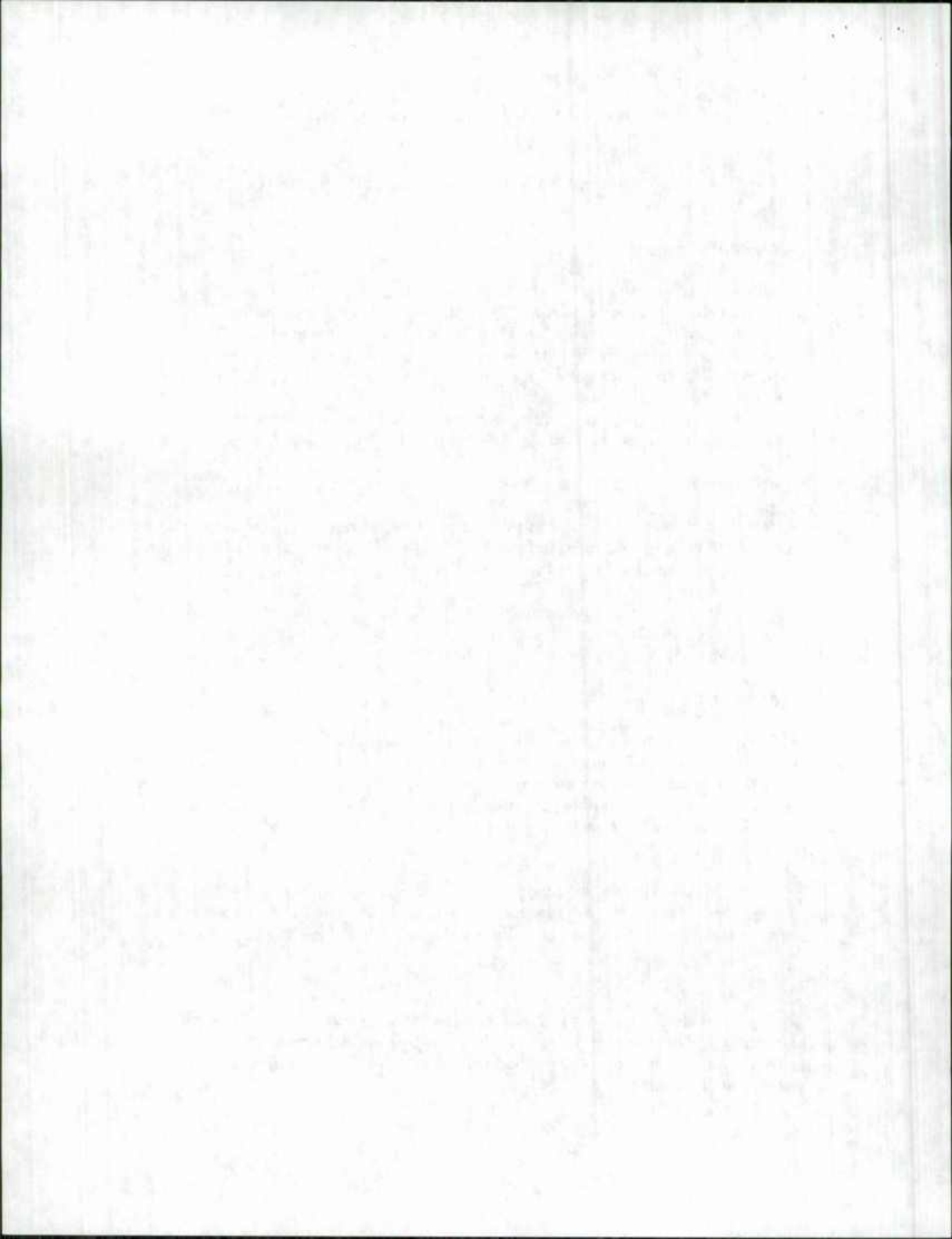
Applicant Response:

The use is located in a water oriented, marina, inn and commercial area on a busy waterway connecting the Choptank River and Eastern Bay. Other restaurants, an inn, a marina, a working commercial watermen's harbor and other commercial uses surround the restaurant and it is compatible with such uses in terms of scale, bulk and appearance. Expansion of seating capacity will not be detrimental to the economic value of neighboring property.

4. The use will not constitute a nuisance to other properties and will not have significant, adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances.

Applicant Response:

Expanded seating capacity at the restaurant will not constitute a nuisance to other properties and will not have adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances.



5. The use will not have significant adverse impact on public facilities or services including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services.

Applicant Response:

Expanded seating at the restaurant will have no such adverse impacts.

6. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic.

Applicant Response:

Expanded seating at the restaurant will not have any adverse effect upon marine, pedestrian or vehicular traffic. The property contains adequate parking and access to and from Maryland Route 33.

7. The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other Applicable standards for road capacity.

Applicant Response:

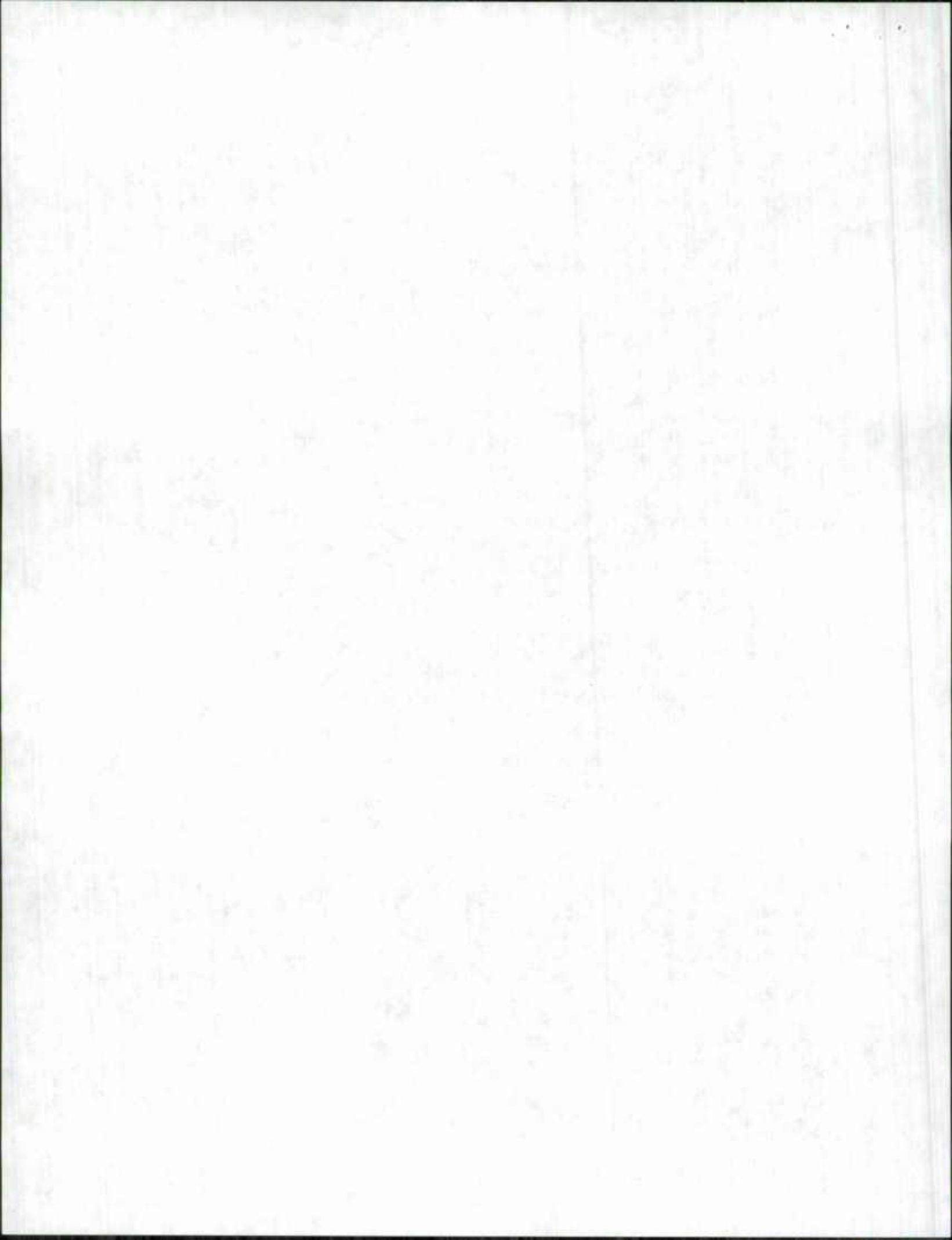
Maryland Route 33 is a high use road in the County, but with very light traffic in the vicinity of the restaurant. Expansion of restaurant seating capacity will not produce traffic volumes which would exceed the capacity of Maryland Route 33 in the area or elsewhere in the County.

8. Any vehicle access to proposed off street parking areas and drive in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic should not use a residential street nor create a hazard to a developed residential area.

Applicant Response:

Well established vehicle access will continue to be used and is designed to minimize such conflicts. Expansion of restaurant seating will not create a hazard given the nature of the area and minimal increase in traffic volumes.

9. Any use will not significantly adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife.



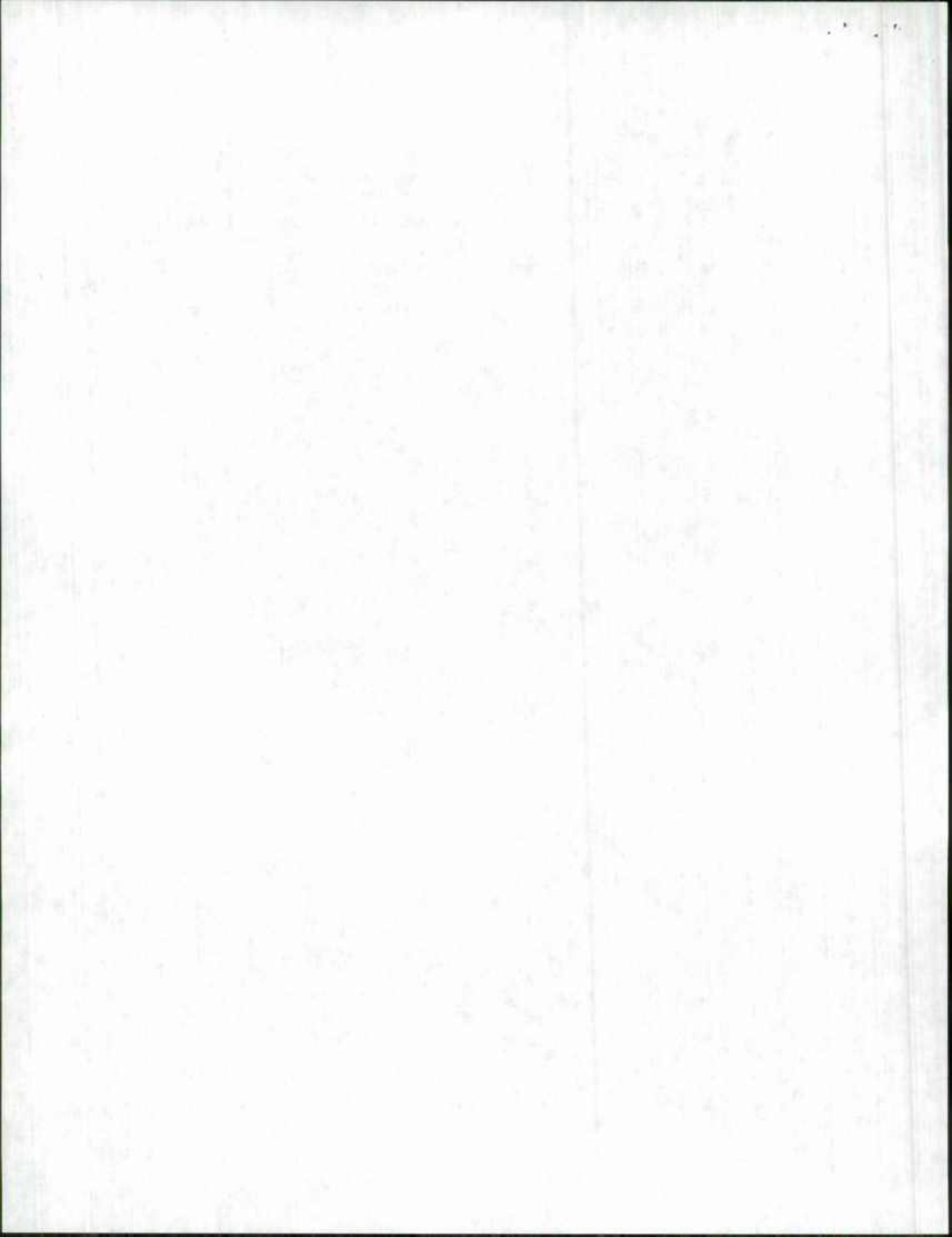
Applicant Response:

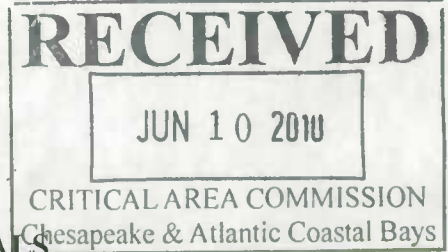
Expansion of restaurant seating will have no such adverse effect.

10. The use will not significantly adversely affect adjacent existing agricultural uses.

Applicant Response:

N/A. The restaurant property is not adjacent to any existing agricultural use.





DECISION

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 1493-R

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., May 10, 2010, on the application of Talbot County to revoke the amendment to a special exception granted to Bay Hundred Restaurant, Inc. and Back Creek II, LLC, on or about April 1, 2009. (The matter was originally scheduled for a hearing in February 2010 but was postponed to the May 10, 2010 date.)

The amendment to the special exception authorized an increase from 100 to 275 seats at the Bay Hundred Restaurant, 6178 Tilghman Island Road, Tilghman, Maryland 21671. The amendment also authorized a seasonal outdoor service bar and grill and an outdoor crab steaming facility at the restaurant. A condition of the amended special exception was that the restaurant owner/operator not play outdoor music at the restaurant. Talbot County's application alleges that the restaurant owner/operator has violated this condition by repeatedly playing outdoor music and has requested the Board of Appeals to revoke the amendment to the special exception for non-compliance with the that condition under §20-21C, §20-21F, and §20-21G of the Talbot County Code.

The property is located at 6178 Tilghman Island Road, Tilghman Island, Maryland 21671 in the Village Center District (VC) zone. The property owner is Back Creek II, LLC, and the property is located on Tax Map 44A, Parcel 362, Lot 1.

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Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Rush Moody, Betty Crothers, and John Sewell. Michael L. Pullen, Esquire, County Attorney, represented Talbot County. Back Creek II, LLC was represented by Willard C. Parker, II, Esquire, Easton, Maryland. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for Revocation with attachments.
2. Aerial map of subject property and adjacent properties.
3. Appeals Notice of Public Hearing.
4. Certificate of Publication of the Notice of Hearing.
5. Notice of Hearing with list of nearby property owners receiving mailed notice of the hearing.
6. Notice of Intention to Participate on behalf of Back Creek, II, LLC, filed by Willard C. Parker, II, Esquire.
7. Talbot County's Prehearing Statement.
8. Letter to Board of Appeals from Robert D. Ebel, dated February 22, 2010.
9. Memo to Board of Appeals from Allan J. Garner and Nancy M. Houser, dated February 22, 2010.

10. Letter to the Board of Appeals from the State of Maryland, Critical Area Commission, dated March 18, 2010.
11. Back Creek, II, LLC's Responsive Pre-Hearing Statement.
12. Sign Maintenance Agreement.

Introduction

The property which is the subject of this matter is located on the north side of Knapps Narrows, a small but active waterway between the Chesapeake Bay and the Choptank River. Historically, the property has been used for marine related commercial activities such as boat mooring and boat supplies, likely since before any County zoning ordinances were enacted. There has also been a restaurant on the property for over 30 years.

The owners of the property in 1978 came before the Board of Appeals to request a special exception to operate a small restaurant. As reported in the minutes of the Board in Appeal No. 290 one of the owners described the proposal as "a soup and sandwich restaurant, nothing very fancy, for the local people who daily tend to their boats at the marina." The minutes also reported that the total seating capacity of the restaurant would not exceed fifty persons. The Board granted the requested special exception in its written minutes, dated March 22, 1978. (At the same time the Board of Appeals also granted the applicants request for a variance for a 40' x 20' pad or deck for serving outdoor meals as the weather permitted.)

In 1982 the then property owner came before the Board of Appeals to request a special exception and a variance for a "modest" expansion of the existing restaurant. The Board of

Appeals in Appeal No. 482, dated July 27, 1982, granted the requested special exception and variance. The Board noted in its written decision that "(the Applicant) estimates the entire facility will accommodate no more than 100 patrons, inside and outside, meeting the limitation of Section 10-33(c)(17), Talbot County Code."

The property and the restaurant apparently passed through several owners after 1982, but no matters relating to the property came before the Board until 2008. By this time the property was owned by Back Creek, II, LLC and the restaurant portion of the property was leased to Bay Hundred Restaurant, Inc. During that time, however, it appears that the restaurant gradually expanded both physically and in terms of seating capacity. On July 7, 2008 the Board of Appeals held a hearing on the application of Bay Hundred Restaurant, Inc. for a special exception to authorize seasonal seating at the restaurant in excess of 100 seats and to permit a seasonal outdoor service bar, grill and crab steaming. (The applicant also sought certain variances for certain physical expansions of the deck and awnings that were used in the restaurant operation.)

Also, the restaurant had apparently begun to employ outdoor music as a draw for customers. In his opening statement counsel for the applicant said that the appeal was the result of a noise complaint from a competitor about outdoor music. Responding to the complaint the zoning inspector noted existing awnings and a deck area that appeared to have been constructed without a building permit. The owner of Bay Hundred Restaurant, Inc., Mr. Mark Chew, indicated to the Board that, in response to complaints, he had established a policy of no outdoor

music at the restaurant. He also admitted that he had gradually expanded the number of seats at the restaurant beyond 100.

The Board issued a written decision on the application on September 11, 2008, granting the requested special exception limiting the capacity of the restaurant to 275 seats. In its findings relating to the special exception requirement that the proposed use avoid significant adverse impacts on the surrounding area the Board noted that, "(t)his condition is only met so long as the Applicant continues its policy of no outdoor music..."

A representative of Back Creek, II, LLC, Mark Julyan, was present and testified at the hearing held on July 7, 2008. He was then and continues to be the manager of the property on behalf of the owner. A copy of the Board's written decision was mailed to Mr. Julyan.

Despite his policy of no outdoor music as announced at the July 7, 2008 hearing, Mr. Chew apparently decided that he could on occasion provide outdoor music at the restaurant. At the request of the county attorney the Board held a hearing on November 24, 2008 to reconsider whether to modify, revoke, or attach other conditions to the special exception granted on September 11, 2008. Evidence was presented at the hearing that the restaurant, despite its policy, had outdoor music, both by live bands and by recorded music played through speakers. Both Mr. Chew and Mr. Julyan were present at the hearing and testified. The Board reaffirmed the previously granted special exception for the expansion of the restaurant seating capacity from 100 to 275 with the condition that there must be no outdoor music, live or recorded. The reaffirmation, with the condition, was voted on and announced at the hearing on November 24, 2008, and memorialized in a written decision issued dated April 1, 2009.

At the July 7, 2008 hearing a number of nearby homeowners appeared in support of the application complementing the owner for being responsive to their complaints regarding outdoor music. However, following the decision of the Board the neighbors apparently began to regret their support as the County began to receive numerous complaints regarding outdoor music at the restaurant. On November 19, 2009, the county attorney filed an Application To Revoke Approval alleging that outdoor music has been played repeatedly in violation of the restriction imposed on the approval by the Board, resulting in the hearing held on May 10, 2010.

Talbot County Code

Talbot County Code, §20-21C provides:

“Compliance required. An approval shall be implemented and maintained in compliance with all terms, conditions, restrictions, and limitations imposed by this Code or the Board. Noncompliance shall be a violation of the approval and shall be cause for revocation of the approval.”

Code, section 20-21F provides in pertinent part:

“Revocation. The Planning Commission, any County department, or any adjacent property owner...may file an application to revoke any approval for noncompliance with §20-21C. The Board shall schedule the application for a hearing, notify the property owner, provide public notice and conduct a public hearing on the application as set forth in this chapter and the Board’s rules of procedure.”

Code, section 20-21G provides:

“Effect of noncompliance. The Board may revoke the approval upon a finding of noncompliance with the requirements of §20-21C. In lieu of revocation, the Board may modify or set such other or further terms, conditions, restrictions, or limitations upon the approval as it deems appropriate.”

Evidence Presented at Hearing

Numerous nearby residents testified at the hearing that they were disturbed repeatedly by loud music, or worse, karaoke from the Bay Hundred Restaurant. They would have to go indoors and turn on air conditioning systems to attempt to drown out noise. Their complaints to Mr. Chew would be unanswered. Among those who testified regarding continuing music from the restaurant included:

1. Douglas Fluharty, 21609 Camper Circle, Tilghman.
2. Robert Ebel, 21748 Camper Circle, Tilghman.
3. Leslie Steen, 21748 Camper Circle, Tilghman.
4. John A. Smith, 21749 Camper Circle, Tilghman.
5. Debra Lynn Brookhouser, 21756 Camper Circle, Tilghman.
6. Allan J. Garner, 21729 Camper Circle, Tilghman.
7. Rondy Alstrom, 21724 Camper Circle, Tilghman.
8. Thomas Geary, 21752 Camper Circle, Tilghman.
9. Jill Khaddari, 21752 Camper Circle, Tilghman.

County's Exhibit No. 1 consisted of copies of email from Rondy Astrom to the county attorney complaining about outdoor music at the Bay Hundred Restaurant.

County's Exhibit No. 2 was an aerial photograph of the restaurant property in relation to the various residents of Camper Circle, Tilghman.

County's Exhibit No. 3 was a memo, dated February 22, 2010 to the Board of Appeals relating to outdoor music from the Bay Hundred Restaurant.

County's Exhibit No. 4 was a letter, dated May 24, 2007, from Mark F. Julyan, General Manager, Knapp's Narrows Marina & Inn.

County's Exhibit No. 5 was a print from an internet advertisement from Bay Hundred Restaurant printed from the internet on May 10, 2010.

County's Exhibit No. 6 was an advertisement for a benefit scheduled at the Bay Hundred Restaurant on October 5, 2008, mentioning live music.

Jennifer McCrea, 9011 Glebe Creek Road, Easton, testified that she helped with a charitable fundraiser held at the restaurant in 2008 that featured live music.

Robert D. Graham, Chief Code Compliance Officer, Talbot County, testified that he became aware of the alleged violations regarding outdoor music as a result of citizen complaints.

Mark Julyan testified that he had evicted Bay Hundred Restaurant from the property because of repeated violations of the restrictions on outdoor music. He said that the restaurant property has recently been leased to a new operator who will reopen the restaurant on May 24, 2010. The new operator of the restaurant is aware of the prohibition regarding outdoor music will comply with that prohibition. He asked that the special exception not be revoked so the new operator would be permitted a 275 seat restaurant.

Mr. Julyan said that he was a non-resident manager of the property and he was usually only there from 7:00 a.m. to 4:00 p.m. on weekdays. He was not aware of activities at the restaurant when he was not there. No one complained to him about outdoor music. He only became aware of complaints after the County initiated actions to enforce the condition of no outdoor music.

Mr. Parker offered several exhibits for the Board's consideration as follows:

1. Copy of a confirmatory deed conveying the property to Back Creek, II, LLC.
2. Copy of letter, dated March 12, 2010, from Mark F. Julyan to Bay Hundred Restaurant, Inc. advising of the breach of lease and ordering that the property be vacated.
3. Copy of Ex Parte Emergency Motion for Temporary Restraining Order, etc. asking the Circuit Court to set aside the eviction notice.
4. Copy of docket entries from the Circuit Court for Talbot County showing that the aforementioned motion was denied.

Mr. Parker also offered a copy of a memorandum opinion and order from the Circuit Court for Talbot County, Case 20-C-07-006072. The exhibit was not admitted.

Mark Chew, owner of Bay Hundred Restaurant, Inc. testified that he had recently been locked out of the premises and was no longer operating a restaurant. He admitted that he had on occasion had live outdoor music at the restaurant even though he knew that it was a violation of the special exception condition.

Three witnesses testified that regarding the importance of the continued viability of a restaurant on the property to their business as charter boat operators. They were:

1. Mike Richards, 5907 Tilghman Island Road, Tilghman.
2. Howard Sweet, 2142 Elmer Street, Tilghman.
3. Bill Kneessi, 7084 Drum Point Road, St. Michaels, Maryland.

Marc Bridges, 6670 Tilghman Island Road, Sherwood, Maryland, testified that he lives a mile away and on some nights he could hear music from the restaurant.

Mr. Parker, asked, on behalf of the property owner, Back Creek, II, LLC, that the special exception not be revoked as the offending party has been removed from the property and a new operator of the restaurant will begin soon, with clear and unambiguous knowledge of the restriction from outdoor music required by the Board. He argued that the restaurant would not be economically viable with the seating restricted to 100 persons.

Findings

The Board finds from the evidence presented that Bay Hundred Restaurant, Inc. knowingly and repeatedly violated the express condition of the special exception to expand the restaurant from 100 to 275 seats, namely, no outdoor music. It further finds that under the circumstances that the violations were deliberate and with clear knowledge of the condition imposed by the Board, that the appropriate remedy is to revoke the special exception. These findings are based on the credible testimony of neighbors that the Bay Hundred Restaurant, Inc. continued having outdoor music at the property despite the condition of the special exception. It is also based on the admission of the restaurant owner that he continued to feature outdoor music despite his knowledge of the condition. Revocation of the special exception is appropriate even though the offending operator has been evicted. Despite repeated violations of the conditions regarding outdoor music the evidence shows that the property owner has failed in any meaningful way to monitor the activities of the restaurant or otherwise take any action to protect any right to the special exception until forced to do so.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY
THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the special exception previously granted to Bay Hundred Restaurant,
Inc., in Appeal No. 1493, by decision dated September 11, 2008, and affirmed by decision dated
April 1, 2009, is hereby REVOKED. The members of the Board of Appeals voted 5 to 0 to
revoke the special exception.

GIVEN OVER OUR HANDS, this 8th day of June, 2010.


TALBOT COUNTY BOARD OF APPEALS



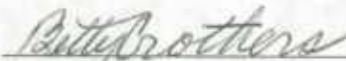
Paul Shortall, Jr., Chairman



Philip Jones, Vice Chairman



Rush Moody

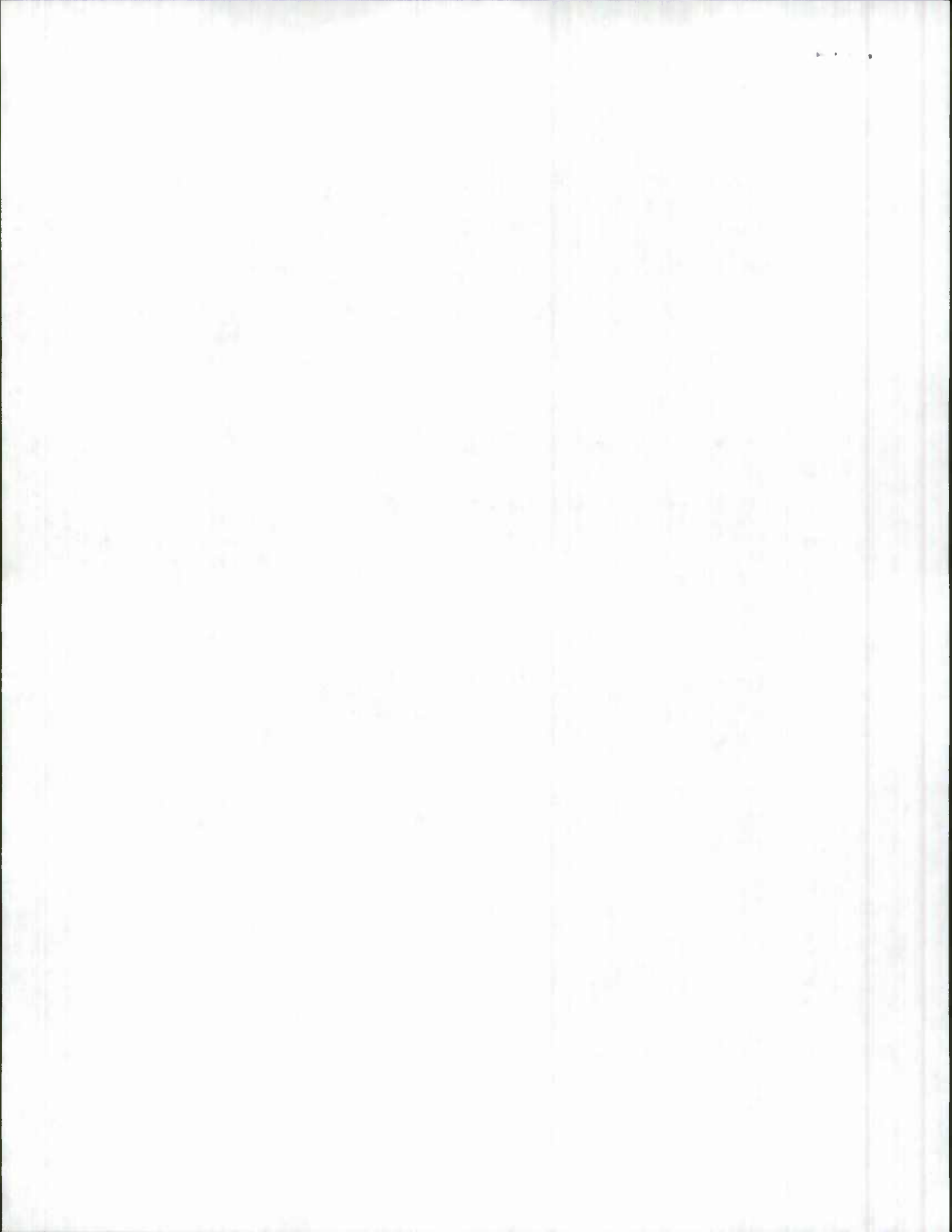


Betty Crothers



John Sewell

Board of Appeals/1493-R.BayHundredRestaurant



369-08 ?



TALBOT COUNTY BOARD OF APPEALS

28712 GLEBE ROAD, SUITE 2
EASTON, MARYLAND 21601

PHONE: 410-770-8040

FAX: 410-770-8043
TTY: 410-822-8735

June 30, 2010

Nick Kelly
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

RE: **Notice of Judicial Review**
Board of Appeals Case No. 1493-R
Petition of Back Creek II, LLC

Dear Mr. Kelly,

Pursuant to Maryland Rule 7-202 (d) (3) you are hereby notified that on June 24, 2010 a Petition for Judicial Review was filed in the Circuit Court of Talbot County and assigned Civil Action No. 20-C-10-007313 AA.

A party wishing to oppose the Petition must file a Response within 30 days after the date of this notice unless the Court shortens or extends the time.

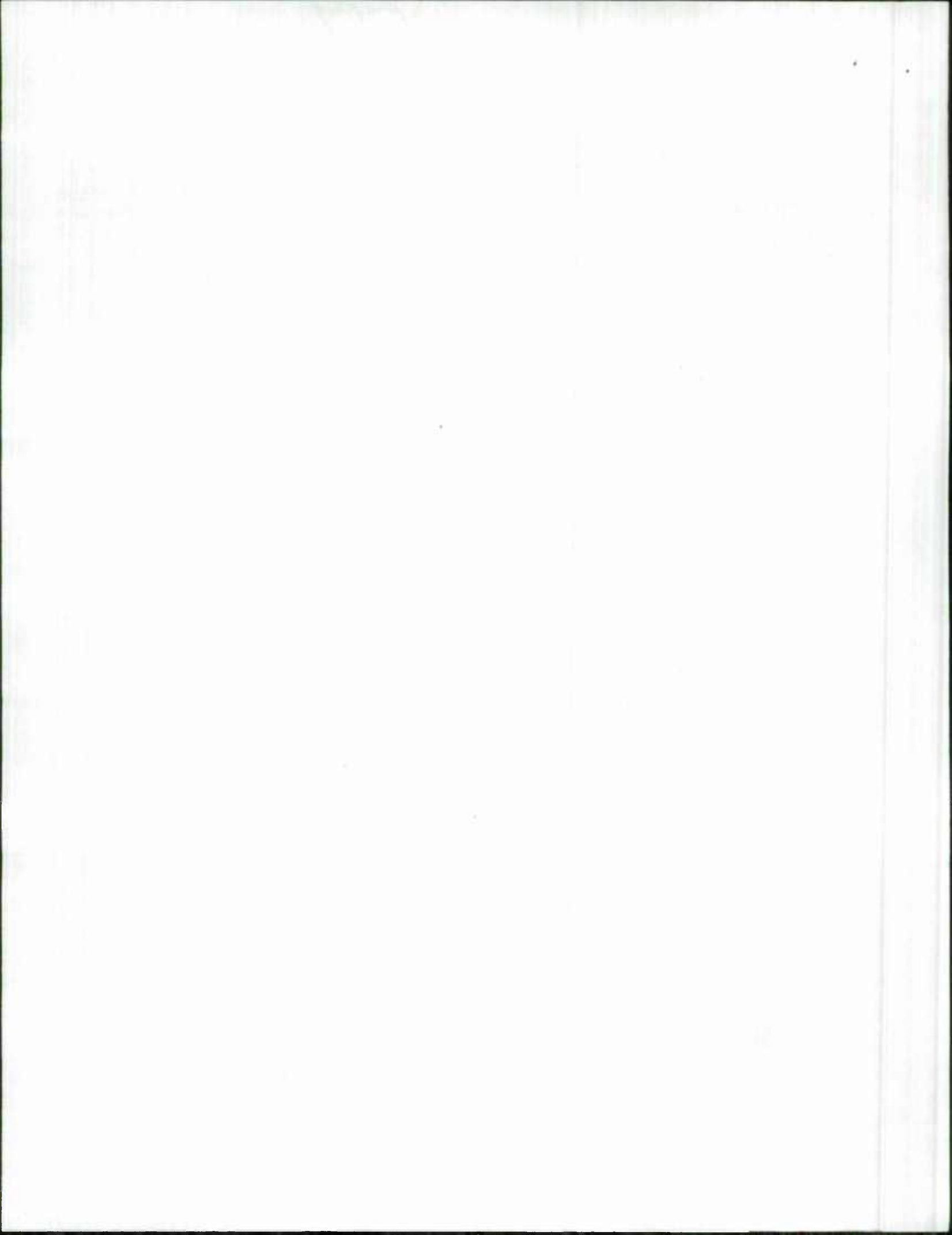
Sincerely,

Chris Corkell
Administrative Assistant

Enclosure



BOARD OF BACK CREEK II LLC
BOARD OF APPEALS CASE NO. 1493-R
RE: NOTICE OF JUDICIAL REVIEW



CIRCUIT COURT FOR TALBOT COUNTY

Mary Ann Shortall
Clerk of the Circuit Court
11 N. Washington Street
Suite 16

Easton, MD 21601
(410)-822-2611

MD Toll Free (1-800)339-3403 Fax (410)820-8168 Assignment Ofc (410)770-6809

CASE NUMBER: 20-C-10-007313 AA

In the Matter of Back Creek II, LLC

RECEIVED
JUN 29 2010

Talbot County Board Of Appeals
28712 Glebe Road, Suite 2
Easton MD 21601

NOTICE TO ADMINISTRATIVE AGENCY
OF JUDICIAL REVIEW

=====

You are advised that a petition for judicial review was filed on 06/24/2010 and assigned Civil Action No. 20-C-10-007313.

Pursuant to Maryland Rule 7-202(d)(1), a copy of the petition is enclosed for the agency.

Date Issued: 06/25/10

Mary Ann Shortall

Mary Ann Shortall
Clerk of the Circuit Court
of Talbot County



PLEASE DATE, SIGN AND RETURN TO THE COURT THE COPY OF THIS NOTICE

DATE RECEIVED: June 29, 2010

SIGNATURE: Chris Corbett



COPY

PETITION OF
BACK CREEK II, LLC,
6178 Tilghman Island Road,
Tilghman, Maryland 21671
FOR JUDICIAL REVIEW OF THE
DECISION OF THE
TALBOT COUNTY BOARD OF APPEALS
28712 Glebe Road, Suite 2
Easton, Maryland 21601
IN APPEAL NO. 1493-R IN THE MATTER
OF THE APPLICATION OF TALBOT
COUNTY TO REVOKE THE AMENDMENT
TO A SPECIAL EXCEPTION GRANTED TO
BAY HUNDRED RESTAURANT, INC. AND
BACK CREEK II, LLC

* IN THE CIRCUIT COURT
* FOR TALBOT COUNTY
* STATE OF MARYLAND
* CASE NO. 20-C-10-007313

CIRCUIT COURT
OF TALBOT COUNTY
EASTON, MARYLAND
2010 JUN 24 PM 12:34


* * * * *

PETITION FOR JUDICIAL REVIEW

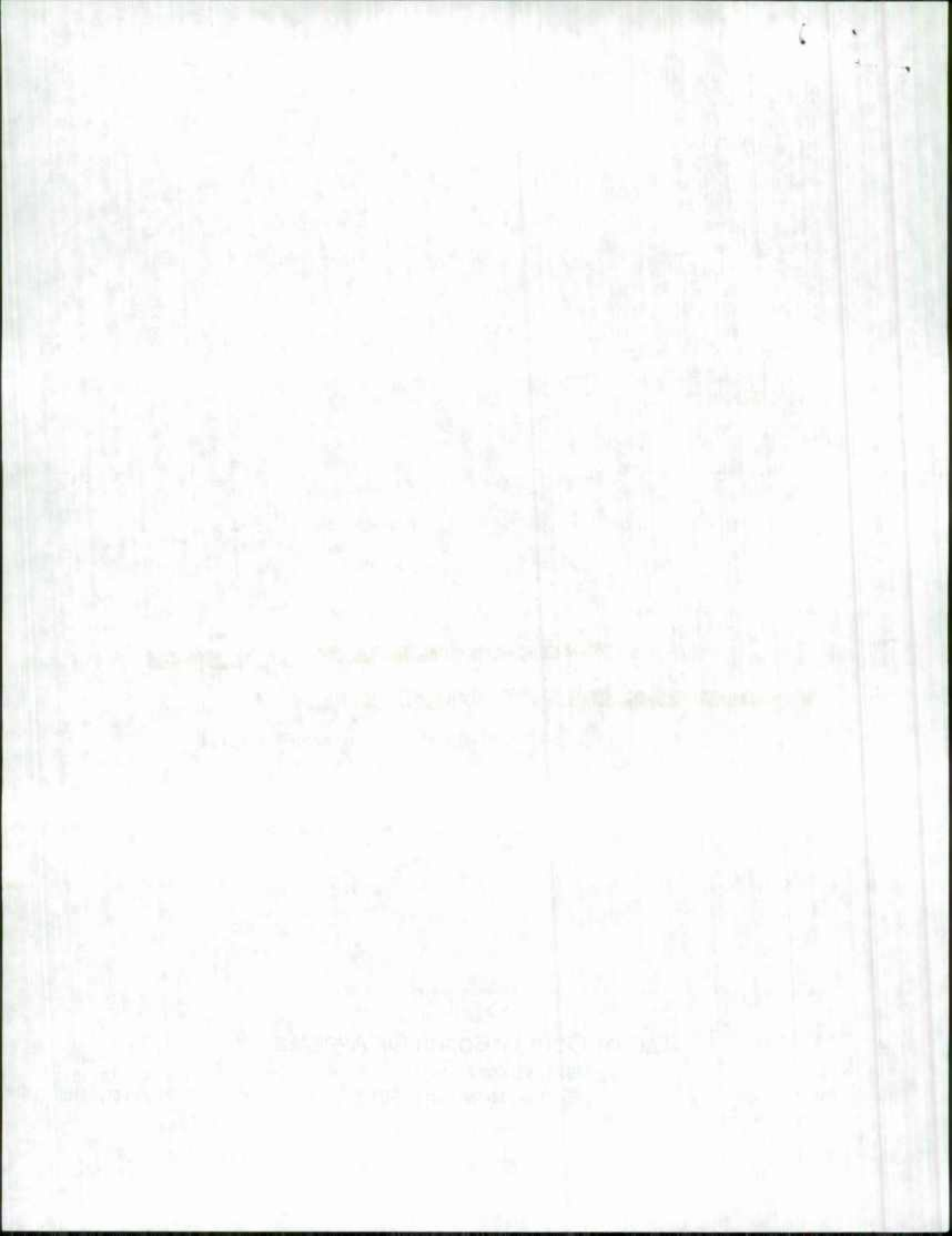
Back Creek II, LLC, ("Petitioner") by Willard C. Parker, II and Parker Counts & Melton, LLP, its attorneys, owners of the real property known as 6178 Tilghman Island Road, Tilghman, Maryland 21671, requests judicial review of the decision of the Talbot County Board of Appeals dated June 8, 2010 granting Talbot County's application to revoke the amendment to a special exception granted to Bay Hundred Restaurant, Inc. and Back Creek II, LLC.

PARKER COUNTS & MELTON, LLP

BY:



Willard C. Parker, II
129 N. Washington Street
P.O. Box 1209
Easton, Maryland 21601
(410)822-1122
Attorneys for Petitioners



MINUTES OF PUBLIC HEARING
TALBOT COUNTY BOARD OF APPEALS
July 12, 1982
Appeals No. 482

Pursuant to due notice, a Public Hearing was held by the Talbot County Board of Appeals at the Court House, Easton, Maryland at 7:30 p.m., on July 12, 1982 on the appeal of Mr. Robert N. Huntington (Being Appeal No. 482) for a Special Exception in accordance with Section 19-33(d) and a Variance from yard requirements of Section 19-33(h) as provided in Sections 19-11(3) and (4), Talbot County Code. Property is located on Rt. 33 adjacent to the drawbridge, Tilghman Island in the V-1 Zone.

Among those present were Messrs. Coleman, Allen, Councell, Turner and Warner constituting the Board of Appeals, Mrs. Janice M. Currie, Recorder and acting coordinator for the Planning and Zoning Commission

Mrs. Janice M. Currie was sworn and testified and presented the following marked exhibits:

Application for a Special Exception and a Variance. Exhibit No. 1.

Tracing of a Section of Tax Map 44A Showing location of Subject Property outlined in red. Exhibit No. 2.

Appeals Notice of Public Hearing. Exhibit No. 3.

Confirmation of Newspaper Advertisements Published in the Star Democrat. Exhibit No. 4.

Notice of Hearing with Attached List of Property Owners Notified, 3 sheets total. Exhibit No. 5.

Variance Requirements. Exhibit No. 6.

Special Exception Requirements, 2 sheets Total. Exhibit No. 7.

Planning Commission Comments. Exhibit No. 8.

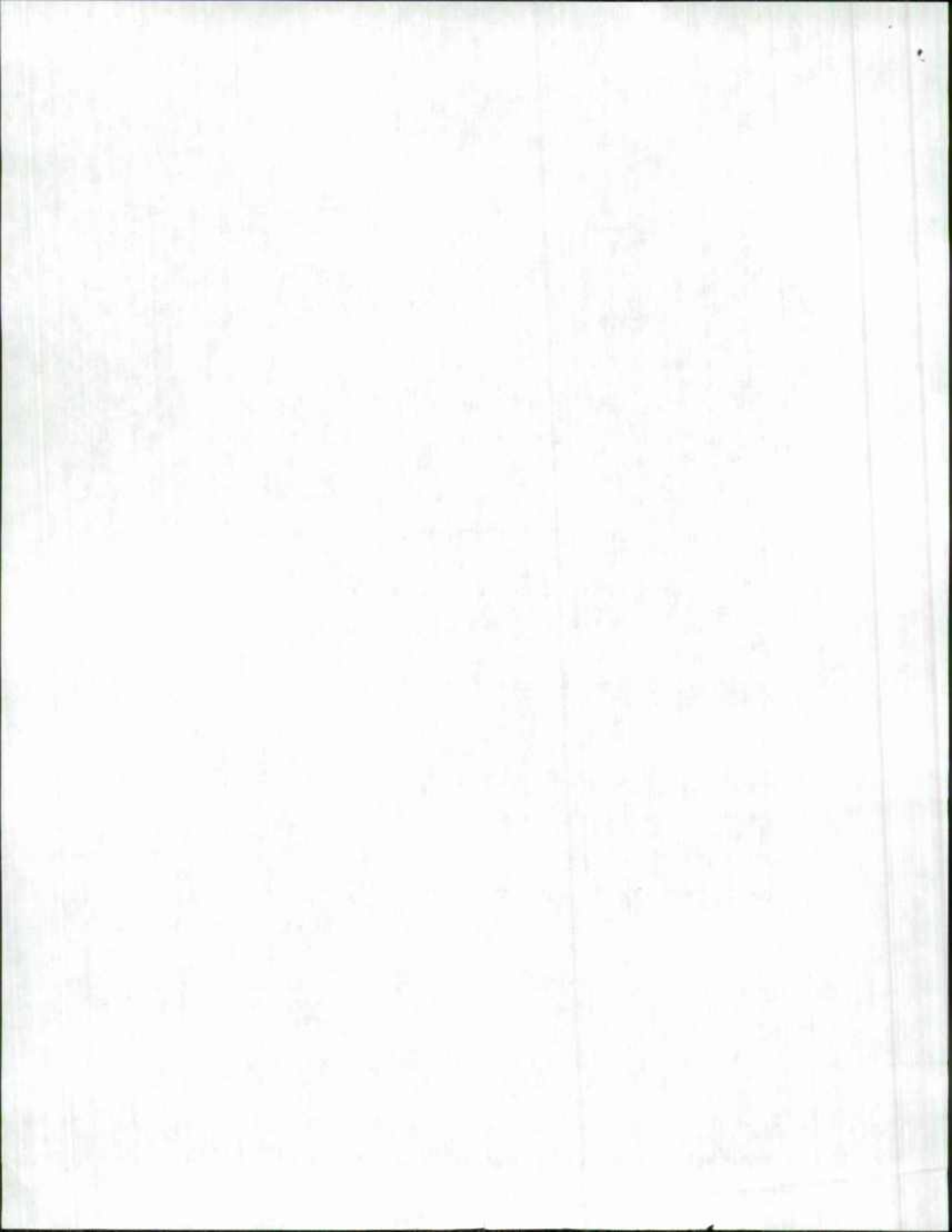
Sign Agreement, Exhibit No. 9.

Sketches of Proposed Building, 2 sheets. Exhibit No. 10.

Exhibit A-1. Mr. Huntington presented a copy of his automobile parking diagram.

After presentation of Boards Exhibit No. 8, the Chairman reminded the assembled that the Board, while mindful of the Planning and Zoning Commission's valued comments, was not bound by same, Talbot County Code, Section 19-11-f.

At this point, it was noted for the record, that the Board of Appeals had made a site visit.



Mr. Robert Huntington, appellant, was sworn and testified.

He plans to enlarge his restaurant located on Knapps Narrows at Rt. 33, Tilghman MD. Due to limitations imposed by the Talbot County Zoning Code, he seeks relief from Sections 19-33(d & h) as provided for in Section 19-11(3 & 4).

The Chairman then invited Mr. Huntington to proceed with the details of his proposal to enlarge his restaurant and the facts required to support his request for a special exception and a variance.

He plans to construct a 18 foot by 44 foot screened porch, with roof, on a concrete slab floor at the south side of his existing restaurant building. The south- side of the porch will be parallel to and be 17 foot 10 inches north of his bulkhead on Knapps Narrows. When completed, he estimates the entire facility will accommodate no more than 100 patrons, inside and outside, meeting the limitation of Section 19-33(c)(17), Talbot County Code.

The existing gasoline pumps and base on the east side of his building will be removed and the space provided used to enlarge his parking area.

Mr. Huntington desires to begin construction as soon as possible, estimating completion with 3 to 4 weeks of starting date.

He next addressed the requirements for a Special Exception.

1. His proposal is a modest enlargement of an existing water front restaurant designed to principally serve the local residents, with a facility within the V-1 Zone of Tilghman and is consistent with the general plan for orderly growth and development of the County.

2. The restaurant will be in harmony with the commercial character of the immediate neighborhood, another small restaurant on the opposite shore, and nearby boat yards, marina and seafood processing establishments. The structure is on 12+ acres of land & having sufficient land and will provide for off-street parking to fully meet the requirements of Section 19-8, Talbot County Code.

3. The proposal will blend with the commercial character of the neighborhood. A porch added to an existing business will not be detrimental to the neighborhood. There will be no objectionable glare from any night illumination.

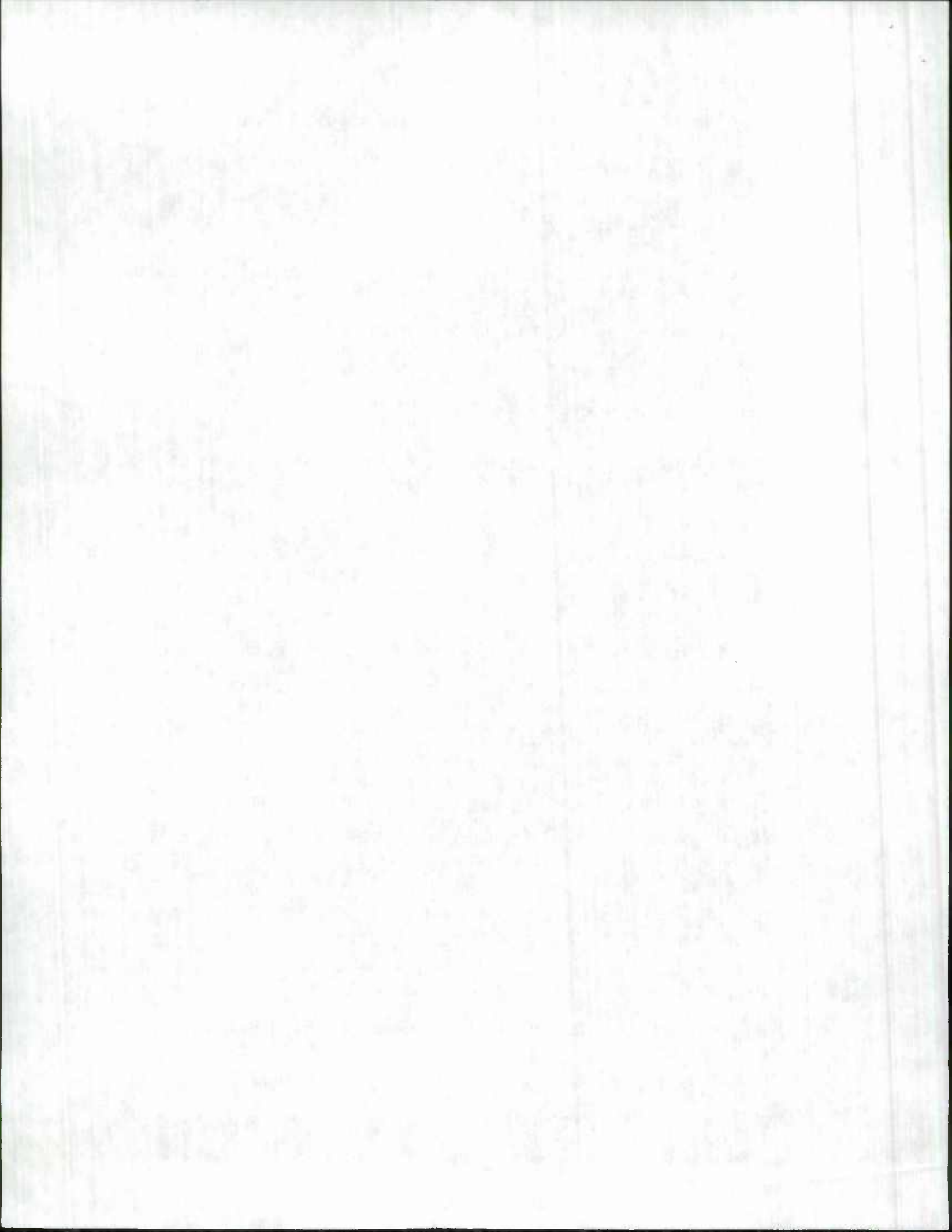
4. Mr. Huntington foresees no material increase in Rt. 33 traffic due to his addition. Any boats that may stop will be clear of the passing marine traffic at his wharf and slips.

5. The porch could not adversely effect the health, safety, security or welfare of people within the area.

6. The facility will not use any public services. The restaurant now has an approved septic system and private water source.

7. Mr. Huntington is committed to meet all definitions and standards for such use.

He then addressed the requirements to obtain a Variance.



1. The opportunity for expansion is limited by fuel tanks on the east, a septic system and entrance road on the north, and an ice house and cold storage building on the west, all in place when he purchased the property, leaving the south side as the only logical area for expansion.

2. Other properties along the commercial water front of Knapps Narrows are as close to the water front as his proposed structure. The existing setbacks from Knapps Narrows are not uniform to the eye.

3. Mr. Huntington disclaims any action that created the special conditions stating that all were existing when he purchased the property.

4. He is within the commercial waterfront area of Knapps Narrows where the setbacks are irregular and he is therefore not being granted a special privilege. His addition will be in keeping with the general commercial appearance of the area.

Mr. Fred Glose next came forward and was sworn.

Mr. Glose has a part-time residence at Bar Neck, Tilghman. He was in support of Mr. Huntington's proposal.

There being no further witnesses or testimony, the Chairman adjourned the hearing at 8:20 p.m., later reconvening in Executive Session to arrive at a decision on subject appeal.

Upon a motion duly made and seconded and unanimously carried, the following findings of fact and law were made:

1. That all legal requirements pertaining to the Notice of Public Hearing have been fully complied with.
2. That a site visit was made by a majority of the Board of Appeals agreeable to Section 11.04 of the Zoning Ordinance.

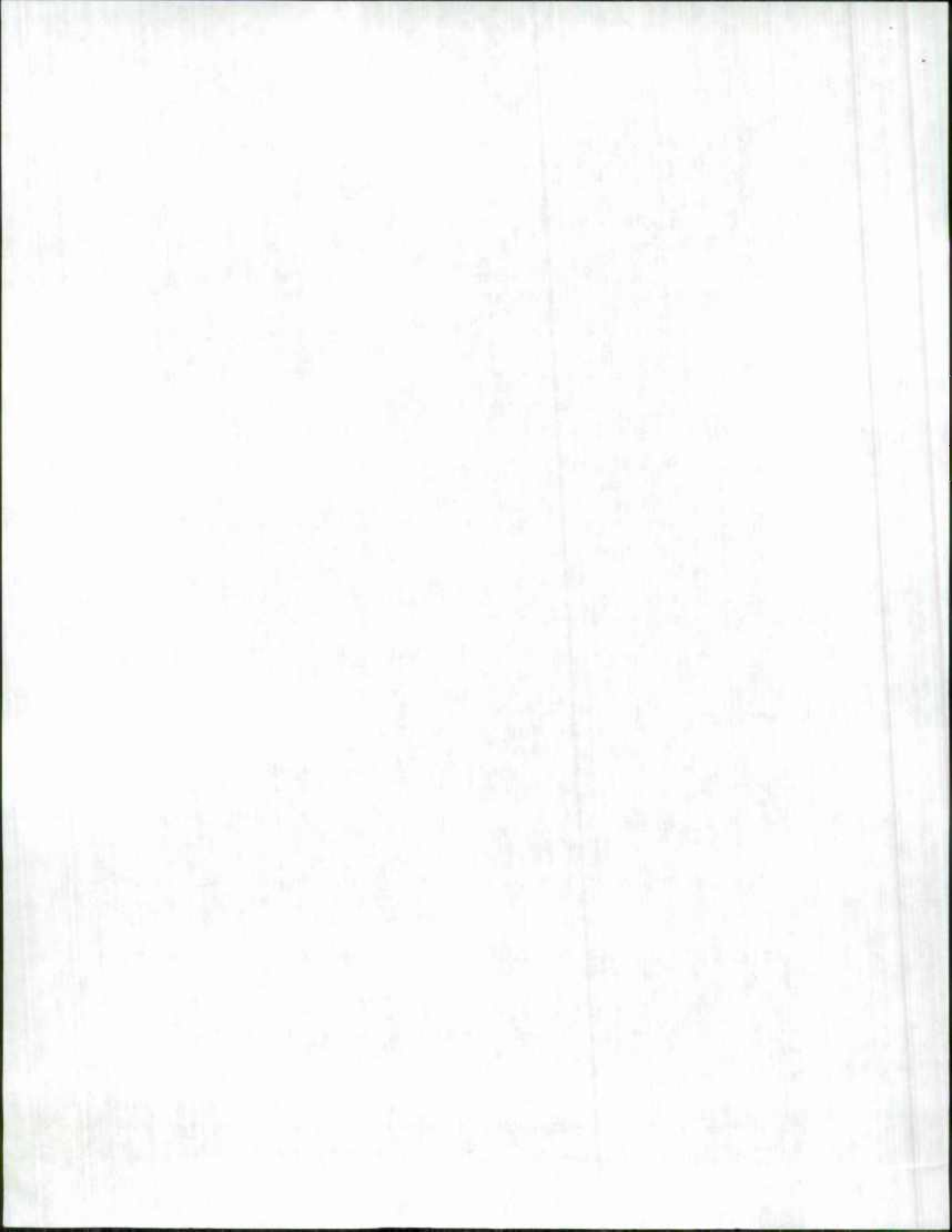
Warner on July 8, 1982, Allen on July 7, 1982, Coleman on July 8, 1982, Turner on July 10, 1982, Councill no visit.

3. That subject property is in a V-1 Zone of Talbot County. Official Zoning Map. NO. 44.
4. That to proceed with his plans, Mr. Huntington will require approval of his application for a Special Exception and Variance because of limitations specified in Section 19-33(d) and (h).

Special Exception. The Board finds for Mr. Huntington by the preponderance of evidence of record that:

1. His proposal is a modest enlargement of an existing waterfront restaurant designed to principally serve the local residents, with a facility within the V-1 Zone of Tilghman and is consistent with the general plan for orderly growth and development of the County.

2. The restaurant will be in harmony with the commercial character of the immediate neighborhood, another small restaurant on the opposite shore, and nearby boat yards, marina and seafood processing establishments. The structure is



small and the character of the business is leisurely. The building is situated on 12+ acres of land. Having sufficient land and will provide for off-street parking to fully meet the requirements of Section 19-8, Talbot County Code.

3. The proposal will blend with the commercial character of the neighborhood. A porch added to an existing business will not be detrimental to the neighborhood. There will be no objectionable glare from any night illumination.

4. Mr. Huntington foresees no material increase in Rt. 33 traffic due to his addition. Any boats that may stop will be clear of the passing marine traffic at his wharf and slips.

5. The porch could not adversely effect the health, safety, security or welfare of people within the area.

6. The facility will not use any public services. The restaurant now has an approved septic system and private water source.

7. Mr. Huntington is committed to meet all definitions and standards for such use.

Variance. The Board finds from the evidence submitted that Mr. Huntington has demonstrated that:

1. The opportunity for expansion is limited by fuel tanks on the east, a septic system and entrance road on the north, and an ice-house and cold storage building on the west, all in place when he purchased the property, leaving the south side as the only logical area for expansion.

2. Other properties along the commercial waterfront of Knapps Narrows are as close to the water front as his proposed structure. The existing setbacks from Knapps Narrows are not uniform to the eye.

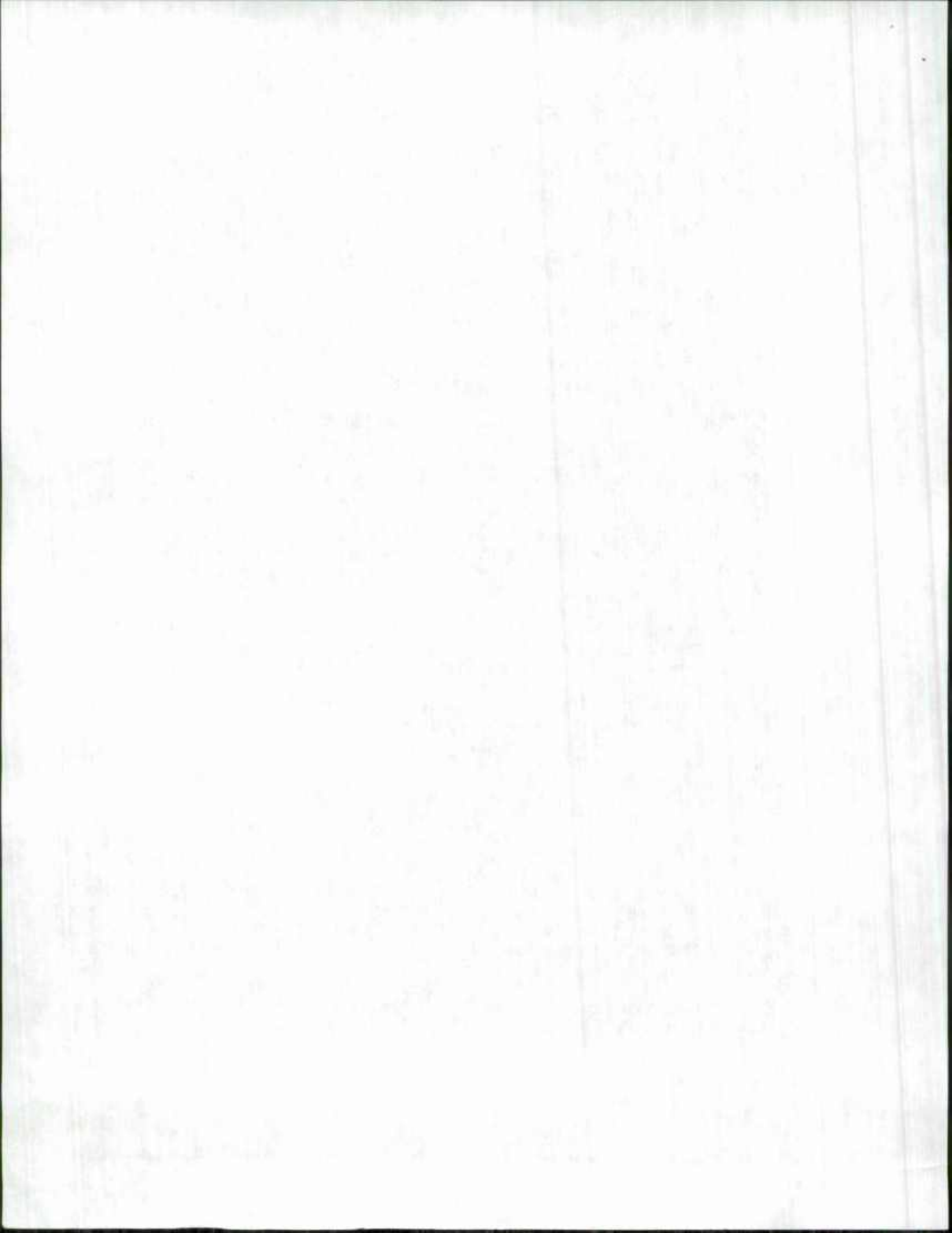
3. Mr. Huntington disclaims any action that created the special conditions stating that all were existing when he purchased the property.

4. He is within the commercial waterfront area of Knapps Narrows where the setbacks are irregular and he is therefore not being granted a special privilege. His addition will be in keeping with the general commercial appearance of the area.

Having made the foregoing findings of fact and law:

"BE IT FURTHER RESOLVED BY THE TALBOT COUNTY BOARD OF APPEALS, THAT INAPPEAL NO. 482, NOW PENDING BEFORE THIS BOARD, MR ROBERT. N. HUNTINGTON BE, AND IS HEREBY, GRANTED A SPECIAL EXCEPTION AND A VARIANCE TO CONSTRUCT A 18 FOOT BY 44 FOOT SCREENED PORCH WITH ROOF ON THE SOUTH SIDE OF HIS RESTAURANT AS TESTIFIED TO, SUBJECT TO THE FOLLOWING CONDITIONS."

1. Strict adherence to all applicable regulations of the Talbot County Code, and as amended from time to time.
2. Strict adherence to all applicable regulations of the Maryland Health Department, Soil Conservation Agency, Environmental Agency and the State Fire Marshall.



3. Twelve months, from the date of this resolution will be allowed for construction of the porch, beyond that date this resolution becomes null and void.

The Vote of the Board was unanimous for Granting the Special Exception and the Variance.

Given over our hands this 27th day of July 1982.

THE TALBOT COUNTY BOARD OF APPEALS

Robert Coleman
Robert Coleman, Chairman

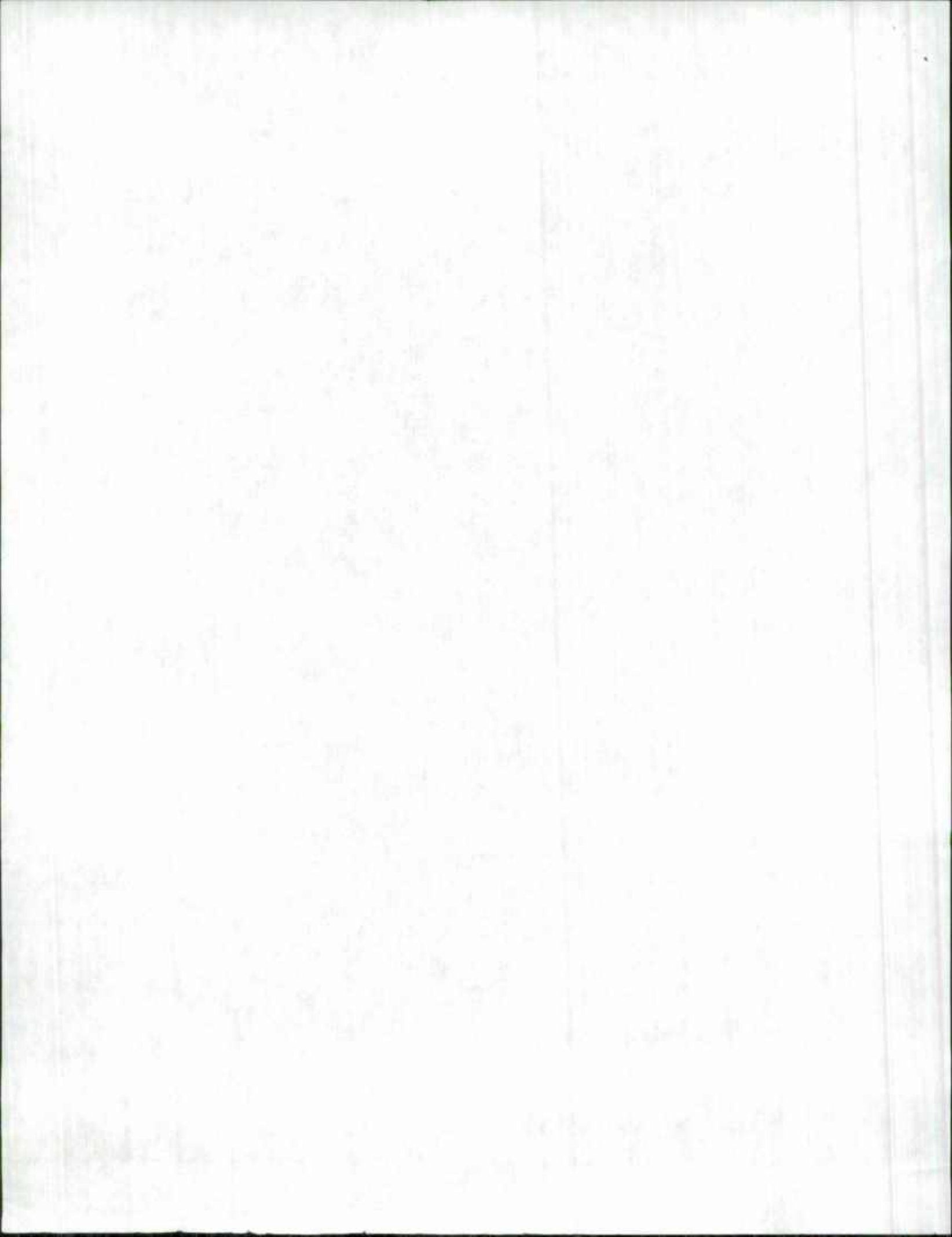
Robert J. Allen
Robert J. Allen

James E. Warner
James E. Warner

Edzel L. Turner
Edzel L. Turner













Phillip E. Council
Phillip E. Council

RJA/jc



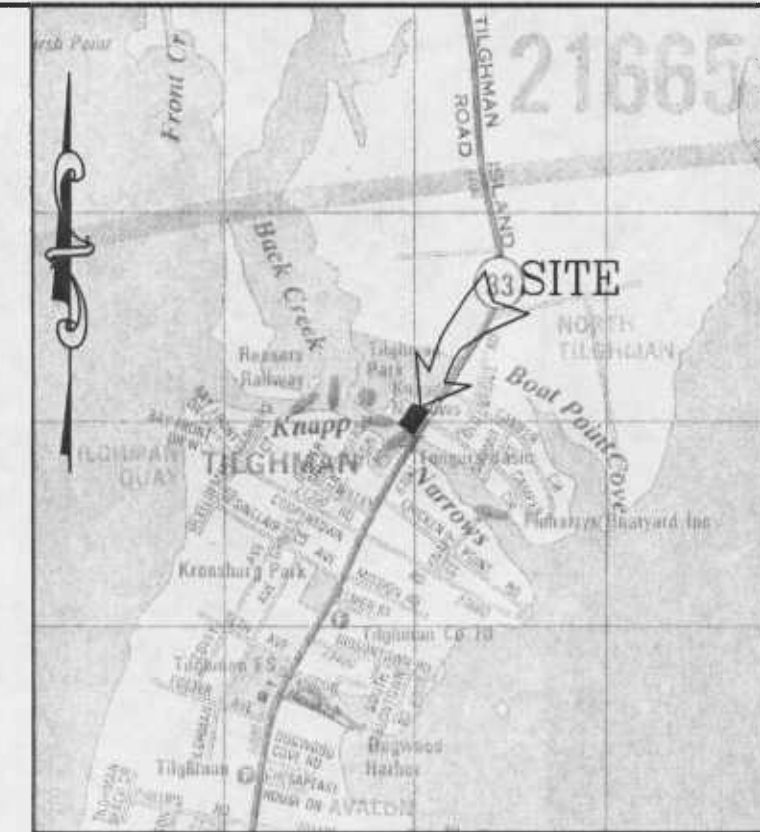
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LEGEND

-  - LAMP POST
-  - GUY WIRE ANCHOR
-  - UTILITY POLE
-  - PUMP STATION
-  - TELEPHONE PEDESTAL
-  - ELECTRIC TRANSFORMER
-  - SIGN
-  - HEAT PUMP
-  - COMPUTED POINT
-  - SEWER CLEANOUT
-  - OVERHEAD UTILITY WIRE
-  - PLANTER/GARDEN AREA

IMPERVIOUS AREA CALCULATIONS, ENTIRE SITE:
 TOTAL LOT AREA= 36,083 SQ. FT.±
 ALLOWABLE IMPERVIOUS AREA= 5,412 SQ. FT. (15% OF 36,083 SQ. FT.±)
EXISTING IMPERVIOUS AREA:
 ONE STORY RESTAURANT= 3,182 SQ. FT.
 OUTSIDE BAR= 236 SQ. FT.
 RAMP= 25 SQ. FT.
 PATIO= 1,781 SQ. FT.
 DECK= 940 SQ. FT.
 STEPS= 29 SQ. FT.
 ONE STORY BUILDING= 335 SQ. FT.
 CONCRETE PADS= 256 SQ. FT.
 GRAVEL AREAS= 21,249 SQ. FT.
 PAVED AREA= 437 SQ. FT.
 WALK-IN= 35 SQ. FT.
 RETAINING WALLS= 164 SQ. FT.
 PIER= 696 SQ. FT.
 BULKHEAD= 6 SQ. FT.
 AWNINGS= 1,316 SQ. FT.
 OVERHANGS= 572 SQ. FT.
 TOTAL EXISTING IMPERVIOUS AREA= 31,259 SQ. FT.
 ALLOWABLE IMPERVIOUS AREA REMAINING= 0 SQ. FT.

IMPERVIOUS AREA CALCULATIONS, 100' BUFFER:
 TOTAL AREA IN 100' BUFFER= 25,510 SQ. FT.±
 ALLOWABLE IMPERVIOUS AREA= 3,827 SQ. FT. (15% OF 25,510 SQ. FT.±)
EXISTING IMPERVIOUS AREA:
 ONE STORY RESTAURANT= 3,182 SQ. FT.
 OUTSIDE BAR= 236 SQ. FT.
 RAMP= 25 SQ. FT.
 PATIO= 1,781 SQ. FT.
 DECK= 940 SQ. FT.
 STEPS= 29 SQ. FT.
 ONE STORY BUILDING= 335 SQ. FT.
 CONCRETE PADS= 251 SQ. FT.
 GRAVEL AREAS= 13,153 SQ. FT.
 WALK-IN= 35 SQ. FT.
 RETAINING WALLS= 164 SQ. FT.
 PIER= 696 SQ. FT.
 BULKHEAD= 6 SQ. FT.
 AWNINGS= 1,316 SQ. FT.
 OVERHANGS= 572 SQ. FT.
 TOTAL EXISTING IMPERVIOUS AREA= 22,721 SQ. FT.
 ALLOWABLE IMPERVIOUS AREA REMAINING= 0 SQ. FT.



VICINITY MAP

SCALE: 1" = 2000'
 Copyright of the ADC Map People
 Permitted Use No. 20992180
 (ADC MAP No. 16)

REVISIONS			
No.	DATE	DESCRIPTION	BY

Lane Engineering, LLC

Established 1986
 Civil Engineers • Land Planning • Land Surveyors

 E-mail: mail@leinc.com
 117 Bay St. Easton, MD 21601 (410) 822-8003
 15 Washington St. Cambridge, MD 21613 (410) 221-0818
 114B West Water St. Centerville, MD 21617 (410) 758-2095

NOT VALID FOR CONSTRUCTION
 UNLESS SIGNED AND DATED HERE:

SEAL

RECEIVED

SEP 23 2010

CRITICAL AREA COMMISSION
 Chesapeake & Atlantic Coastal Bays

DATE

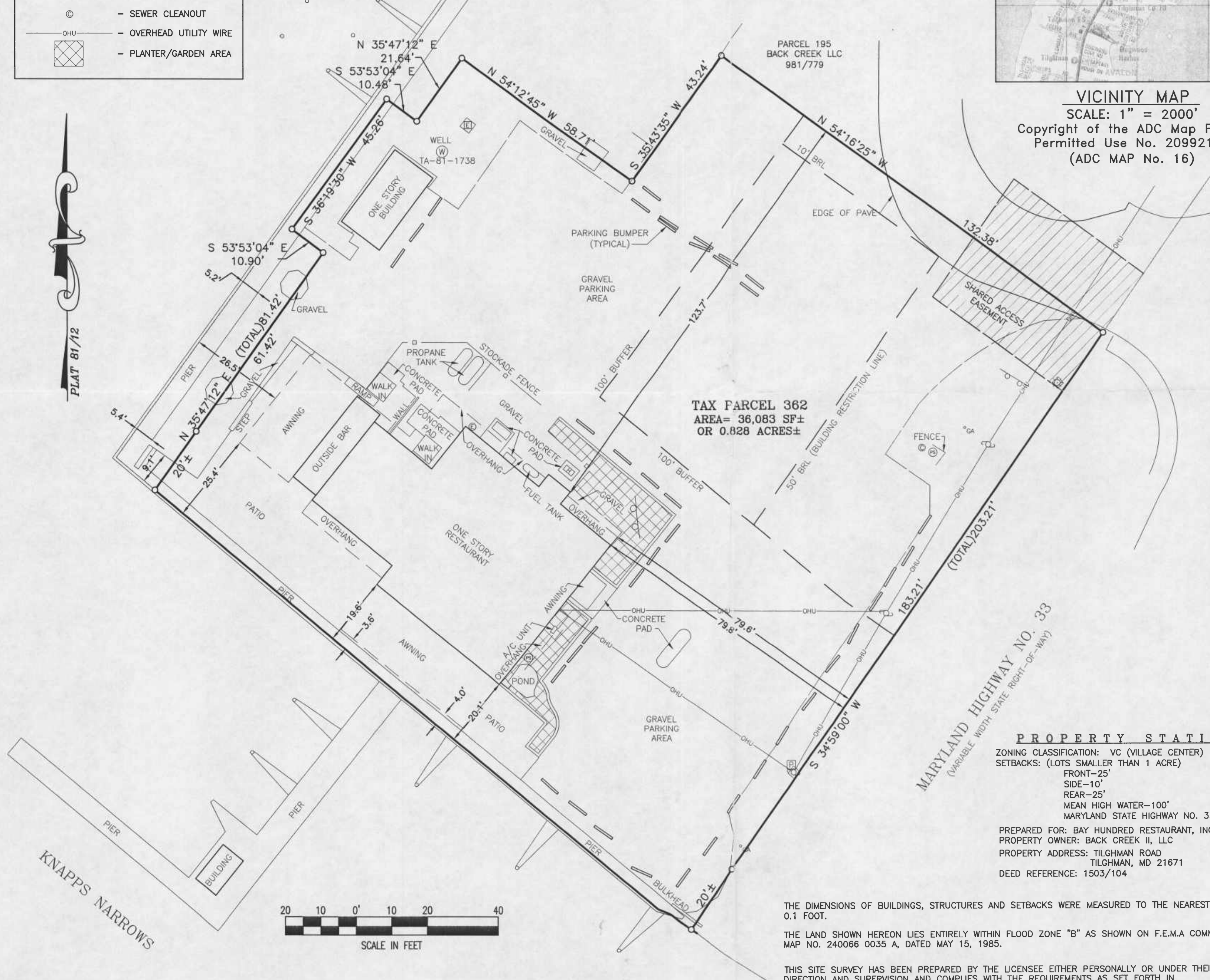
SITE EXHIBIT

FOR
**BAY HUNDRED
 RESTAURANT, INC**

IN THE FIFTH ELECTION DISTRICT
 TALBOT COUNTY, MARYLAND
 TAX MAP 44A PARCEL 362

ISSUED FOR:	DATE:	BY:

SHEET No. 1	SCALE: 1"=20'
JOB No. 070647	FILE No. 1073



TAX PARCEL 362
 AREA= 36,083 SF±
 OR 0.828 ACRES±

MARYLAND HIGHWAY NO. 33
 (VARIABLE WIDTH STATE RIGHT-OF-WAY)

PROPERTY STATISTICS:
 ZONING CLASSIFICATION: VC (VILLAGE CENTER)
 SETBACKS: (LOTS SMALLER THAN 1 ACRE)
 FRONT-25'
 SIDE-10'
 REAR-25'
 MEAN HIGH WATER-100'
 MARYLAND STATE HIGHWAY NO. 33- 50'

PREPARED FOR: BAY HUNDRED RESTAURANT, INC
 PROPERTY OWNER: BACK CREEK II, LLC
 PROPERTY ADDRESS: TILGHMAN ROAD
 TILGHMAN, MD 21671
 DEED REFERENCE: 1503/104



THE DIMENSIONS OF BUILDINGS, STRUCTURES AND SETBACKS WERE MEASURED TO THE NEAREST 0.1 FOOT.

THE LAND SHOWN HEREON LIES ENTIRELY WITHIN FLOOD ZONE "B" AS SHOWN ON F.E.M.A COMMUNITY-PANEL MAP NO. 240066 0035 A, DATED MAY 15, 1985.

THIS SITE SURVEY HAS BEEN PREPARED BY THE LICENSEE EITHER PERSONALLY OR UNDER THEIR DIRECTION AND SUPERVISION AND COMPLIES WITH THE REQUIREMENTS AS SET FORTH IN REGULATION 09.13.06.12 OF THE MARYLAND MINIMUM STANDARDS FOR SURVEYORS.

KNAPPS NARROWS

PLAT 81/12