

**COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND**

**2009 Legislative Session**

Legislative Day #\_\_\_\_

**BILL NO.** 2009

**Introduced by:** Planning Staff

**Date introduced:**  / / 200

**Public Hearing:**  / / 200

**Commissioners Action:**  / / 200 \_\_\_\_\_

**Commissioner Votes:** WC: \_\_, EP: \_\_, RC: \_\_, SG: \_\_, GH: \_\_

**Pass/Fail:** \_\_\_\_\_

**Effective Date:**  / / 200 12:01 a.m.

**Remarks:** \_\_\_\_\_

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

2009 Legislative Session

Bill No. 2009-

Chapter. No. 278

Introduced by Planning Staff

Date of Introduction \_\_\_\_\_

**BILL**

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AN ACT concerning:

**Chesapeake Bay Critical Area Program**

FOR the purpose of:

Comprehensive update incorporating legislative changes

BY repealing and reenacting, with amendments:

Chapter 278- Subdivision Regulations

Article V, §44, General Site Design Standards.

*Code of Charles County, Maryland*

*(March, 2006)*

Chapter 278- Subdivision Regulations

Article V, §53, Chesapeake Bay Critical Area Overlay Zones.

*Code of Charles County, Maryland*

*(March, 2006)*

BY adding:

1 Chapter 278- Subdivision Regulations  
2 Article III, §19, Chesapeake Bay Critical Area Overlay Zone Lot Consolidations  
3 and Lot Reconfigurations.  
4 *Code of Charles County, Maryland*  
5 *(March, 2006)*

6  
7 **SECTION 1. BE IT ENACTED BY THE COUNTY COMMISSIONERS OF**  
8 **CHARLES COUNTY, MARYLAND, that the Laws of Charles County,**  
9 **Maryland read as follows:**

10  
11 **SECTION 19: CHESAPEAKE BAY CRITICAL AREA OVERLAY**  
12 **ZONE**  
13 **LOT CONSOLIDATIONS AND LOT RECONFIGURATIONS**

- 14  
15 **I. THE FOLLOWING PROVISIONS SHALL APPLY TO:**  
16  
17 **A. ANY LEGAL PARCEL OF LAND, NOT BEING PART OF**  
18 **A RECORDED OR APPROVED SUBDIVISION, THAT WAS**  
19 **RECORDED AS OF DECEMBER 1, 1985;**  
20  
21 **B. LAND THAT WAS SUBDIVIDED INTO RECORDED**  
22 **LEGALLY BUILDABLE LOTS, WHERE THE SUBDIVISION**  
23 **RECEIVED FINAL APPROVAL BEFORE JUNE 1, 1984; OR,**  
24  
25 **C. LAND THAT WAS SUBDIVIDED INTO RECORDED,**  
26 **LEGALLY BUILDABLE LOTS, WHERE THE SUBDIVISION**  
27 **RECEIVED FINAL APPROVAL AFTER DECEMBER 1, 1985,**  
28 **BUT NOT LATER THAN JUNE 7, 1989.**

29

**D. THESE PROVISIONS DO NOT APPLY TO A  
CONFORMING PARCEL OR LOT.**

**1. “CONFORMING” MEANS A PARCEL OR LOT  
THAT MEETS ALL CRITICAL AREA  
REQUIREMENTS.**

**2. “CONFORMING” DOES NOT INCLUDE A  
PARCEL OR LOT:**

**I. FOR WHICH A CRITICAL AREA  
VARIANCE IS SOUGHT OR HAS BEEN  
ISSUED, OR**

**II. THAT IS IN THE RESOURCE  
CONSERVATION ZONE AND IS LESS THAN  
20 ACRES.**

**II. LOT CONSOLIDATIONS AND LOT RECONFIGURATIONS IN  
THE CHESAPEAKE BAY CRITICAL AREA OVERLAY ZONES  
SHALL BE REQUIRED TO BRING NON-CONFORMING PARCELS  
OR LOTS INTO COMPLIANCE WITH THE CHARLES COUNTY  
CRITICAL AREA PROGRAM TO THE EXTENT POSSIBLE.**

**III. THESE DEVELOPMENT ACTIVITIES SHALL BE SUBJECT TO  
THE STANDARDS AND REQUIREMENTS OUTLINED IN SECTION  
53 OF THESE REGULATIONS AND THE CHARLES COUNTY  
ZONING ORDINANCE. ADDITIONALLY, THE FOLLOWING**

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**REGULATIONS APPLY:**

**A. AN APPLICATION FOR LOT CONSOLIDATION OR LOT RECONFIGURATION SHALL INCLUDE:**

- 1. THE DATE OF RECORDATION OF EACH LEGAL PARCEL OF LAND OR LEGALLY BUILDABLE LOT TO BE CONSOLIDATED OR RECONFIGURED;**
- 2. THE LOCATION OF ALL EXISTING AND PROPOSED PROPERTY BOUNDARIES;**
- 3. A TABLE THAT LISTS THE NUMBER OF ALL LEGAL PARCELS OF LAND OR RECORDED LEGALLY BUILDABLE LOTS AND THE NUMBER OF PROPOSED LOTS TO BE DERIVED; AND,**
- 4. INFORMATION SUFFICIENT FOR THE CHARLES COUNTY PLANNING DIVISION TO MAKE THE FINDINGS SET FORTH IN III (B) OF THIS SECTION.**

**B. PRIOR TO APPROVAL, THE PLANNING DIVISION SHALL MAKE WRITTEN FINDINGS THAT THE PROPOSED CONSOLIDATION OR RECONFIGURATION:**

- 1. WILL RESULT IN NO GREATER NUMBER OF LOTS, PARCELS OR DWELLING UNITS IN THE CRITICAL AREA THAN THE EXISTING**

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**CONFIGURATION WOULD ALLOW;**

**2. WILL RESULT IN NO GREATER LOT COVERAGE THAN THE EXISTING CONFIGURATION WOULD ALLOW;**

**3. DOES NOT:**

- I. CREATE AN ADDITIONAL RIPARIAN LOT OR PARCEL, WATERFRONT LOT, OR ANY OTHER LOT OR PARCEL DEEDED WITH WATER ACCESS; OR,**
- II. INTENSIFY OR INCREASE IMPACTS ASSOCIATED WITH RIPARIAN ACCESS.**

**4. DOES NOT CREATE:**

- I. A LOT OR PARCEL OR PORTION OF A LOT OR PARCEL THAT WILL SERVE DEVELOPMENT ACTIVITIES OUTSIDE THE CRITICAL AREA; OR,**
- II. A RESOURCE CONSERVATION ZONE LOT OR PARCEL THAT SERVES DEVELOPMENT ACTIVITIES IN THE INTENSE DEVELOPMENT ZONE OR LIMITED DEVELOPMENT ZONE.**

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**5. ADDRESSES HABITAT PROTECTION AREA REQUIREMENTS BY:**

**I. IDENTIFYING EACH HABITAT PROTECTION AREA ON SITE;**

**II. PROVIDING PROTECTIVE AND RESTORATIVE MEASURES WHICH PROVIDE FOR THE LEAST POSSIBLE ADVERSE IMPACT TO THE HABITAT; AND,**

**III. ENSURING NO GREATER IMPACT TO THE HABITAT PROTECTION AREA THAN THE EXISTING CONFIGURATION WOULD ALLOW.**

**6. PROVIDES STORMWATER MANAGEMENT FOR ALL PROPOSED DEVELOPMENT ACTIVITIES;**

**7. CLEARLY IDENTIFIES BENEFITS TO FISH, WILDLIFE AND PLANT HABITAT; AND**

**8. FULLY COMPLIES WITH THE AFFORESTATION AND REFORESTATION REQUIREMENTS IN COMAR 27.01.05 AND 27.01.09, UNLESS CLEARING IS NECESSARY TO AVOID A HABITAT PROTECTION AREA.**

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**C. WHEN SITE CONDITIONS WARRANT, THE PLANNING DIVISION MAY REQUIRE AN ENVIRONMENTAL FEATURES MAP AND ADDITIONAL INFORMATION BE PROVIDED WITH AN APPLICATION TO DEMONSTRATE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION AND THE ZONING ORDINANCE.**

**D. THE PLANNING DIVISION SHALL ISSUE A FINAL WRITTEN DECISION OR ORDER GRANTING OR DENYING AN APPLICATION FOR A CONSOLIDATION, RECONFIGURATION, OR A MODIFICATION OR RECONSIDERATION OF A CONSOLIDATION OR RECONFIGURATION. WITHIN TEN DAYS OF ISSUING ITS WRITTEN DECISION, THE PLANNING DIVISION SHALL FORWARD A COPY OF THE DECISION AND SUBDIVISION PLAT, AS APPLICABLE, TO THE CRITICAL AREA COMMISSION VIA FIRST CLASS MAIL, UNITED STATES POSTAL SERVICE.**

**~~E. [THE TIME PERIOD DURING WHICH THE CRITICAL AREA COMMISSION MAY FILE AN APPEAL OR A PETITION FOR JUDICIAL REVIEW BEGINS ON THE DATE OF THE CRITICAL AREA COMMISSION'S RECEIPT OF THE FINAL DECISION DESCRIBED IN ITEM III.D OF THIS SECTION. THE CRITICAL AREA COMMISSION APPEAL THE PLANNING DIVISION'S DECISION BY MAY FILING SAID AN APPEAL OR~~**

1 ~~PETITION THE CIRCUIT COURT FOR JUDICIAL~~  
2 ~~REVIEW WITHIN 30 DAYS OF RECEIPT OF THE~~  
3 ~~FINAL DECISION.]~~

4  
5 **Section 44: General Site Design Standards**

6  
7 (a) *Site Design and Environmental Features Analysis.* The characteristics of  
8 the development site shall be detailed in an analysis, which may include the  
9 following, as appropriate: site context and history; geology, soil and  
10 topography; vegetation, fauna, and ecology (including the known location of  
11 any threatened or endangered species); visual features and their context; past  
12 and present use of the site; existing structures, and road networks. Other  
13 features and information may be included in the site analysis, and may be  
14 required during plan review;. ~~[a] At A~~ minimum, ~~[the] AN~~ environmental  
15 features analysis **AND/OR ASSESSMENT CONTAINING THE**  
16 **INFORMATION NECESSARY TO DEMONSTRATE CONSISTENCY**  
17 **WITH ~~[required-per]~~ the *Forest Conservation Ordinance* AND THE**  
18 **CRITICAL AREA PROGRAM** is to be provided with the preliminary  
19 subdivision plan application.

20  
21 (b) *Subdivision Design.*

22  
23 i. Design of the development shall take into consideration all  
24 existing local and regional plans for the surrounding community  
25 including, but not limited to, the Charles County *Comprehensive Plan*  
26 and the *Comprehensive Water and Sewer Plan*.

27  
28 ii. Development of the site shall be based on the site analysis. To  
29 the maximum extent practicable, development shall be located to

1 preserve the natural features of the site, to avoid areas of environmental  
2 sensitivity, and to minimize negative impacts and alteration of natural  
3 features.

4  
5 **iii.** The following specific areas include, but are not limited to, areas  
6 that shall be preserved as undeveloped open space, to the extent  
7 consistent with the reasonable use of land, and in accordance with  
8 applicable state or local regulations:

9  
10 **A.** Unique and/or fragile areas, including tidal and non-tidal  
11 wetlands as defined in the Charles County Zoning Ordinance.  
12 This information is to be field verified by on-site inspection on  
13 the property and within 100 feet of the property boundary;

14 **B.** Priority forest stands and/or specimen trees consistent  
15 with the Charles County *Forest Conservation Ordinance*;

16  
17 **C.** Lands in the flood plain;

18  
19 **D.** Steep slopes in excess of twenty-five (25) percent, or as  
20 required by Resource Protection Zone or Critical Area  
21 regulations, as measured over an area of 10,000 square feet,  
22 except where **IT IS DEMONSTRATED THAT** appropriate  
23 engineering measures concerning slope stability, erosion, and  
24 resident safety are **BEING** taken;

25  
26 **E.** Habitats of rare, threatened and endangered species, as  
27 identified by the Secretary of the Maryland Department of  
28 Natural Resources or by the Federal Endangered Species Act;

29

1                   **F.**     Other significant ecological areas, including but not  
2                   limited to: Forest Interior Dwelling Bird Habitat, fish spawning  
3                   areas, colonial waterbird nesting sites, and submerged aquatic  
4                   vegetation;

5  
6                   **G.**     Historically significant structures and sites, as listed on  
7                   federal, state, or County lists of historic places, or eligible for  
8                   inclusion on the National Register of Historic Places;

9  
10                  **H.**     Information for off-site delineation of the above items,  
11                  beyond the 100 feet specified, may be based upon the most recent  
12                  topographic and historical information available at the time of  
13                  submittal, provided that the sources used are clearly specified on  
14                  the plan or plat document; **AND**

15  
16                  **I.       THE CRITICAL AREA BUFFER AS SET FORTH IN**  
17                  **SECTION 297-131, ZONING ORDINANCE.**

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19                  **iv.**     The development shall be laid out to avoid adversely affecting  
20                  ground water and aquifer recharge; to reduce cut and fill; to avoid  
21                  unnecessary impervious cover; to prevent flooding; to provide adequate  
22                  access to lots and sites; and to mitigate adverse effects of shadow, noise,  
23                  odor, traffic, drainage, and utilities on neighboring properties.

24  
25                  **v.**     Area of special geotechnical consideration - A geotechnical report  
26                  will be required including a preliminary soils condition report at the time  
27                  of preliminary plan application for new construction in the portion of the  
28                  county designated as the “Area of Special Geotechnical Consideration”  
29                  per Appendix F. The geotechnical report shall be prepared by a

1 professional engineer licensed in the State of Maryland who is hired by  
2 the County and paid for by the applicant. The geotechnical report shall  
3 identify all unstable soil conditions and make recommendations for  
4 construction requirements where the unstable soil conditions exist.  
5 Unstable soil conditions shall include but not be limited to, high  
6 shrink/swell or other unstable soil conditions as determined by the  
7 geotechnical engineer. These recommendations shall become a part of  
8 the construction permit requirements. *[Amended December 15, 2000 by*  
9 *Ordinance No. 00-89.]*

10  
11 The geotechnical construction recommendations shall include all the  
12 necessary requirements for roads, grading, drainage, stormwater  
13 management, water and sewer, building, foundations, landscaping,  
14 utilities, and any other construction as determined by the county.

15  
16 (c) *Circulation System Design.*

17  
18 i. The road system shall be designed to permit the safe,  
19 efficient, and orderly movement of traffic; to meet, but not  
20 exceed the needs of the present and future population in the area  
21 to be served, as established by the Comprehensive Plan; to have a  
22 simple and logical pattern; to provide interparcel connectors to  
23 alleviate traffic congestion and to facilitate access for emergency  
24 vehicles, without promoting through traffic on local residential  
25 streets; to respect natural features and topography; and to present  
26 an attractive streetscape.

27  
28 ii. Nonresidential developments are to provide shared or  
29 coordinated entrances to streets classified as collector streets or

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greater.

iii. The pedestrian system shall be located as required for safety. In conventional developments, walks shall be placed parallel to the road, with exceptions permitted to preserve natural features or to provide visual interest. In other developments, walks may be placed away from the road system, but they may also be required parallel to the road for safety reasons. (See Article VII for road and sidewalk standards.)

**Section 53: Chesapeake Bay Critical Area Overlay Zones**

The standards and requirements outlined [herein] **IN THE CHARLES COUNTY ZONING ORDINANCE, ARTICLE IX**, shall be considered minimum standards and requirements for this section. [~~Other information required by other regulations may be included, in order to assure consistency and to minimize the possibility of contradictions in information presented in a development proposal.~~] **THE FOLLOWING STANDARD NOTES SHALL BE INCLUDED ON ALL SUBDIVISIONS AND/OR PLATS CONTAINING PROPERTY WITHIN THE CRITICAL AREA:**

- 1. **“THIS PROPERTY/A PORTION OF THIS PROPERTY IS LOCATED WITHIN THE \_\_\_\_\_ ZONE OVERLAY OF THE CHESAPEAKE BAY CRITICAL AREA”**
- 2. **“SITE TABULATIONS:**  
**TOTAL AREA: \_\_\_\_\_**  
**TOTAL AREA IN CBCA: \_\_\_\_\_**  
**TOTAL AREA OUTSIDE CBCA: \_\_\_\_\_**

1 TOTAL AREA OF CBCA: \_\_\_\_\_ EXCLUSIVE OF TIDAL  
2 WATERS OR WETLANDS (IF APPLICABLE)  
3 EXISTING ALLOWABLE CBCA DENSITY: \_\_\_\_\_  
4 PROPOSED CBCA DENSITY \_\_\_\_\_”

5  
6 3. “THERE SHALL BE NO CLEARING, GRADING,  
7 CONSTRUCTION, OR DISTURBANCE WITHIN THE CRITICAL  
8 AREA BUFFER EXCEPT AS MAY BE PERMITTED BY THE  
9 CHARLES COUNTY PLANNING DIVISION.”

10  
11 FOR PROPERTIES WITHIN THE RESOURCE CONSERVATION  
12 ZONE OVERLAY OR LIMITED DEVELOPMENT ZONE OVERLAY:

13 1. “TOTAL EXISTING LOT COVERAGE: \_\_\_\_\_  
14 TOTAL PROPOSED LOT COVERAGE: \_\_\_\_\_  
15 TOTAL EXISTING FOREST COVERAGE: \_\_\_\_\_  
16 TOTAL PROPOSED FOREST COVERAGE: \_\_\_\_\_”

17  
18 FOR PROPERTIES SUBJECT TO INTRAFAMILY TRANSFER:

19  
20 1. LOT(S) \_\_\_\_\_ ARE CREATED UNDER THE  
21 PROVISIONS OF A BONAFIDE INTRAFAMILY TRANSFER  
22 AND MAY NOT BE TRANSFERRED OR SOLD TO A THIRD  
23 PARTY, WHO IS NOT A MEMBER OF THE OWNER'S  
24 IMMEDIATE FAMILY OR HOLDER OF A MORTGAGE OR  
25 DEED OF TRUST ON THE PROPERTY, UNLESS APPROVED  
26 BY THE PLANNING COMMISSION

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28 VARIATIONS OF THE ABOVE NOTES MAY BE APPROVED BY THE

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**PLANNING DIRECTOR OR HIS OR HER DESIGNEE .**

**THE PLANNING DIVISION OR THE PLANNING COMMISSION MAY REQUIRE ADDITIONAL NOTES BASED UPON THE NATURE OF THE PLAT.**

~~[(a) The development of Habitat Protection Plans in the Chesapeake Bay Critical Areas shall be in conformance with the Habitat Protection Program section of the Charles County Chesapeake Bay Critical Area Program.]~~

~~[(b) General requirements:~~

~~i. — Land shall be suited for the purposes for which it is to be subdivided. The subdivision shall be laid out as to proper design and improvement, form and dimensions and in relationship to street and lot design as well as proposed and existing land uses in the proposed subdivision and adjoining areas. The land use pattern of the adopted *Comprehensive Plan*, Critical Area Program and the requirements of the *Zoning Ordinance* shall form the basic theme for the design pattern.~~

~~ii. — Where trees, waterways, scenic points, historic sites and structures or other assets and landmarks are located within a proposed subdivision, the Planning Commission shall not approve the subdivision unless some practical means be taken to preserve these features. Any measures taken in this regard must comply with the Charles County Chesapeake Bay Critical Areas ordinance, and any other relevant regulation.~~

~~iii. — Where a tract of land bordering tidal water, tidal wetlands or~~

1 tributary streams in the Critical Area is to be subdivided and a Buffer  
2 exemption has not been granted by the County Commissioners, a buffer  
3 of at least one hundred (100) feet shall be established and maintained in  
4 native vegetation in accordance with the *Zoning Ordinance*. No  
5 development, including septic systems, impervious surfaces, parking  
6 areas, roads or structures, is permitted in the Buffer, unless specifically  
7 permitted by the *Zoning Ordinance*.

8  
9 ~~iv. — If the lot ownership extends to the water, wetlands or stream bed,  
10 then the Buffer shall be included in the required setback distance for  
11 building on that lot, except in the case of water dependent facilities.—  
12 Where the buffer is to be owned and maintained by a Home Owners  
13 Association or similar appropriate organization, the required setback  
14 distance shall be measured from the property line separating that lot from  
15 the designated Buffer. This buffer, when not included in the lots, may  
16 be included in calculating the open space required per the *Zoning  
17 Ordinance*.~~

18  
19 ~~v. — The buffer shall be expanded to include contiguous sensitive areas  
20 on the parcel which, if developed or disturbed, may impact streams,  
21 wetlands or other aquatic environments as determined by the Planning  
22 Commission. The expanded Buffer must be shown on plans required for  
23 such development or activities. Sensitive areas are defined as follows:—  
24 hydric soils and soils with hydric properties as designated by the Soil  
25 Conservation Service as highly erodible soils with a "K" value greater  
26 than 0.35 on slopes greater than five (5) percent, and steep slopes greater  
27 than fifteen (15) percent. The buffer shall be expanded according to the  
28 *Zoning Ordinance*.~~

1 ~~vi.~~—The subdivider shall be required to identify storm water  
2 management practices appropriate to site development which achieve the  
3 following standards:

4  
5 ~~A.~~—In areas designated Intense Development Overlay Zone on  
6 the Charles County Critical Area Overlay Zone Map, the  
7 subdivider shall demonstrate that the best management practices  
8 for storm water assure a ten (10) percent reduction of  
9 predevelopment pollutant loadings.

10  
11 ~~B.~~—The subdivider shall delineate those site areas not covered  
12 by impervious surfaces to be maintained or established in  
13 vegetation. Where vegetation is not proposed, the developer shall  
14 demonstrate why plantings for such portions of the site are  
15 impracticable. Types of planting and vegetation proposed shall  
16 be in accordance with guidelines established in Section 132 of  
17 Article VIII of the *Zoning Ordinance*.

18  
19 ~~vii.~~—In Limited Development and Resource Conservation Overlay  
20 Zones, roads, bridges and utilities serving lots shall be located to avoid  
21 disturbances to Habitat Protection Areas. When no alternative exists and  
22 such infrastructure must cross or be located in a Habitat Protection Area,  
23 the developer shall demonstrate how impacts to habitats have been  
24 minimized and that no feasible alternative location of such infrastructure  
25 exists.

26  
27 ~~viii.~~—In the Limited Development and Resource Conservation Overlay  
28 Zones, all development activities which cross or are located adjacent to  
29 tributary streams in the Critical Area shall be designed in accordance

1                   with the *Zoning Ordinance*.

2  
3                   ~~ix. — Lots and open space areas shall be located and designed to~~  
4                   ~~provide for the maintenance of existing site wildlife and plant habitats,~~  
5                   ~~and to provide continuity with those habitats on adjacent sites. Existing~~  
6                   ~~wildlife corridors shall be identified on proposed development plats.~~  
7                   ~~When wildlife corridors exist or are proposed, they shall include any~~  
8                   ~~existing Habitat Protection Areas and connect large forested areas on or~~  
9                   ~~adjacent to the site.~~

10  
11                   ~~x. — Impervious surfaces in subdivisions located in Limited~~  
12                   ~~Development and Resource Conservation Overlay Zones shall be limited~~  
13                   ~~to fifteen (15) percent of the gross site area proposed for development,~~  
14                   ~~except that impervious surfaces on any lot not exceeding one (1) acre in~~  
15                   ~~size in a subdivision approved after December 1, 1985, may be up to~~  
16                   ~~twenty five (25) percent of the lot.]~~

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**SECTION 2.** BE IT FURTHER ENACTED, that this Act shall take effect TEN  
(10) calendar days after it becomes law.

COUNTY COMMISSIONERS OF  
CHARLES COUNTY, MARYLAND

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Edith J. Patterson, Vice President

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Reuben B. Collins, II

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Samuel N. Graves, Jr.

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Gary V. Hodge

ATTEST:

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Denise Ferguson, Clerk