

Sept. 22, 2023

POST AND COURIER QUESTIONS FOR CHARLESTON COUNTY:

1. An overall question: The ordinance council passed establishing the Historic Preservation Commission was purposefully designed to help protect settlement communities. Now the proposed revisions to the ordinance would significantly weaken the HPC's ability to execute its mandate. Why have these amendments to the ordinance been put forward BEFORE some alternative enforcement mechanism is devised? Why the sudden backtracking?
2. At Monday's Planning Commission hearing, County staff referred repeatedly to a conflict between the HPC's authority as granted by the ordinance, and state law. The precise nature of the conflict either was ill-defined or eluded me, but I think it centered on plat approvals. Staff's argument is that only the Planning Commission has the authority to approve or deny plats, and therefore certain decisions of the HPC were null and void. My reading of the ordinance, however, did not reveal this conflict. The ordinance's original language asks the HPS to consider not plats but "the historic, cultural and architectural significance" of the site, "the exterior form and appearance of any proposed additions or modifications," and "prevailing patterns of existing lots, densities, spacing of homes, lot sizes and shapes and other characteristics" of the district. Further, the HPS should require that potential negative impacts of a proposed development are minimized, according to the ordinance. So is there a conflict or not? If so, what is it exactly? If not, why amend that portion of the ordinance?
3. On a related note to the above, what in the law permitted the Planning Commission to approve plats without a certificate of historic appropriateness (which the law requires before final plats can be reviewed). Staff cited the above-described alleged conflict as the reason. But even if a conflict is evident, doesn't it require an authorized body (e.g. a court of law) to make that determination? How can staff simply assert there's a conflict then choose to ignore a requirement set forth in a council-approved ordinance?
4. Finally, are there any other efforts on the books or under consideration by the Planning Commission or by full council to protect settlement communities? What policies and procedures are in place, or might soon be put in place, to ensure these communities are not squeezed by new development and an influx of middle- and upper-middle-class people who are certain to be mostly white?

COUNTY RESPONSE:

Charleston County is proposing to amend the Historic Preservation Ordinance to reaffirm the County's commitment to recognizing and protecting our settlement communities. County ordinances are regularly amended to reinforce the ordinance or clarify its terms. Sometimes ordinances are amended to address unforeseen issues that have arisen over time or to protect the ordinance from legal challenge. Since its adoption, the Historic Preservation ordinance has been amended three other times.

Nearly all the amendments to the Historic Preservation Ordinance being proposed are intended to improve the ordinance and clarify the approval criteria for Certificates of Historical Appropriateness ("CHA"). With clearer approval criteria, applicants will have a better idea of what they are expected to demonstrate to the Historic Preservation Commission ("HPC") to receive a CHA. The HPC will likewise be empowered to base their decisions on more objective approval criteria and avoid the appearance of making overly subjective decisions which tend to invite legal challenges.

The only amendment being proposed that could be characterized as “weaken[ing] the HPC’s ability to execute its mandate”, in your words, is the amendment to remove subdivision review from the HPC’s purview. The County acknowledges that requiring proposed subdivisions to receive a CHA prior to subdivision plat approval would be an effective tool in protecting the character of historic settlement communities. State law does not give HPC the authority to disapprove a subdivision application that otherwise complies with the applicable zoning. Pursuant to S.C. Code Ann. §§ 6-29-340 and 6-29-1150, the County’s Planning Commission is vested with the authority to administer subdivision regulations and approve or disapprove subdivision applications. Allowing the HPC to have veto power over subdivision applications strips the Planning Commission of its statutory authority over subdivisions. Though the HPC has never denied a CHA for any subdivision application, once this issue arose, it became clear that the HPC ordinance needed to be amended.

However, the goals sought to be achieved by allowing the HPC to review subdivision applications for historical appropriateness can still be accomplished through other means. There are other traditional zoning tools at the County’s disposal to protect these historic districts and settlement communities from over-development. For example, the County already has overlay zoning districts specific to two settlement communities, Sol Legare (<https://www.charlestoncounty.org/departments/zoning-planning/projects-slcpe.php>) and Parkers Ferry (<https://www.charlestoncounty.org/departments/zoning-planning/projects-wccpe.php>). The County has also been in discussions with the Ten Mile community and the Town of Mount Pleasant to create a new overlay zoning district for the Ten Mile community that would, among other things, address the community’s concerns with density and minimum lot size. This is more of an issue for Ten Mile because Ten Mile is zoned R-4 whereas Phillips, for example, is zoned S-3 which has a much larger minimum lot size requirement. Another option for Ten Mile would be to simply rezone the historic district from R-4 to S-3.

While the County cannot prevent development entirely or prevent residents from selling their property to developers, rezoning settlement communities to reduce density and increase minimum lot size would prevent the kinds of dense small-lot subdivisions that the current zoning allows.