June 26, 2025 Statement of Dan Creedon, Neighbors for Neighborhoods:

Today, counsel for the homeowners in the EHO litigation filed an Expedited Motion for Stay of the June 24 Order in the Virginia Court of Appeals.

The Motion notes that both Arlington County and the developer that sought to intervene in the case are treating the Court's order as if it has immediate effect. Indeed, statements have been made about intentions to move forward with EHO development and resuming issuance of EHO and related building permits.

The Expedited Motion for Stay seeks to put a pause on the Court's order until the appellate courts can rule on the homeowners' arguments to reverse the order. The Motion states that it is highly unusual, and contrary to the rules binding the Court of Appeals, not to have offered the parties oral argument on the developer's motion to intervene in the litigation.

It is important to note that the developer's motion and the Court's Order do not address the trial judge's decision to invalidate EHO as a violation of Virginia law.

At the heart of the developer's motion to intervene is the claim that it was a necessary party to the litigation. The Court's order failed to analyze a key component of the necessary party doctrine: the adequacy of representation of its interests in the case.

The developer couldn't have had more vigorous representation than the Arlington County Attorney's Office, together with many lawyers from a private law firm that to date has charged the County about $1.4 million to handle this case. Both wanted to keep EHO on the books.

And the developer only sought to intervene in the case after the 5-day trial last summer and after the judge ruled that EHO was invalid. The developer stated in its court papers that it didn't know about the litigation until after the trial, despite the widespread local, regional, and national reporting on this case.

The homeowners seek an orderly disposition of this matter, with oral argument seeking to reverse the Court of Appeals order that the developer should have been allowed to intervene in the case. If the homeowners prevail, the focus of the appeal will turn back to the merits of the trial court's decision invalidating EHO.