

The Reality of EHO In Arlington County

POLICY IMPACT REPORT

MAY 15, 2026

An analysis of the implementation of Expanded Housing Option
against the initial goals and community promises

PREPARED BY
NEIGHBORS FOR NEIGHBORHOODS



neighborsforneighborhoods.org



Troy St. N
EHO Duplex unit

Introduction

Arlington’s elimination of single-family zoning began with a years-long process: the [Missing Middle Housing \(MMH\) Study](#). The Study stated that MMH would provide moderately-priced housing for young adults, teachers, and public safety workers.

Many residents supported the goal of increasing housing opportunities for these groups, believing that "missing middle" referred to **people** with moderate incomes. Instead, the County defined "missing middle" strictly as **housing types** – such as duplexes, townhouses, and small apartment buildings.



THE COUNTY CONTINUED TO CLAIM THAT EHO WOULD BE AFFORDABLE TO MODERATE-INCOME RESIDENTS.

Midway through the process, the County rebranded the initiative, replacing "Missing Middle Housing" with "Expanded Housing Option" (EHO). Despite the name change, the county continued to claim that EHO would be affordable to moderate-income residents.

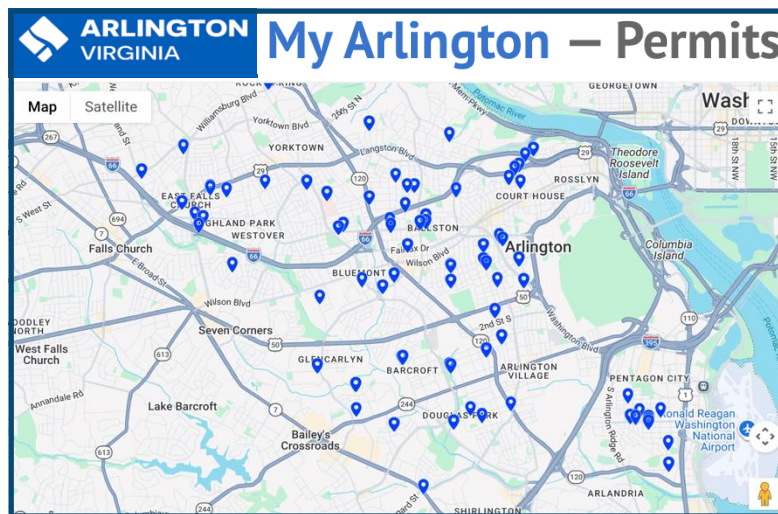
In March 2026, the County issued a report reviewing EHO permits approved between July 1, 2023 through 2025. The report lists the goals of the EHO initiative as "increase housing supply" and "diversify range of housing types," but it contains no analysis of whether EHO has delivered moderately-priced housing. In fact, the words "affordable" and "affordability" are entirely absent from the report.

Introduction

The data show:

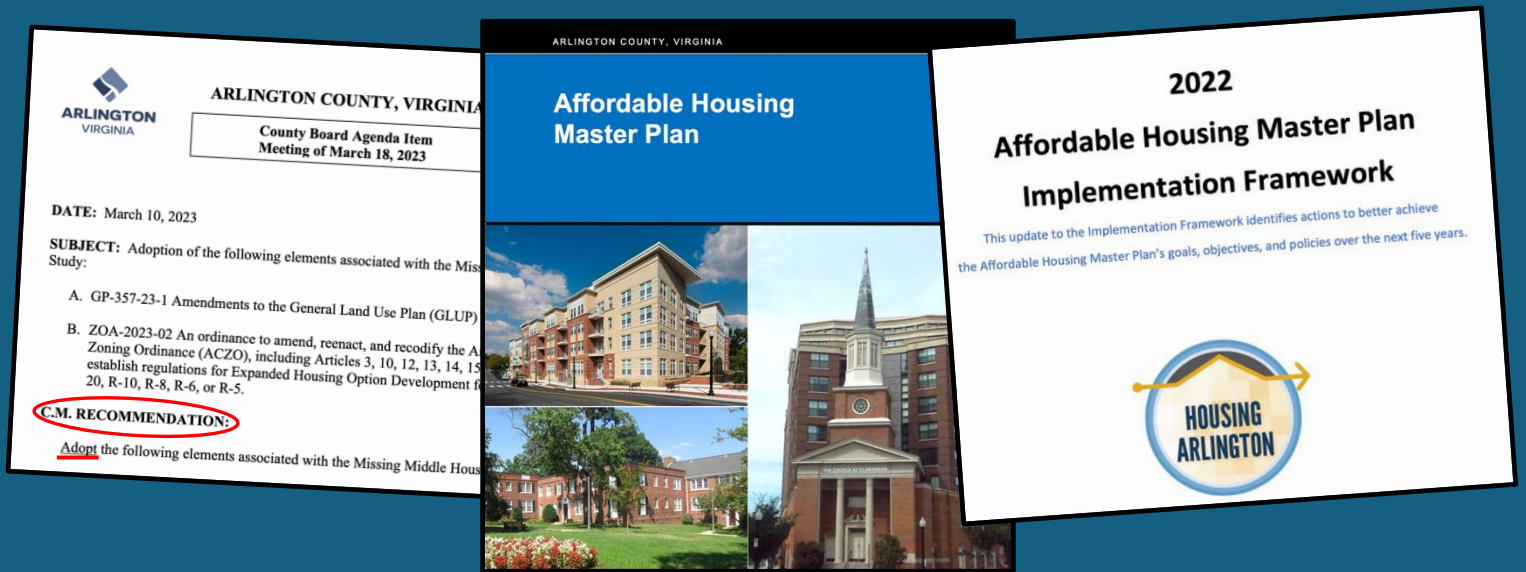
- EHO is far out of reach for moderate-income households.
- Most EHO buildings are much larger than single-family homes.
- EHO is concentrated in certain civic associations and zoning districts.
- Most EHO development is not metro accessible.

Expanded Housing Option (EHO)



[Neighbors for Neighborhoods](#) (NfN) has reviewed approved EHO permits, applications, real estate listings, real property records, GIS data, and other sources to offer a detailed analysis of affordability, compatibility, distribution and proximity to transit

EHO Does Not Address Arlington’s Housing Needs



In 2020, the County stated that EHO would:

“incentivize the production of moderately-priced ownership housing.”

But the County Manager’s [2023 recommendation](#) to the County Board to adopt EHO stated that under the policy, “households earning less than \$100,000 do not earn sufficient income to purchase or rent homes.”

By design, the EHO policy left behind [35% of Arlington households](#) - those earning less than \$100,000 - which was 78% of Median Household Income in 2023.

By excluding these low-income earners, EHO ignores those with the greatest housing needs: households earning less than 60% AMI, and particularly those earning less than 30% AMI, according to the [2015 Affordable Housing Master Plan](#).

Arlington County’s own [2022 housing analysis](#) did not recommend EHO to address affordable housing needs, noting that the tools recommended considered “what can reasonably be achieved given constraints on resources and the limitations on local government authority.”

EHO supporters were aware of the housing needs of low-income households and believed that EHO was designed to help them. [Testimony during public hearings](#) included that EHO was “the right thing to do” for bus drivers, custodians, and teachers’ assistants; [while others](#) looked forward to welcoming more diverse, low-income neighbors to Arlington.

EHO Does Not Address Arlington's Housing Needs



ARLINGTON COUNTY BOARD



ARLINGTON VIRGINIA

What is "missing middle"?



County says Missing Middle is housing types, not people.

In community meetings during the consideration of EHO, and on its [website](#), the County promised that EHO would benefit: *“Young adults, who are just starting their careers”* and *“public servants in search of mid-scale homes, such as teachers, police officers, and firefighters.”*

But EHO is not affordable for these individuals.

EHO Does Not Address Arlington's Housing Needs

No requirements or incentives to produce housing that is affordable.

EHO is attainable only for very high-income residents.

Demand for luxury housing in Arlington continues to be strong.

To date, only three EHO units have sold and one is under contract, with prices ranging from \$1,200,000 to \$1,615,000. On the rental market, EHO units are currently listed for as much as \$4,350 per month.

These figures demonstrate that EHO has failed to incentivize the production of moderately-priced housing. By relying entirely on private developers to provide units without an affordability requirement, the policy has succumbed to market realities: in an environment with high demand for luxury housing, developers will build large, expensive units to maximize profit.

Proponents of the zoning change often argue that an EHO unit is "less expensive" than a \$2 million single-family home. This is a false comparison. For the moderate-income households that the policy was intended to help, a \$1.2 million unit is just as out of reach as a \$2 million home.

EHO is for Very High-income Households



Case Study: Troy St. N

A developer purchased a single-family home for \$863,000 and replaced it with a duplex that sold for a total of \$3,225,000 (\$1,610,000 + \$1,615,000).

These units sold for 26% more than the [2026 average assessed value](#) for a single-family home (\$1,279,000).

[Source: 2026 Arlington Profile.](#)

The County's 2026 EHO Report highlights that each of these unit costs 45% less than the average sales price of a new single-family home in the same zip code - \$2,976,000. This fact is irrelevant to teachers and public safety workers who can't afford EHO, even if it is less expensive than new, large single-family homes.

While EHO promised "moderately-priced" housing, only extremely high-income households earning at least \$350,000 can afford to purchase an EHO home in Arlington.

EHO is for Very High-income Households



Case Study: 25th St. S

5043 25th St. S is the least expensive EHO unit sold to date – \$1,200,000.

A developer purchased the single-family home for \$560,000 and replaced it with a duplex that sold for a total of \$2,450,000.

Like the developments on Troy Street N, the duplex units on 25th St. S are accessible only to very high-income households. To avoid being "cost-burdened,"* a purchaser would need an annual income between **\$350,000 and \$400,000**. And the cash needed up front with a 10% down payment and closing costs would be nearly \$150,000.

**Arlington County defines "cost-burdened" as spending more than 30% of gross household income on housing.*

EHO is for Very High-income Households



Currently, the only EHO units listed for rent are in a 6-plex with a "base rent" of **\$4,350 per month** for a 3-bedroom unit. This is the rent most recently listed on [Zillow](#). It appears that units were offered for a lower price initially and then the price increased. No units are currently listed for rent. This is **16% higher** than the 2025 average rent of \$3,741 for a 3-bedroom apartment in Arlington. (Source: [2026 Arlington Profile](#))

Households earning \$100,000—the very group the County promised EHO would assist—would be severely cost-burdened by these prices. Rent alone would consume **52% of their pre-tax income**, leaving them far beyond the County's own 30% affordability threshold.

EHO is for Very High-income Households



Income levels of those EHO was intended to benefit:

- Firefighters - \$71,510 (entry level)
- Police Officers - \$90,012 (entry level)
- Black Households - \$95,137 (median)
- Teachers - \$98,053 (average)
- Latino Households - \$106,601 (median)

Sources:

- <https://www.arlingtonva.us/Government/Departments/Fire/Employment>
- <https://joinarlingtoncountypd.com/careers/>
- <https://www.healthierarlington.org/demographicdata>
- <https://www.apsva.us/wp-content/uploads/sites/57/2026/02/FY-2026-WABE-Guide.pdf>
- <https://www.healthierarlington.org/demographicdata?id=2878§ionId=939>

Costs to purchase or rent completed EHO units are so high that only those earning very high incomes can afford them.

Level	Median Household Income % (\$142,114)	Income
Very low	Under 30%	Under \$42,134
Low	30% to under 80%	Under \$113,691
Not intended for EHO	Under 78%	Under \$100,000
Moderate	80% to 120%	\$113,691 – \$170,537
High	More than 120%	More than \$170,537
Required for EHO	At least 245%	At least \$350,000

EHO is for Very High-income Households



25th Street S:

Original Property: A developer purchased a single-family home for \$560,000.

EHO Replacement: one unit sold for \$1,200,000, and the second is under contract for \$1,250,000.

The **Missing Middle Housing Study** highlighted a growing concern: the dwindling supply of moderately-priced single-family homes. This shortage is largely driven by the “McMansion” trend, where developers demolish smaller, entry-level houses to build expansive, high-cost single-family ones.

While EHO was intended to address this deficit, implementation to date demonstrates that like McMansions, EHO developments are replacing modest homes with large, very expensive units.

The "solution" eliminated a moderately-priced home and replaced it with two units, each costing twice the price of the original house.

EHO: Loss of Moderately-priced Housing



The failure of EHO to live up to its goals extends beyond affordability.

Developers have purchased many single-family homes for EHO development at prices well below the averaged assessed value of such homes. This includes sales prices of:

\$475,000; \$560,000; \$650,000; \$678,000; \$690,000; \$695,000; and \$710,000.

By any objective metric, EHO has failed to provide the "moderately-priced" housing that the County promised. Instead, it has created a new tier of luxury units accessible only to the top percentage of earners. **While EHO units sold to date cost less than McMansions, neither is affordable for the teachers, public servants, and young professionals the County claimed this policy would serve.**

EHO Buildings are Large

County said that EHO fitting into neighborhoods was a key consideration.

At the outset of the process to eliminate single-family zoning, the County stated in its MMH Study document that “design that is complementary and compatible with the scale and style of their intended neighborhoods” was a key consideration. To show how EHO would fit into neighborhoods, Arlington County uses the top row of images in its reports. But the bottom row shows what EHO really looks like in Arlington.



Duplex



Townhouse



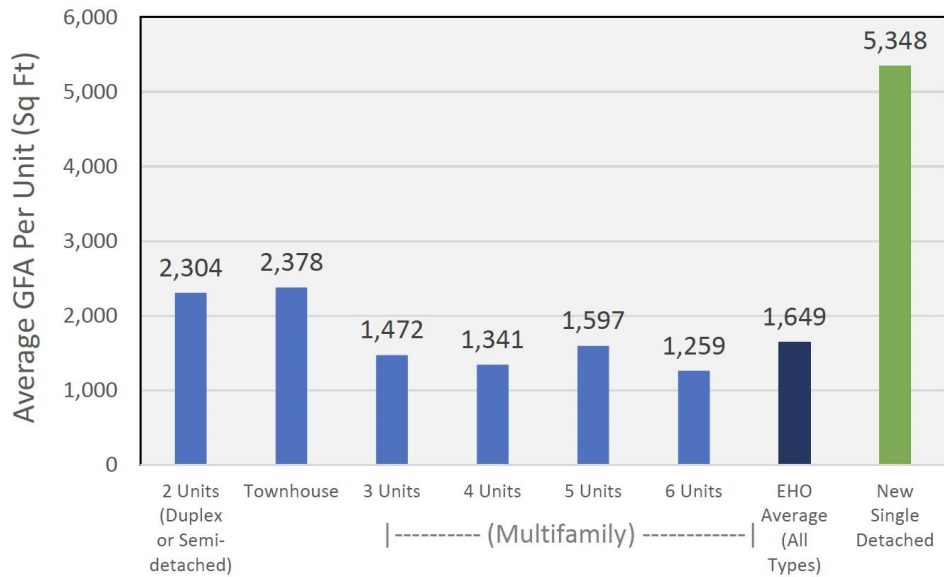
Multifamily



EHO Buildings are Large

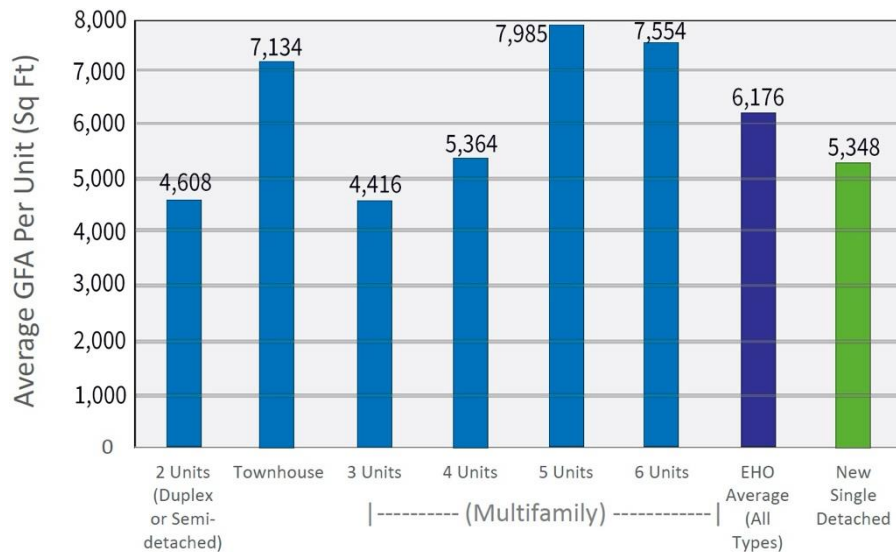
The County's **2026 EHO Report** leads readers to believe that the goal of compatibility has been achieved, but it has not. This chart from the Report compares the size of one unit in an EHO building, for all EHO permit approvals, with the size of an entire single-family home built in 2025. What counts is how big is the entire EHO building, not the size of one unit.

Arlington comparison Average Gross Floor Area Per Housing Unit



True comparison

Average Gross Floor Area Per Building



EHO Buildings are Large

Most EHO buildings are much larger than single-family homes.

Further, since “design that is complementary and compatible with the scale and style of their intended neighborhoods” is a key consideration for EHO, the relevant comparison is not between EHO buildings and single-family houses built in 2025, which tend to be large, but with the homes in the neighborhood where EHO is built.



The average square footage of all single-family homes in [Arlington](#) is [2,244 sf](#), compared with 5,348 sf for a single-family home built in 2025. This shows that **EHO buildings dwarf existing homes – they are about three times the size of Arlington’s single-family homes.**

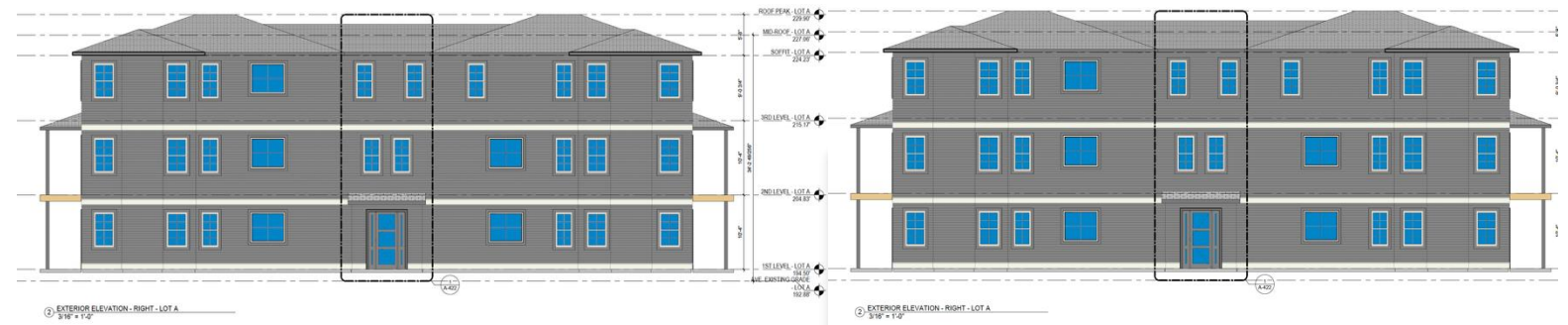


EHO Buildings are Large

There is no limitation on how many EHO developments can be on one street. For example, permits were approved for two sets of three townhouses next door to each other on N. Potomac St. and for two 6-plexes next door to each other on 7th St. S.



Formerly single-family home on one lot.
Now, EHO approved 6 townhouses on six small lots.



Formerly 1,792 sf single-family home on one lot.
EHO approved two six-plexes, 7,649 sf. each.
After neighbors objected, two single-family homes were built instead.

EHO: Double the Impact vs Single-Family Homes

Adding one 6-plex to a street has impacts that are different from adding a new, large single-family home: more cars, more traffic, less available street parking, more stormwater runoff, and more strain on the sanitary sewer system.

The impact of EHO on neighborhoods was a key issue during the 2024 trial in the case of Nordgren v. Arlington County Board. The [judge ruled on October 25, 2024](#) that EHO violated state law because, among other reasons, there was “no evidence that the Board considered that a six plex with at least six toilets, additional washing machines, showers, sinks and dishwashers would increase the flow in the county system so that homeowners sharing the sewer line with that six plex will suffer sewage backup into their homes.”

The conversion of the 7th St. S project from two 6-plexes to two single-family homes provides an example of the impact of different housing types.

Housing type	Square feet	Bathrooms	Cars (est)
Two 6-plexes	15,298	24	24
Two Single-family homes	9,018	10	6



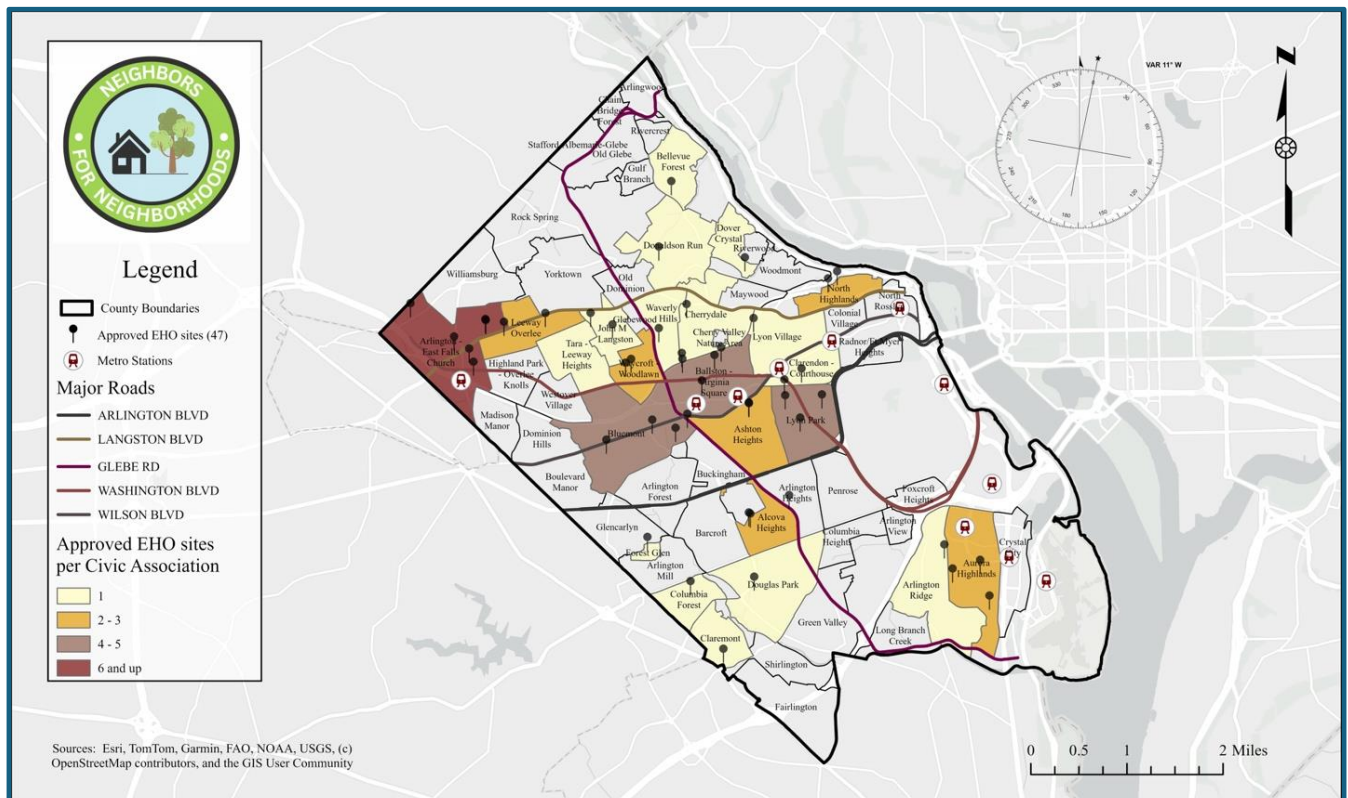
EHO is Concentrated in Certain Civic Associations

The County’s 2026 EHO report touts the geographic distribution of approved EHO permits.

The report states regarding permits approved through 2025: “The 47 approved EHO permits are within 25 different civic associations, demonstrating geographic distribution throughout Arlington.”

But 39 of Arlington’s 64 civic associations have no EHO-approved permits during that time. And of the 25 civic associations where there are EHO-approved permits, 16 of these have just one EHO approval.

As the chart below demonstrates, EHO is concentrated in a limited number of civic associations. Arlington-East Falls Church has the most, with 6 approved permits; followed by Ballston-Virginia Square with 5, Bluemont with 4 and 3 each in Alcovia Heights, Aurora Highlands, and Lyon Park.



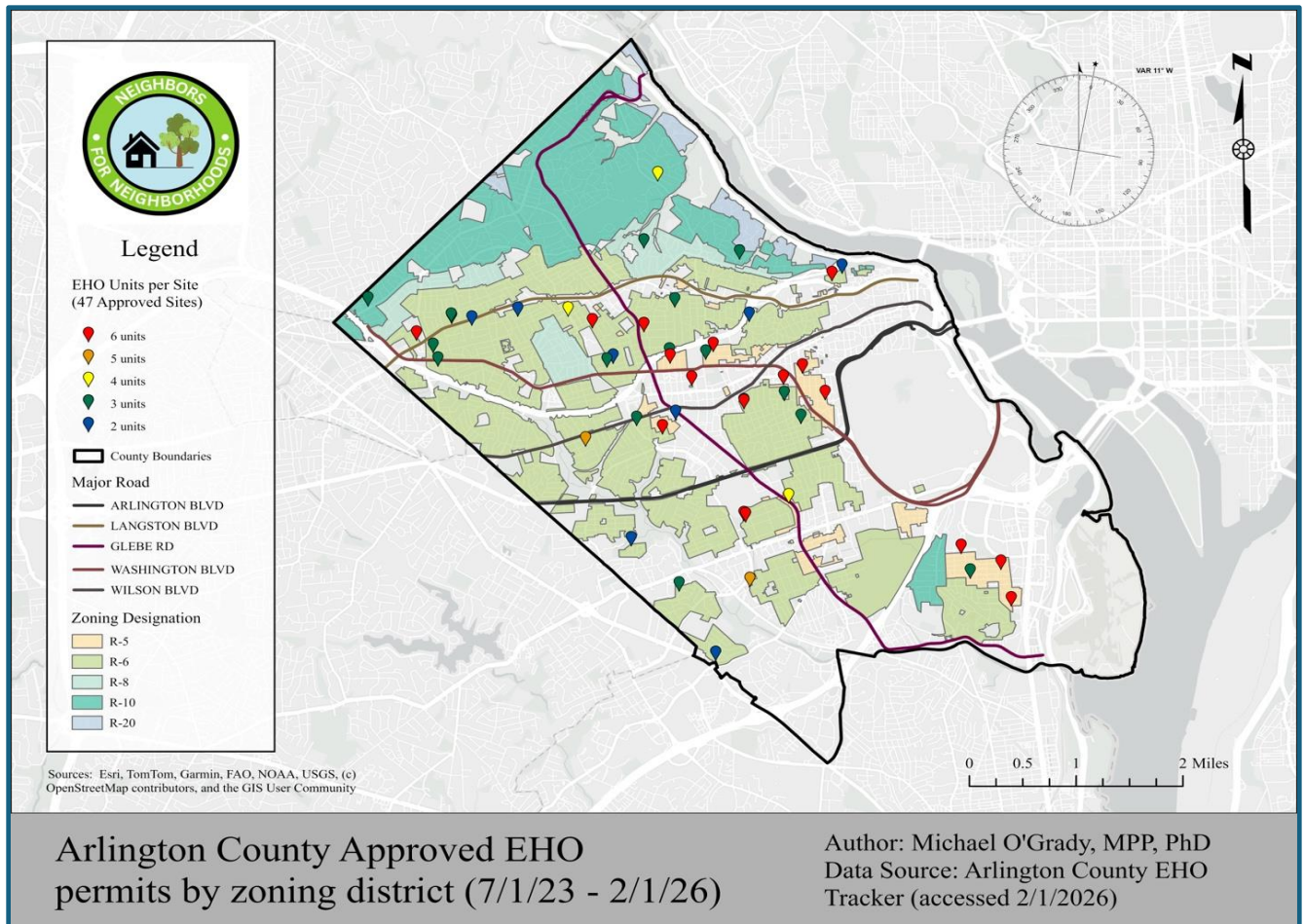
Arlington EHO Sites by Civic Association (7/1/23 - 2/1/26)

Author: Michael OGrady, MPP, PhD
Data Source: Arlington County EHO Tracker (accessed 2/1/2026)

EHO is Concentrated in Certain Zoning Districts

EHO permits approved through 2025 are highly concentrated in R-6 zoning districts, which require a minimum lot size of 6,000 square feet. There have been 29 EHO permits approved in R-6, 14 in R-5, 3 in R-10, and 1 in R-8.

This concentration in zoning districts with smaller lots likely reflects the benefit to developers to purchase smaller lots at less cost and to build the largest square footage allowed to maximize profits.

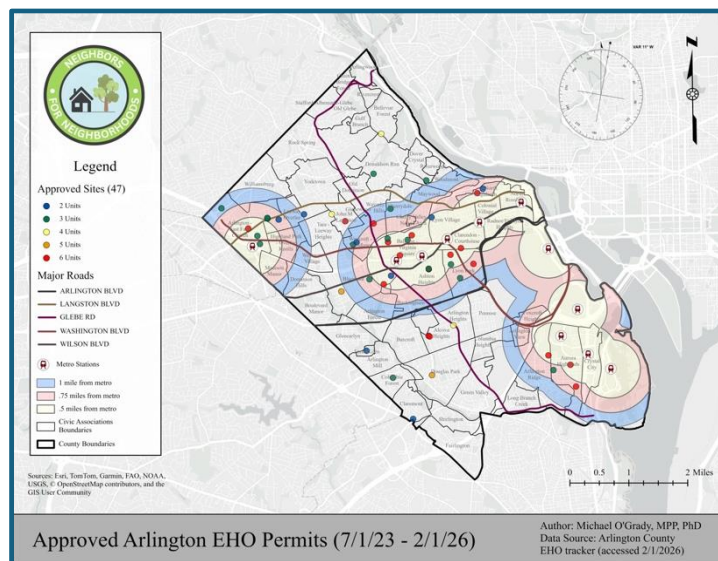


EHO Is not Transit-Oriented Development



The County’s [General Land Use Plan \(GLUP\)](#) guides Arlington’s land use policy and “reflects the County’s smart growth principles, concentrating future development along its transit corridors to increase the benefits of its multi-modal transportation options and existing infrastructure.”

This approach is known as transit-oriented development, which the [Urban Institute](#) defines as “*creating livable, walkable communities with businesses, services, and housing near transit.*”



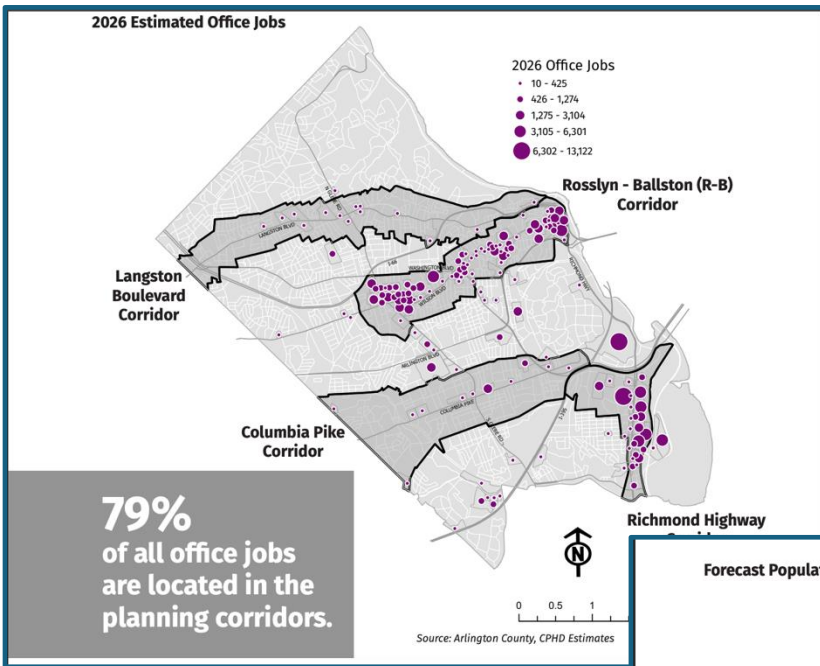
The [MMH Study](#) that led to EHO stated that key considerations in eliminating single-family zoning included “analysis of locational factors, such as access to multi-modal transportation options; proximity to major arterials; proximity to jobs, shopping and recreational opportunities.” But the County Board rejected calls for EHO to be transit-oriented. Instead, it voted to allow EHO to be built across Arlington County, with no requirement for proximity to transit.

As a result, 62% of EHO-approved permits through February 1, 2026 are located more than .5 miles of Metro stations, the maximum distance considered walkable and consistent with transit-oriented development.

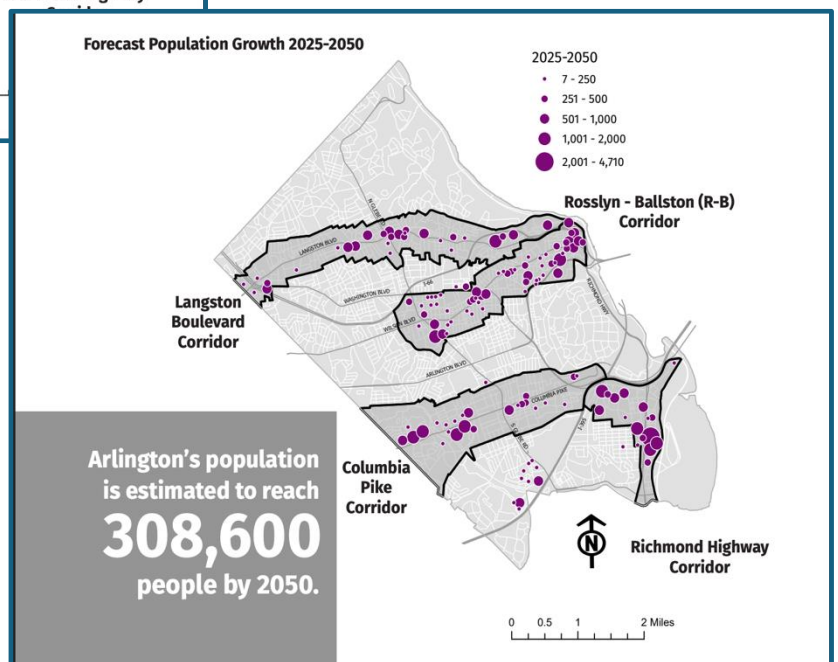
EHO Is not Transit-Oriented Development



EHO is not allowed in Arlington’s planning corridors, where most jobs are located and where most residents live. ([Zoning Ordinance Sec. 10.4.2](#))



Arlington has four major planning corridors, which include Metro stations or other major transportation routes. According to the [2026 Profile](#), 79% of all office jobs in Arlington are in these planning corridors.



In addition, most of Arlington’s households live in these corridors: 63% in 2020, which is projected to grow to 71% by 2050.

Arlington has more Housing Units than Households

EHO has been offered as a tool to address Arlington’s “housing crisis.” But what is that crisis? It is not a lack of housing overall, Arlington has more housing units than households and according to [County projections](#), that will continue well into the future.

Arlington County Forecast Round 10.1 (Prepared 2024)

	Housing Units	Households	Population	Jobs
2020 Census	119,085	109,912	238,643	221,600*
2025	126,000	120,700	247,400	220,500
2030	133,900	127,100	258,800	233,500
2035	141,800	133,700	269,800	250,500
2040	149,700	141,100	283,100	257,300
2045	157,100	147,900	295,400	261,800
2050	165,000	155,400	308,600	266,100

*CPHD Estimate

For more information visit: www.arlingtonva.us/Government/Projects/Data-Research/Future-Forecasts

The housing that Arlington does have is for low-income households, where sufficient supply is lacking. EHO does nothing to address this need.

EHO Cannot Address Arlington's Housing Needs



No Affordability Requirement

EHO allows multi-family buildings across Arlington, but it has no requirement that any of the units be moderately-priced or that developers contribute to the Arlington's Affordable Housing Investment Fund (AHIF).

For larger developments, the County has a [variety of tools](#) that allow developers to build more square footage than otherwise permitted if they include affordable units in their projects or contribute to AHIF.

In the absence of such requirements, developers – like any business owners – seek to maximize profits. As EHO development to date demonstrates, most EHO buildings are larger than single-family homes and sell or rent for prices that only very high-income households can afford.

Demand

The demand for very expensive housing in Arlington remains high. That is driven in part by our proximity to Washington, D.C.; the availability of multiple Metro stations; and the excellent job opportunities, schools, parks, and other benefits of living in Arlington. In addition, Arlington has the highest median income in the metropolitan area, other than Falls Church.

The opportunity to build large multi-family buildings on small lots, which sell or rent for very high prices, has attracted investors from outside of Arlington and even outside of Virginia.

Demand for housing for low-income residents, particularly for households earning less than 30% of the Area Median Income, is high. **But without substantial government subsidies, developers do not build housing that is affordable for this income-level, which the County identifies as having the greatest housing shortage.**

EHO Cannot Address Arlington’s Housing Needs

Supply

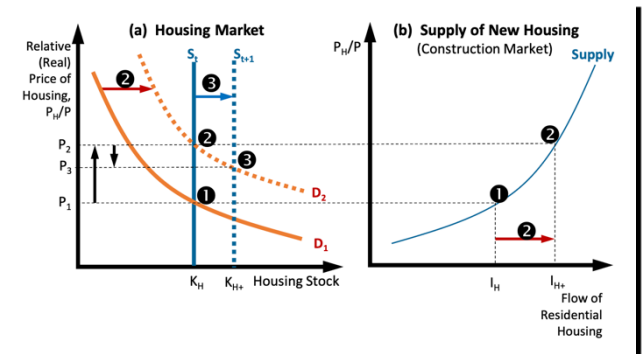
One of the County Board’s goals in adopting EHO was to increase housing supply. But for EHO to have an impact on housing prices, it would have to produce a significant number of units. As one [commentator](#) noted: “For the laws of supply and demand to actually reduce price, there must be a glut of new housing, not a trickle.” So far, EHO has produced only a trickle of housing.

The pace of EHO development likely has been affected by the pending litigation. But even once that is resolved, it is unlikely that EHO will ever produce the amount of housing needed to lower housing costs. Developers will continue to meet the demand for large, expensive single-family homes.

The EHO units completed and under construction show that EHO reduces the supply of single-family homes that could be affordable to first-time homebuyers. For almost every EHO-approved permit, a single-family house has been – or will be – torn down to build very expensive multi-family units.

Supply & Demand

According to Prof. Jay Cochran, Adjunct Professor of Economics at George Mason University, the law of supply and demand breaks down in high land value markets, like Arlington. (read analysis)



EHO increases housing costs

Many [studies](#) show that upzoning like EHO, which allows multi-family buildings on what were single-family zoned lots, makes land more expensive.

Michael O’Grady, a research economist with a PhD in public policy, has studied the effect of EHO on sales prices in Arlington and Fairfax. His soon to be published paper about this study concludes that EHO has increased sales prices. O’Grady, who has done work for Arlington Economic Development, tells Neighbors for Neighborhoods: “I estimate missing middle has increased sales prices by about 8.8 percent compared to similar, adjacent Fairfax County neighborhoods.”

O’Grady further estimates that EHO “has raised residential property taxes by about \$800-\$1,000. While this may seem trivial to some, approximately 20 percent of Arlington homeowners now meet the National Low-Income Housing Coalition’s definition of cost-burdened (a 4 percent increase since the pre-missing middle time frame).” And these increases come during a time of record unemployment in Arlington and high inflation.

EHO Increases Tax Revenue



25th St. S. sold for \$560,000



25th St. S. total both units = \$2,450,000

As older, modest single-family homes are torn down and replaced with EHO developments assessed at many times the original assessment, the County's real estate tax revenue increases. And, as O'Grady notes, assessment of other single-family homes increases due to EHO, further adding to the County's tax base.

For decades, commercial real estate and residential real estate provided an equal share of real estate [tax revenue for the County](#). But in recent years, the share of commercial real estate revenue has dropped significantly. In 2025, commercial real estate provided 43% of total real estate taxes, while residential provided 57%. Overall, these real estate taxes account for 60% of Arlington's revenue.

Because of the increased revenue from EHO, the County Board does not have an incentive to take action to make EHO more affordable to renters or homebuyers.

EHO Legal Battle

Arlington Residents Challenge EHO



Nordgren v. Arlington County Board

Status

The Supreme Court of Virginia issued an order on May x, 2026 agreeing to hear the appeal by Arlington homeowners of the [September 5, 2025](#) decision of the Court of Appeals. That decision reversed the trial judge’s ruling that EHO violated Virginia law and was void. The parties will file briefs and have oral argument in the Supreme Court in the coming months.

Trial

In [April 2023](#), [ten Arlington residents filed a lawsuit](#) against the County Board, alleging that the adoption of EHO, and the ordinance itself, violated Virginia law.

The Board hired Gentry Locke, a private law firm, to work alongside attorneys in the County Attorney’s Office. To date, Gentry Locke has charged the Board nearly \$1.5 million for its representation in this case.

After lengthy discovery, including depositions and review of thousands of pages of documents, the case went to trial in July 2024. Following a 5-day trial in Arlington Circuit Court, [Judge David Schell ruled](#) that EHO was invalid on four counts in the homeowners’ lawsuit.



Permitting Recap	
7/1/23	EHO Permits Accepted
10/25/24	EHO Permits Invalid
6/24/25	EHO Permits Accepted
7/8/25	EHO Permits Invalid
9/5/25	EHO Permits Accepted*

*in dispute awaiting VA Supreme Court ruling

EHO Legal Battle

- 1) The Board failed to consider the localized impact of EHO development upon the neighborhoods where EHO would be built, in violation of Virginia law.

Expanded Housing Option Zoning Application Process



<p>ZEHO25-00001 Address: 4026 18th RD N Zip Code: 22207 RPC: 06023031 Zoning District: R-6 Applicant: SUNNYSIDE DEVELOPMENT LLC Status: Approved Date Applied: 2025-10-10 Date Issued/Denied: 2026-02-09 Project Description: Existing Units: One-family. Proposed: Semidetached (2-units)</p>	<p>ZEHO26-00004 Address: 1712 N VEITCH ST Zip Code: 22201 RPC: 15024014 Zoning District: R-6 Applicant: david springberg Status: Approved Date Applied: 2026-01-31 Date Issued/Denied: 2026-04-21 Project Description: Existing Units: One-family. Proposed: Townhouse (3-units)</p>	<p>ZEHO24-00004 Address: 3812 16th ST S Zip Code: 22204 RPC: 26011017 Zoning District: R-6 Applicant: Marie Payne Status: Approved Date Applied: 2025-12-12 Date Issued/Denied: 2026-02-27 Project Description: Existing Units: One-family. Proposed: Multifamily (6-units)</p>
<p>ZEHO24-00032 Address: 1508 S WALTER REED DR Zip Code: 22204 RPC: 32020004 Zoning District: R-5 Applicant: ROSTAMINIA GHAZALEH Status: Approved Date Applied: 2025-10-29 Date Issued/Denied: 2026-02-27 Project Description: Existing Units: One-family. Proposed: Multifamily (6-units)</p>	<p>ZEHO26-00002 Address: 801 23rd ST S Zip Code: 22202 RPC: 36031001 Zoning District: R-5 Applicant: 801 23rd St S LLC Status: Approved Date Applied: 2026-01-15 Date Issued/Denied: 2026-03-30 Project Description: Existing Units: One-family. Proposed: Townhouse (3-units)</p>	<p>ZEHO25-00004 Address: 6119 11th ST N Zip Code: 22205 RPC: 11049020 Zoning District: R-6 Applicant: OCH AT 11TH ST LLC Status: Approved Date Applied: 2025-11-19 Date Issued/Denied: 2026-02-09 Project Description: Existing Units: One-family. Proposed: Semidetached (2-units)</p>

EHO provides no notice to neighbors of EHO permit applications and no opportunity to share their concerns about the impact of increased density as the permit application is considered. This is known as “by-right” zoning, treating EHO development like single-family home construction, which does not require a public process. ([Check on your neighborhood](#))

Judge Schell ruled that because EHO is an exception to single-family zoning, the law requires the County Board to review EHO permit applications. He stated: “The issuance of these permits has been delegated to staff and not to an appropriate entity for legislative scrutiny. This removes the special exception procedure which would require a public process with localized studies, public participation, and consideration of the protection of neighboring residents from the excepted use.”

It is notable that an owner of a single-family home who seeks a variance to make a modest change to their property, such as adding a porch that encroaches on a setback by a few inches, must go through a process of notification to neighbors and a public hearing. But EHO developers building a 6-unit apartment building next to that homeowner are not subject to the same notice and hearing requirements.

EHO Legal Battle

2) The Board failed to consider the localized impact of EHO development upon the neighborhoods where EHO would be built, in violation of Virginia law.

The law is intended to protect neighborhoods from undue traffic congestion; strain on water, sewer, and flood protection systems; and lack of sufficient school capacity and community resources, such as parks.

The lack of studies included, among other issues, the impact of EHO on the stormwater system. Judge Schell found that not only did the County fail to conduct proper studies about this, but that the County Board ignored staff warnings about the insufficiency of the system to handle EHO development and that these “concerns of staff were not brought to the attention of the public in any meeting.”

The staff warnings included: “I cannot state in strong enough words that this is going to be devastating to the already stressed stormwater conveyance system.”

Judge Schell found that these concerns “were dismissed or not considered on the basis that if you are building on the same footprint of a single-family home with a six plex there will be no deleterious effect or increase in storm water drainage requirements. This position appears to be supported by no study or evaluation.”

Implementation of EHO has demonstrated that the County’s assumptions were wrong. For example, as discussed in this NfN Report, most EHO buildings are much larger than single-family homes and will have more deleterious effects than do those homes. Had the County consulted developers to see what they would build under EHO, they would have learned that developers would build as much square footage as the ordinance allows to earn the greatest profits.

EHO Legal Battle

3) The County Board did not adopt an initiating resolution to commence the EHO zoning amendment process, as required by Virginia law.

The law's purpose in requiring initiating resolutions for zoning amendments is to provide the public with notice so that they can participate in the process about zoning changes in an informed manner from the outset.

4) The County Board exceeded its authority in enacting the EHO tree requirements that are not consistent with Virginia law.

Judge Schell found: "Evidence presented by plaintiffs in exhibits show that the public was told that EHO would increase the tree canopy" beyond what is required by the Chesapeake Bay Preservation Ordinance. But such an increase, while desirable, is not allowed by state law. This promise about the increased tree canopy likely garnered support of the EHO ordinance by many in the community.

Appeal

On November 19, 2024, the County Board voted unanimously to appeal Judge Schell's ruling that EHO was void based on four counts in the homeowners' lawsuit.

The County Board filed its Notice of Appeal to the Virginia Court of Appeals on November 20, 2024 and filed its brief in support of its appeal on May 1, 2025. Since that time, the Court of Appeals has not considered whether Judge Schell's ruling that EHO is void was correct.

Instead, the County's appeal of Judge Schell's decision has been placed on hold because of a motion filed by a developer. Wilsons Ventures claimed that the trial judge erred in not allowing it to intervene in the case after the trial concluded in July 2024 and after Judge Schell found that EHO was void.

Wilsons Ventures appealed the ruling that denied its intervention. On September 5, 2025, the Court of Appeals agreed with the developer that it should have been allowed to intervene in the case. That ruling meant that EHO was again valid and that the County could issue new EHO permits and issue construction-related permits for previously approved EHO development projects.

The homeowners opposed Wilsons Ventures appeal and filed their own appeal to the Supreme Court of Virginia seeking reversal of the Court of Appeals decision that Wilsons Ventures should have been allowed to intervene in the case after the trial was over.

After the Supreme Court hears oral argument on this issue, it likely will be months before it issues an opinion. If the Court agrees with the homeowners, the case goes back to the Court of Appeals to consider the County's appeal of the trial judge's ruling that EHO is void because it violates state law. If the Supreme Court rules for the County and Wilsons Ventures, the case goes back to the Arlington Circuit Court for proceedings including Wilsons Ventures about the validity of the EHO ordinance.

EHO Legal Battle

Appeals to the Board of Zoning Appeals

Residents who would be affected by a particular EHO development can appeal the issuance of an EHO permit to the [Board of Zoning Appeals](#). The fee to do so is \$1,124. Note that the fee for a developer to apply for an EHO permit is \$889.

Some residents have filed such appeals, alleging that the Zoning Administrator erred in issuing the EHO permit because the application did not comply with the zoning ordinance. The challenge for residents is that an appeal must be filed within 30 days of approval of an EHO permit. Arlington County does not notify residents of these approvals.

If the neighbors happen to learn of the EHO development, they must submit a Freedom of Information Act (FOIA) request to the County to obtain the approved plans and pay for the documents that are provided. The plans are not provided on the County's website. The FOIA process can take weeks, while the 30-day clock for filing an appeal is running.

A draft [BZA 2024-2025 Report](#) discusses some of the appeals of EHO permits. Since 2025, several residents have filed or are preparing to file BZA appeals of EHO permit approvals.

To date, the BZA has not reversed any decisions of the Zoning Administrator to issue EHO permits.

EHO Legal Battle

Vested Rights

Following the trial court's ruling that EHO was void, Arlington County asked the judge to stay its decision and allow EHO permitting and construction to continue while the County appealed the ruling.

In November 2024, Judge Schell issued a partial stay, allowing the County to issue construction-related permits to those developers who had already obtained EHO permits. However, this applied only if the developer placed language in the land records essentially warning prospective purchasers of EHO properties that the case was on appeal.

Some developers complied with this requirement and were able to move forward with construction.

Some developers have opted to pursue court orders that they had vested rights in their EHO permits - essentially a court guarantee that even if EHO is ultimately declared void by the courts, they can finish their projects and they don't have to be torn down.

Several developers obtained these court orders that they had vested rights in their EHO permits. In each case, the County Attorney's Office did not object to the developer's request. And because neighbors are not given notice of these vested rights hearings, no motions opposing these requests have been filed, until recently.

In March, neighbors happened to learn of a developer's request for a declaration of vested rights for its EHO permits on North Potomac Street that allowed 6 townhouses to be built on what once was one lot with one single-family home. They hired an attorney who recently filed motions arguing why the court should not grant vested rights in this case. A hearing in the case is scheduled for June 5, 2026 in Arlington Circuit Court.

If the Judge agrees with the neighbors' argument, this would have significant implications for developers. Without the guarantee of vested rights, they are faced with Judge Schell's warning during the October 25, 2024 hearing about the partial stay: "I warn you" that you are proceeding "in a very dangerous way" and "taking a huge risk" if you build a six plex and the County loses on appeal: "that six plex cannot exist."

Conclusions & Recommendations

An analysis of EHO since its adoption in 2023 demonstrates that it has not lived up to the goals that the County established for this multi-family development:

- EHO is not affordable to moderate-income households, but only to very high-income households.
- EHO is not compatible with surrounding neighborhoods - most EHO buildings are much larger than new single-family homes.
- EHO is not dispersed across Arlington, but it is concentrated in certain civic associations and zoning districts.
- EHO is not consistent with Arlington's transit-oriented development goals: 62% of EHO-approved properties as of 2/1/26 are more than .5 miles from Metro.

EHO has not and cannot meet these goals because of the faulty foundation on which the policy is based. The County Board assumed that increasing the supply of housing with EHO would reduce housing costs. As discussed in this report, that has not occurred and will not occur due to the high cost of land in Arlington and the fact that EHO does not require developers to include any affordable units in their developments.

During the Missing Middle Study, neither Arlington County staff nor its consultant spoke with developers to ascertain what they would build under the new zoning ordinance. While the County suggested that EHO buildings would be no larger than single-family homes, in fact, they are much larger. The County's consultant assumed that EHO would be concentrated in the zoning districts with larger minimum square footage, such as R-10 and R-8, but instead, development is concentrated in R-6 and R-5 districts.

The County Board, County staff, and residents have been embroiled in EHO since 2020. The amount of time and effort that has gone into EHO from the Missing Middle Study, to hearings on the adoption of EHO, to legal challenges to EHO is staggering. All of this work has yielded no positive results. It is time for the County Board to work with the Arlington community to improve housing opportunities in Arlington.

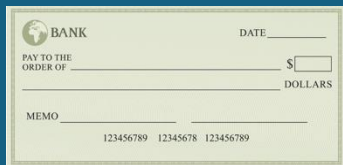
Conclusions & Recommendations

If the County Board wants to address Arlington’s housing needs in a meaningful way, it should:

- Renew efforts to address Arlington’s most critical housing shortage: affordable housing for households earning less than 30% Area Median Income (AMI).
- For households at other income levels, identify which have the greatest housing needs and identify what the Board can do that will make a difference.
- Recognize that without a substantial increase in the County’s housing budget, which would require a tax rate increase, the County’s options are very limited.
- Heed the advice of experts that upzoning, with no requirement for affordability, will not provide moderately-priced housing.
- Promote the preservation of older, lower-cost homes that can be affordable to first-time homebuyers.
- If the Board does not repeal EHO zoning, amend it to require notice to neighbors when EHO permits are approved.
- Post approved-EHO permit plans on the EHO website so that residents don’t have to submit FOIA requests and pay for these documents.
- In addition to the annual EHO data report, provide an annual analysis of how EHO implementation is or is not advancing the County’s housing goals.



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Neighbors for Neighborhoods (NfN) is a grassroots organization dedicated to housing that is genuinely accessible to low and moderate-income households. We believe in the proven success of Arlington's decades-old "Transit-Oriented Development" model - concentrating density near Metro hubs while preserving the integrity of single-family neighborhoods.