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PANEL OF THE VIRGINIA COURT OF APPEALS REVERSES ITS ORDER:
MISSING MIDDLE/EHO ZONING IS INVALID IN ARLINGTON

On June 24, 2025, **a three-judge panel of the Virginia Court of Appeals issued an order reversing the trial judge's ruling that Missing Middle Housing/Expanded Housing Options (EHO) zoning was invalid.**

The order did not address the merits of why the trial judge ruled that EHO zoning violated Virginia law. Instead, it held that the trial judge should have allowed a developer to intervene in the case, even though the request to intervene came after the 5-day trial was over and the judge had decided against the County Board.

Counsel for the homeowners who brought the initial lawsuit against the County sought a rehearing of the order before the three-judge panel that issued it. **Arguments were heard on July 7, 2025 and the next day – two weeks after the initial order – the panel reversed itself.**

This means that EHO zoning is invalid in Arlington.

The County Board was quick to react to the June 24 order, stating: "The County is considering its next steps, including how this impacts previous applicants for EHO permits, new applications, and housing options in Arlington County going forward."

The appellate process is a long and winding road. The County Board has filed its brief in the Court of Appeals in support of its appeal of the trial judge's ruling that EHO zoning is invalid. The homeowners have not yet filed their brief in opposition.

Appeals are considered by a three-judge panel of the Court of Appeals and the losing party can seek a rehearing before the full Court or can appeal to the Virginia Supreme Court. The EHO zoning litigation journey will not end until these appeals are exhausted and that could take years.

Dan Creedon, a founder of Neighbors for Neighborhoods, said today: "We are pleased that the three-judge panel reversed its order and that the trial judge's ruling that Arlington's Missing

Middle Housing zoning is invalid is the law of the land. Neighbors for Neighborhoods is in this for the long haul – supporting the homeowners who won at trial until all of the appeals completed." He continued: "As the County Board considers housing in Arlington, regardless of the status of the litigation, Neighbors for Neighborhoods calls on the Board to be guided by the fact that its experiment with Missing Middle Housing failed to produce housing that was affordable for low and middle-income households."

Regarding housing in Arlington, the facts are:

Arlington does not have a housing crisis of supply not meeting demand.

- According to Arlington's Annual Profile, Arlington has more housing units than households in 2025: 126,000 housing units and 120,700 households. That trend will continue with the forecast for 2050 showing 165,000 housing units and 155,400 households.

Missing Middle Housing in Arlington isn't missing.

- "Missing Middle" refers to housing types, not income levels. Housing types between single-family detached units and high-rise buildings are considered "missing middle."
- Interestingly, Arlington County's Annual Profile does not reveal the number of missing middle units in Arlington. It does show that 78% of Arlington's housing stock consists of multi-family units, including duplexes, townhouses, condos and apartments.
- Neighbors for Neighborhoods found an Arlington County searchable database that shows that there are thousands of apartment and condo units in buildings that are not high-rises, in addition to the thousands of duplexes and townhouses in Arlington listed in its Profile.

Eliminating single-family zoning with EHO zoning did not produce affordable units.

- The County Board claimed that allowing multi-family units in areas zoned only for detached, single-family homes would result in housing that was affordable for teachers, public safety workers, and first-time home buyers.
- But the EHO projects that were completed and planned demonstrate that the County Board was wrong. For example, a single-family home on N. Troy Street was purchased in 2023 for $862,500 and replaced with EHO duplexes for sale at nearly $1.8 million for each unit.

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