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Homeowners win again: Judge denies County's motion to appeal his ruling that plaintiffs have standing to sue over Missing Middle Housing/Expanded Housing Options (MMH/EHO) zoning

Today, Judge David Schell denied the County's motion that he certify an interlocutory appeal (appeal now instead of after the trial commencing on July 8 has concluded) on the issue of standing.

The plaintiffs, 10 Arlington homeowners, would suffer "substantial harm" from the construction of multi-family buildings, the judge stated, if he were to grant the County's motion, which could delay the trial for two or more years while being heard by Virginia's appellate courts.

He stated that it would not be in either party's interest to delay the trial for years, noting that if the County were to lose at trial, developers might have to tear down the buildings they construct while the case is pending.

Judge Schell previously ruled that the plaintiffs have "a fundamental right" to challenge "a rezoning of their property that they allege was done incorrectly or in violation of the Code of Virginia," noting that "the nature of their ownership" changed when their property was rezoned.

The primary allegation in the lawsuit is of a violation of the Code of Virginia is the County's failure to conduct studies of the impact of increased density on infrastructure, such as roads, stormwater, and schools before its adoption of its MMH/EHO zoning ordinance.

Perhaps the County did not conduct such studies because its consultant report estimated that MMH/EHO development would be limited to 17-21 lots per year and would be dispersed across the County.

But the reality is playing out very differently. In the first six months alone of MMH/EHO applications, 26 properties have been approved for multi-family development, and these are concentrated in the smallest residential districts: R-5 and R-6. Most of the approved units will be in 6-plexes, the most dense housing type under MMH/EHO zoning.

The County Attorney, who argued today's motion, cast doubt on whether developers will begin construction of these multi-family buildings while the lawsuit is pending.

Neighbors for Neighborhoods Litigation Fund, LLC (NfN) was created to provide funding for the litigation to have Arlington County's MMH/EHO zoning ordinance declared void.

"Today's ruling is another win for Arlington homeowners and another loss for the County, which now has brought in the big guns, hiring at Arlington taxpayers' expense, Gentry Locke, a Roanoke law firm, to assist with the case" said Dan Creedon with NfN. He added, "The judge recognized that the County's delay tactics would harm the plaintiffs as MMH/EHO buildings would be built pending an appeal."

More information about the litigation:
https://www.gofundme.com/f/suit-re-end-of-singlefamily-zoning-in-arlington

Inquiries: arlnfnllc@gmail.com