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Judge Sets Trial Date in Missing Middle Housing Case.
County Claims That its Zoning Decision Should not be Reviewed by the Court.

Today, Judge David Schell set the date for a five-day trial, commencing July 8, 2024 trial date in the case against the Arlington County Board seeking to invalidate Missing Middle Housing/Expanded Housing Options (EHO) zoning.

In his October 19 ruling, Judge Schell denied the County's efforts to have the case dismissed, stating repeatedly that the plaintiffs – 10 Arlington homeowners – had alleged direct violations of Virginia law in the County's process of adopting EHO zoning.

During the September hearing that led to that ruling, Arlington's County Attorney argued that the judiciary should not question the County Board's actions in adopting EHO zoning and that the lawsuit was "improper" and "a subversion of the democratic process."

Arlingtonians for Upzoning Transparency (AFUT) wrote to the County Board asking it to disavow the County Attorney's statement. Instead, Board Chair Christian Dorsey doubled down in a November 3 response to AFUT, stating that the Board's EHO decision "is wholly within the purview of the local legislative body, which has the constitutional authority to make county-wide land use decisions, revisions, and repeals if necessary. It is our position that the Judiciary should not substitute its judgment for decision-making expressly reserved for the local legislative body."

Judge Schell also ruled on October 19 that the plaintiffs' rights will be affected by the ruling in this case and, therefore, have standing to sue the County. The Judge stated that when the plaintiffs' property was rezoned from single-family to multi-family, "the nature of their ownership was changed." He further stated that it "is difficult to understand how a property owner whose property has been rezoned would somehow not have standing" to challenge the rezoning.

Today, the County notified the Court that is will seek an interlocutory appeal of the Judge's standing ruling and a January 11 hearing date was set. The plaintiffs' attorney, Gifford

Hampshire, indicated that he will oppose the County's effort for an appeal at this stage of the litigation. If Judge Schell grants the County's motion after the hearing, the County then would request that the Virginia Court of Appeals consider the standing issue. The Court of Appeals has discretion whether or not to accept the case on standing.

Dan Creedon, speaking for Neighbors for Neighborhoods Litigation Fund, LLC, stated today: "The County's hubris in claiming that the courts don't have a role in reviewing EHO zoning is astonishing." He added, "But now that a trial date has been set, and maybe reality is setting in, the County is seeking an appeal that could delay the trial and add tremendous expense to the litigation."

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