

PRESS RELEASE – OCTOBER 19 2023

Judge in Missing Middle (EHO) Lawsuit Rules Plaintiffs Can Proceed to Trial

Today, the Court hearing the lawsuit about Arlington County's controversial Missing Middle upzoning rejected the County's effort to stop the suit and found all 6 counts can go to trial.

The County had argued the case is not "ripe" because no Missing Middle buildings have been built, and that it would be a "subversion really of our democratic process" to challenge what the County did. The Judge rejected that. He said it is a "quintessential use" of the law to ask the Court to weigh in.

On standing (the right to sue), the Court found it "readily apparent" that a homeowner whose land is rezoned could sue, adding that it would be difficult to understand how such a property owner would NOT have standing. Analogizing, the Court posed that if the County changed the zoning on a home from a residential area "to a garbage dump," would anyone think they wouldn't have standing?

On all 6 counts of the lawsuit that deal with substance of the County's Missing Middle program, how it initiated it, and how it advertised it, the Court found the plaintiffs' lawsuit can proceed. This includes allegations the County failed to do the studies that state law requires and exceeded its authority on the tree canopy issue.

ASF's Peter Rousselot called the decision "a major victory for residents of the County." "Using our tax dollars to contest the residents, Arlington County's attorneys tried to get this case dismissed before trial on multiple different grounds, but failed."

"ASF calls on the County to reconsider its position and start over now to develop a sensible, smart approach to up-zoning", Rousselot concluded.

The Court also denied a claim under the Freedom of Information Act for which it heard testimony in September. The Court had concerns about the County's process and said it was "not the best possible way," but declined to find a violation.

The Court will reconvene on November 16 to set dates for the trial. More information on the suit is available [here](#).