

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

MARCIA L. NORDGREN, *et al.*,)

Plaintiffs,)

v.)

COUNTY BOARD OF ARLINGTON,)
VIRGINIA,)

Defendant.)

Case No. CL23001513-00

PRETRIAL BRIEF OF NAACP ARLINGTON BRANCH AS *AMICUS CURIAE*

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INTRODUCTION



*All segregation is the result of public policy, past and present.*¹

Heather McGhee, *The Sum of Us* (2021)

*Half a century ago, the truth of de jure segregation was well known, but since then we have suppressed our historical memory and soothed ourselves into believing that it all happened by accident or by misguided private prejudice.*²

Richard Rothstein, *The Color of Law* (2017)

¹ Heather McGhee, *The Sum of Us: What Racism Costs Everyone and How We Can Prosper Together* at 171 (2021).

² Richard Rothstein, *The Color of Law: The Forgotten History of How Our Government Segregated America* preface (2017); see also *Segregated by Design*, <https://www.segregatedbydesign.com/> (last accessed July 1, 2024).

On the southernmost edge of the historically Black neighborhood of Hall’s Hill in Arlington County, Virginia, a marker stands to remind passersby of the makeshift wall that separated the neighborhood from an adjacent, whiter neighborhood.³ This “segregation wall,” described as “a patchwork barrier of fencing and brick or cinder-block segments,”⁴ was built in the 1930s by white neighbors “to separate themselves from the adjacent Black community”⁵ and keep Black residents out of their white neighborhood.⁶

The construction of the segregation wall was enabled by Arlington County’s first zoning ordinance. By allowing for “the construction of a rear fence or wall to a height not exceeding seven feet,”⁷ Arlington’s 1930 zoning ordinance empowered white homeowners whose properties abutted Hall’s Hill to build the “seven foot tall cinderblock wall.”⁸ Hardly anything remains of the physical wall. One section was removed in the 1960s to open a previously blocked neighborhood street,⁹ and other sections were destroyed naturally as time passed.

Yet Arlington’s zoning ordinance remains, as do the invisible walls that it built around Arlington’s neighborhoods. For almost a hundred years, Arlington County enforced exclusionary zoning, defined as “prohibition of building of least-cost forms of housing,”¹⁰ by making it illegal

³ Arlington County Department of Community Planning, Housing and Development (“Arlington CPHD”), *A Guide to the African American Heritage of Arlington County, Virginia* at 22 (2d ed. 2016), available at <https://arlingtonva.s3.dualstack.us-east-1.amazonaws.com/wp-content/uploads/sites/31/2016/09/A-Guide-to-the-African-American-Heritage-of-Arlington-County-Virginia.pdf>.

⁴ *Id.* See also Shelley Mastran et al., *A History of Residential Development, Planning, and Zoning in Arlington County, Virginia* at 9 (April 2020), available at https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/15/2020/08/VirginiaTech_ArlingtonStudy_HistoryofResidentialDevelopmentandPlanning.pdf.

⁵ Steven Woolf et al., *Deeply Rooted: History’s Lessons for Equity in Northern Virginia* at 20 (2021), available at https://novahealthfdn.org/storage/Deeply-Rooted-Report_Single-Pages-compressed.pdf.

⁶ Wilma Jones, *My Halls Hill Family: More Than a Neighborhood* at 26 (2018).

⁷ Arlington County, Va. Zoning Ordinance § 14 (adopted Apr. 26, 1930), available at <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/38/2019/08/1930-Zoning-Ordinance.pdf>.

⁸ Lindsey Bestebreurtje, *Built by the People Themselves – African American Community Development in Arlington, Virginia, from the Civil War Through Civil Rights* at 208 (Mar. 27, 2017) (Ph.D. thesis, George Mason University), available at <https://mars.gmu.edu/server/api/core/bitstreams/4a569a00-ec1e-4605-9425-f281f9e1aaec/content>.

⁹ Jones, *supra* n.6, at 152.

¹⁰ Robert C. Ellickson, *America’s Frozen Neighborhoods: The Abuse of Zoning* at 5 (2022).

to build any home other than a detached single-family house on the vast majority of Arlington’s residential land. It was not until last year, based on years of study and community feedback, that Defendant County Board of Arlington, Virginia (the “County Board”) took a significant step toward ending exclusionary zoning and legalized small multifamily “missing middle” housing across all residential neighborhoods.

The relief sought in the Complaint would reinstitute a zoning scheme that impaired the ability of Black people to live in Arlington’s residential neighborhoods. The scheme was established in the 1930s as an integral part of a segregationist system, and it bears responsibility for the segregated state of Arlington’s residential neighborhoods today. Plaintiffs claim that Arlington County’s decision to reform its exclusionary zoning scheme was arbitrary, capricious, and unreasonable. In light of the history and harms of Arlington’s prior zoning policies, and the benefits of making them less restrictive and more inclusive, the County’s decision is reasonable beyond any fair debate.

INTEREST OF *AMICUS CURIAE*

NAACP Arlington Branch (the “NAACP”) is a multiethnic, multiracial community whose mission is to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color in Arlington. The NAACP advocates, agitates, and litigates for the civil rights due to Black America.¹¹ Its legacy is built on the foundation of grassroots activism by civil rights pioneers who founded the national organization in 1909 and NAACP Arlington Branch in 1940.¹² Its

¹¹ See Woolf, *supra* n.5, at 45; Bestebreurtje, *supra* n.8, at 180; Equal Justice Initiative, *Segregation in America: “Massive Resistance”* (2018), at <https://segregationinamerica.eji.org/report/massive-resistance.html>.

¹² Bestebreurtje, *supra* n.8, at 315–16, 328–30.

bylaws call for “oppos[ing] all restrictive practices whether public or private” in housing.¹³ The NAACP is committed to an Arlington without racism where Black people enjoy equitable opportunities in a thriving community.

In keeping with that commitment, the NAACP has advocated to end exclusionary zoning in Arlington County, including by engaging directly with the County Board. In March 2022, shortly before County staff released the proposed framework for what would become the Expanded Housing Options (“EHO”) ordinance, the NAACP reminded the Board of “Arlington’s history of racist, exclusionary housing policies” and urged the Board to “reform our zoning laws to give residents of color better access to a wider variety of housing at lower cost.”¹⁴ After the proposal’s release, the NAACP praised it to the Board in May 2022 as “an important first step to addressing the legacy of racial discrimination and segregation in the housing market” and “a foundational element of improving housing affordability broadly, encouraging greater racial and economic integration, and expanding access to homeownership.”¹⁵ And when the Board restricted the proposal and considered restricting it further, the NAACP voiced its opposition and in February 2023 called on the Board to enact the proposal “without causing any racially discriminatory effects, treatments, or impacts[.]”¹⁶

¹³ *Bylaws for Units, National Association for the Advancement of Colored People* at 46 (adopted Mar. 2019), available at <https://naacp.org/resources/bylaws-units>.

¹⁴ Ex. 1, Ltr. from J. Spain *et al.*, NAACP Arlington Branch, to K. Cristol & M. Schwartz, Arlington County at 1 (Mar. 7, 2022), available at https://drive.google.com/file/d/121Z2wuyCy9_n7CbhXD3NSfAG1oV6ofpE/view.

¹⁵ Ex. 2, Ltr. from J. Spain *et al.*, NAACP Arlington Branch, to K. Cristol, Arlington County at 2 (May 23, 2022), available at [https://storage.googleapis.com/production-constantcontact-v1-0-4/824/621824/9vj90fif/f73b62a5b08a4444a5560dc61321a9f6?fileName=Missing Middle Housing Study Phase 2 Draft Framework 05 23 2022 .pdf](https://storage.googleapis.com/production-constantcontact-v1-0-4/824/621824/9vj90fif/f73b62a5b08a4444a5560dc61321a9f6?fileName=Missing%20Middle%20Housing%20Study%20Phase%20Draft%20Framework%2005%2023%202022.pdf). See also Ex. 3, Ltr. from M. Hemminger *et al.*, NAACP Arlington Branch, to C. Dorsey, Arlington County (Jan. 19, 2023), available at <https://storage.googleapis.com/production-constantcontact-v1-0-4/824/621824/9vj90fif/475791205be3433180af4197915aa922?fileName=NAACP%20MMH%20RTA%20Letter%20to%20CB.pdf>.

¹⁶ Ex. 4, Ltr. from M. Hemminger *et al.*, NAACP Arlington Branch, to C. Dorsey, Arlington County at 6 (Feb. 1, 2023), available at [https://storage.googleapis.com/production-constantcontact-v1-0-4/824/621824/9vj90fif/32e2945d9cf3413b9201565e52a25ec8?fileName=NAACP%20MMH%20Post-RTA%20Letter%20to%20CB%20\(2023-02-01\)%20final.pdf](https://storage.googleapis.com/production-constantcontact-v1-0-4/824/621824/9vj90fif/32e2945d9cf3413b9201565e52a25ec8?fileName=NAACP%20MMH%20Post-RTA%20Letter%20to%20CB%20(2023-02-01)%20final.pdf); see also Ex. 5, Ltr. from J. McCarthy, NAACP Office of General Counsel, to C. Dorsey *et al.*,

As authorized by votes of its Executive Committee and General Membership, the NAACP submits this *amicus curiae* brief to provide the Court with arguments and authorities that support the NAACP’s advocacy to the County Board. The NAACP seeks to inform the Court of the segregationist roots of exclusionary zoning in Arlington, the harms it inflicted, and the benefits of bringing it to an end.

ARGUMENT

The County Board’s decision to move away from exclusionary zoning in Arlington was informed by County staff’s analysis of how that zoning scheme had excluded people of color. Staff found that “zoning decisions” had “contributed to racial segregation,” that “within areas in Arlington zoned for single-detached housing today ... only 28% of residents are people of color, compared to 48% people of color living in zoning districts that allow two-family, townhouse, and multifamily dwellings,” and that the EHO ordinance “may allow more households of color to remain or move into” areas that had been zoned for single-family detached houses only.¹⁷ These findings supported the Board’s determination that legalizing multifamily housing throughout Arlington’s residential neighborhoods would achieve lawful purposes under Virginia’s enabling statute for local zoning authority, such as “to facilitate the creation of a convenient, attractive and harmonious community” and “to provide reasonable modifications in

Arlington County (Mar. 14, 2023) (reiterating NAACP Arlington Branch’s concerns that restrictions would “put renting or homeownership in Arlington out of reach for many would-be residents of color”).

¹⁷ Arlington County Staff Report to County Board, *Missing Middle Housing Study GLUP and ACZO Amendments* at 35–36 (Mar. 18, 2023), available at <https://tinyurl.com/mmfinalstaffreport>; see also, e.g., Arlington CPHD, *Expanding Housing Choice: The Missing Middle Housing Study Phase I Report*, at 28 (Nov. 2021), available at https://www.arlingtonva.us/files/sharedassets/public/housing/documents/missing-middle/mmhs_phase-1-report-final-draft.pdf (finding that “historic land use and zoning policies” had been “designed to segregate neighborhoods”); Arlington CPHD, *Arlington’s Race and Ethnicity Dashboard - 2022 Briefing Report* at 4–5 (May 16, 2022), available at https://www.arlingtonva.us/files/sharedassets/public/projects/documents/data-and-research/race-and-ethnicity-dashboard/2022-brief-arlington-race-and-ethnicity-dashboard_5-16-22.pdf (finding that Arlington’s prior zoning laws “contribute[d] to segregation by limiting the housing options for households with lower incomes, overrepresented by People of Color”).

accordance with ... state and federal fair housing laws[.]”¹⁸ A careful examination of the history and effects of Arlington’s zoning laws confirms that this determination was correct.

I. ARLINGTON’S EXCLUSIONARY ZONING SCHEME WORKED WITH OTHER RESTRICTIVE PRACTICES TO SEGREGATE RESIDENTIAL NEIGHBORHOODS.

Most of Arlington’s residential neighborhoods—with suburban features like low population density, small lot sizes, and single-family detached houses—were built during “the rise of Jim Crow society[.]”¹⁹ In 1900, Arlington was a largely rural community with only a few “suburban villages.”²⁰ Its population was 6,430, about 38% of whom were Black.²¹ And yet by 1960, when the production of single-detached houses “leveled off,” Arlington’s population had multiplied to over 163,000, while the Black share of the population had plummeted to only 5%.²² Arlington’s residents, and almost every Arlington neighborhood, had become overwhelmingly white by then.²³ This was no accident. It was the deliberate result of policies adopted and enforced across all levels of government. As historian Lindsey Bestebreurtje observed, “[l]ocal, state, and federal laws, developer practices, and lending policies all came together to create increasingly restrictive residential segregation” in Arlington.²⁴

A. Residential Neighborhoods in Arlington Were Built for Whites Only.

What drove Arlington’s population growth in the early twentieth century, as well as its transition from a rural to a suburban community, was the creation of jobs in Washington, DC.²⁵

¹⁸ Va. Code § 15.2-2283. *See also* Ex. 4, Ltr. from M. Hemminger *et al.*, *supra* n.16.

¹⁹ Bestebreurtje, *supra* n.8, at 396.

²⁰ Mary Louise Shafer, *Arlington County, Virginia in Transition: 1870-1920* at 54 (Feb. 16, 1981) (M.A. thesis, George Washington University) (on file with Arlington Public Library); Bestebreurtje, *supra* n.8, at 122–34, 235.

²¹ Bestebreurtje, *supra* n.8, at 133, 173, 232, 289.

²² Mastran, *supra* n.4, at 6, 18; *see also* Shafer, *supra* n.20, at 54 (noting that Arlington’s Black population “increased by just 40 people in twenty years” after 1900).

²³ Mastran, *supra* n.4, at iii (“By the mid-1950s Arlington was completely built-out, with most of the County devoted to single-family housing, mostly white neighborhoods.”).

²⁴ Bestebreurtje, *supra* n.8, at 396.

²⁵ *Id.* at 189, 194, 235–36.

Workers taking these jobs sought homes from which they could commute.²⁶ Arlington’s undeveloped land and transportation connections to Washington made it ripe for residential development.²⁷ Developers like Frank Lyon²⁸ and Crandal Mackey²⁹ founded whites-only suburban subdivisions³⁰ and influenced local politics to realize a “vision of Arlington dominated by white residents in single family homes.”³¹ A homebuilding boom ensued, and between 1900 and 1920, seventy plats for new residential subdivisions were recorded with the County.³²

Directing the build-out of Arlington’s neighborhoods, “Arlington’s white boosters, planners, and politicians expanded their suburban visions of pre-planned, white, middle class communities.”³³ A “selling point” for these new neighborhoods was the absence of Black people.³⁴ A 1915 advertisement for the Clarendon neighborhood assured potential homebuyers that there was “not a colored resident within the borders.”³⁵ Advertisements for Lyon Village boasted that it was both “reserved for the white race alone” and “restricted against objectionable structures from the standpoint of architectural harmony.”³⁶ Other neighborhoods like Dominion Hills and Tara Leeway—which took its name from the Tara Plantation from *Gone with the*

²⁶ *Id.* at 133 (“New white residents were drawn to Arlington from Virginia and throughout the South for the county’s suburban homes and neighborhoods with their easy access to employment in Washington.”).

²⁷ *See* Mastran, *supra* n.4, at 3.

²⁸ Lyon bought a weekly newspaper that went on to publish opinions that “set out curbing African Americans’ social and political rights.” Bestebreurtje, *supra* n.8, at 140.

²⁹ Mackey narrowly won a race for Commonwealth’s Attorney in 1903 due to “the reduction of the negro vote” from the 1902 Virginia Constitution (*see infra* Part I.C) and led a violent vigilante raid on integrated businesses in Rosslyn. *See* Bestebreurtje, *supra* n.8, at 144, 145–48.

³⁰ Bestebreurtje, *supra* n.8, at 140.

³¹ *Id.* at 300. *See also id.* at 151 (“Arlington’s politicians and developers overlapped immensely.”).

³² Shafer, *supra* n.20, at 57. *See* Ruth P. Rose, *The Role of Frank Lyon and His Associates in the Early Development of Arlington County* at 58, in 5 *Arlington Historical Magazine*, No. 4 (Oct. 1976), available at <https://arlingtonhistoricalsociety.org/wp-content/uploads/2017/02/1976-8-Lyon.pdf> (“Much of the character of the County by 1930 ... was due to the interests of Frank Lyon and his associates. Today, the lovely communities of Lyon Park and Lyon Village reflect the way of life which Frank Lyon must have envisioned[.]”).

³³ Bestebreurtje, *supra* n.8, at 172.

³⁴ *Id.* at 167. *See id.* at 169–70 (“In advertising these new communities Arlington’s strict racialized control of county politics and whites-only buying policies were featured selling points.”); Shafer, *supra* n.20, at 67.

³⁵ Bestebreurtje, *supra* n.8, at 167.

³⁶ *Id.*

Wind—were founded with the same racially exclusionary mindset.³⁷ For planners of the era, “standardization in the built environment and racial homogeneity” were paramount.³⁸

These segregationist practices reflected the prevailing attitudes among white developers, planners, and policymakers. A bedrock principle was *uniformity*.³⁹ New suburban neighborhoods were to be exclusively residential, with no other land uses. The most desirable neighborhoods would consist exclusively of detached single-family houses. And the residents who lived in those new houses should be exclusively white and middle-class. The desire for racial uniformity in neighborhoods was widely held among white Americans.⁴⁰

Uniformity of land uses, housing types, and racial makeup became federal policy. The Public Works Administration—lauded as the crown jewel of the New Deal—built new public housing in the 1930s pursuant to a “neighborhood composition rule,” under which federal housing developments entrenched the “previous racial composition of their neighborhoods[.]”⁴¹ When the federal government began insuring home mortgages in the 1930s,⁴² the Federal Housing Administration (“FHA”) developed standards that created irresistible financial incentives for private developers to racially segregate the neighborhoods they built. The FHA’s 1936 Underwriting Manual stated: “If a neighborhood is to retain stability it is *necessary* that

³⁷ *Id.* at 252.

³⁸ *Id.* at 167.

³⁹ *See id.* at 118–19 (“Unlike Arlington’s African American communities, which formed diverse neighborhoods from semi-rural to suburban to aspirationally urban, Arlington’s white communities created a more consistent environment across their neighborhoods.”).

⁴⁰ *See, e.g., Public Opinion on Civil Rights: Reflections on the Civil Rights Act of 1964*, Roper Center (July 2, 2014), at <https://ropercenter.cornell.edu/blog/public-opinion-civil-rights-reflections-civil-rights-act-1964-blog> (“[I]n 1963, a Gallup poll found that 78% of white people would leave their neighborhood if many black families moved in.”).

⁴¹ Rothstein, *supra* n.2, at 21.

⁴² *Id.* at 64 (explaining how federal mortgage insurance would “solve the inability of middle-class renters to purchase single-family homes for the first time”). Before this federal mortgage insurance program, owning a home was “prohibitively expensive for working- and middle-class families,” in no small part because mortgages typically required 50% down and full repayment within 5-7 years. *Id.*

properties shall continue to be occupied by the *same social and racial classes*.”⁴³ The FHA made racial segregation an “official requirement” of federally-backed mortgages,⁴⁴ denying federal financial support for any racially integrated developments and turning entire neighborhoods into “racially exclusive white enclaves.”⁴⁵

According to historian Richard Rothstein, governments tried to “persuade as many white families as possible to move from urban apartments to single-family suburban homes” while also making it “nearly impossible for African Americans to follow.”⁴⁶ Homebuilders ensured that new neighborhoods would remain whites-only by recording deeds with racially restrictive covenants, which expressly forbid those homes from being purchased by or lived in by Black people. Before their enforcement was deemed unconstitutional in 1948,⁴⁷ racially restrictive covenants bound every subsequent owner of the properties they encumbered, and they could be enforced privately by neighbors.⁴⁸ That is to say, if the owner of an encumbered property wished to sell their home to a Black family, their white neighbors could sue to stop the sale.

In Arlington, developers imposed racially restrictive covenants on “[n]early all of Arlington’s new communities” in the early twentieth century.⁴⁹ Frank Lyon recorded deeds prohibiting his properties from being “sold or leased to any one not of the Caucasian race[.]”⁵⁰ Covenants in the Arlington Forest neighborhood similarly instruct that “[n]o persons of any race

⁴³ Fed. Housing Admin., *Underwriting Manual: Underwriting and Valuation Procedure Under Title II of the National Housing Act*, Part II, ¶ 233 (Apr. 1, 1936), available at <https://fraser.stlouisfed.org/title/underwriting-manual-6279/underwriting-manual-602318> (emphasis added).

⁴⁴ Rothstein, *supra* n.2, at 65.

⁴⁵ *Id.* at 69–70.

⁴⁶ *Id.* at 60.

⁴⁷ See *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁴⁸ Rothstein, *supra* n.2, at 78–80.

⁴⁹ Bestebreurtje, *supra* n.8, at 166–67; see *id.* at 282–83 (observing that racially restrictive covenants “barred Arlington’s African Americans from living in the majority of Arlington’s new suburban community”); Mastran, *supra* n.4, at 14 (noting that “[r]estrictive covenants ... were prevalent in Arlington County”).

⁵⁰ Rose, *supra* n.32, at 50.

other than the Caucasian Race shall use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race[.]”⁵¹ And a covenant in the Bellevue Forest neighborhood mandates that:

No part of the land herein conveyed shall ever be used, occupied by, sold, demised, transferred, conveyed unto or in trust for, leased, rented or given to negroes ... or to any person or persons not of the Caucasian race, which racial description shall be deemed to include Armenians, Jews, Persians and Syrians.⁵²

Researchers have uncovered racially restrictive covenants encumbering properties in entire neighborhoods across the County.⁵³

Around the time that racially restrictive covenants had become “common practice” in Arlington, the FHA began expressly recommending them.⁵⁴ A “favorable condition is apt to exist,” the 1936 FHA manual states, where “deed restrictions apply over a broad area and ... relate to types of structures, use to which improvements may be put, and *racial occupancy*[.]”⁵⁵ As such, “U.S. government financing required home developers and landlords to put racially restrictive covenants ... in their housing contracts.”⁵⁶ A significant share of Arlington’s racially restrictive covenants were recorded in 1937 and 1938, aligning with the FHA’s directives.⁵⁷

⁵¹ Donald A. Wise, *Arlington Forest* at 32, in 3 *Arlington Historical Magazine*, No. 4 (Oct. 1968), available at <https://arlingtonhistoricalsociety.org/wp-content/uploads/2020/02/1968-5-Forest.pdf>.

⁵² Mastran, *supra* n.4, at 16.

⁵³ See James Jarvis, *New Study Documents Location of Discriminatory Deed Covenants in Arlington and Northern Virginia*, ARLnow (May 7, 2024), at <https://www.arlnow.com/2024/05/07/new-study-documents-location-of-discriminatory-deed-covenants-in-arlington-and-n-va/>; Woolf, *supra* n.5, at 18.

⁵⁴ Mastran, *supra* n.4, at 9, 16. The FHA claimed that “a purchase by an African American in a white neighborhood ... would cause the value of the white-owned properties to decline.” Rothstein, *supra* n.2, at 93. A federal appeals court disagreed, reasoning that enforcing a racially restrictive covenant would actually “depreciate all the property on the block” by denying families of color the opportunity to outbid whites. *Hundley v. Gorewitz*, 132 F.2d 23, 24 (D.C. Cir. 1942).

⁵⁵ FHA, *Underwriting Manual*, *supra* n.43, ¶ 228.

⁵⁶ McGhee, *supra* n.1, at 170. See Rothstein, *supra* n.2, at 83.

⁵⁷ Mastran, *supra* n.4, at 14. The FHA financing application for the Colonial Village apartments, for example, “included racially based restrictive covenants[.]” Bestebreurtje, *supra* n.8, at 262.

B. Exclusion of Black People from Arlington’s Residential Neighborhoods Was Maintained by Exclusionary Zoning.

To keep Black people from living in Arlington’s new whites-only neighborhoods, segregationist planners took a belt-and-suspenders approach. Not satisfied to rely on racially restrictive covenants and other discriminatory practices that depended on private actors, public officials also instituted restrictive zoning laws to keep neighborhoods segregated by race.

Zoning “originated, in large part, out of an intentional desire to segregate people of color from whites.”⁵⁸ In Virginia, zoning laws responded to “perceived threats ... from the mixing of races and the presence of African Americans in white neighborhoods.”⁵⁹ In 1911, the first zoning ordinance adopted by the City of Richmond created separate blocks for white and “colored” people.⁶⁰ The General Assembly enabled all Virginia cities and towns to adopt racially segregationist zoning in 1912,⁶¹ which the Supreme Court of Virginia upheld in 1915.⁶²

The U.S. Supreme Court’s 1917 decision in *Buchanan v. Warley* upended years of explicit racial zoning throughout Virginia. In *Buchanan*, the Court invalidated an ordinance that had expressly prohibited Black home purchases in white neighborhoods.⁶³ The decision left segregationists with “two distinct problems: how to keep lower-income African Americans from

⁵⁸ Katherine Levine Einstein *et al.*, *Neighborhood Defenders: Participatory Politics and America’s Housing Crisis* at 41 (2020). See also Michael C. Lens, *Zoning, Land Use, and the Reproduction of Urban Inequality*, 48 Annual Rev. Sociology 421, 425 (2022), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10691857/pdf/nihms-1895779.pdf> (“Although many of the arguments for single-family zoning made at the time were economic, racial separation was accomplished through the same means, and zoning proponents were on record as being very much in favor of segregated cities.”); Rothstein, *supra* n.2, at 48 (“[T]here was also enough open racial intent behind exclusionary zoning that it is integral to the story of *de jure* segregation.”); Ellickson, *supra* n.10, at 11 (“Racism, most conspicuously against Blacks, unquestionably was once a central motivator of zoning policies.”).

⁵⁹ Jonathan Rak *et al.*, *Zoning and Segregation in Virginia: Part 1* at 3 (2021), available at <https://media.mcguirewoods.com/publications/2021/Zoning-And-Segregation-In-Virginia-Study-Part1.pdf>.

⁶⁰ *Id.* at 4.

⁶¹ Va. Acts 1912 ch. 157. See Mastran, *supra* n.4, at 6.

⁶² *Hopkins v. City of Richmond*, 117 Va. 692 (1915).

⁶³ *Buchanan v. Warley*, 245 U.S. 60, 82 (1917) (concluding that a locality’s “attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the state”).

living near middle-class whites and how to keep middle-class African Americans from buying into white middle-class neighborhoods.”⁶⁴ The first was addressed by a toxic brew of restrictive practices like racially restrictive covenants.⁶⁵ As for the second, localities adopted exclusionary zoning ordinances that—without mentioning race at all—would prevent movement into “finer residential districts ... by colored people.”⁶⁶

After *Buchanan*, “racial zoning gave way to the broader notion of a race-based comprehensive planning process and racially informed zoning districts.”⁶⁷ Localities “rushed to adopt ‘exclusionary zoning’ laws to restrict the types of housing that most Black people could afford to buy ... such as units in apartment buildings or two family homes[.]”⁶⁸ Early zoning ordinances in Virginia were “commonly used to segregate communities by race and class[.]”⁶⁹ The 1936 FHA manual confirms that the aim of exclusionary zoning was segregationist, stating: “Natural or artificially established barriers will prove effective in protecting a neighborhood and the locations within it from *adverse influences*” like “*lower-class occupancy, and inharmonious racial groups*.”⁷⁰ The manual concludes that the “best artificial means of providing protection from adverse influences is through the medium of appropriate and well drawn zoning ordinances.”⁷¹ Zoning laws were intended to work hand-in-glove with restrictive

⁶⁴ Rothstein, *supra* n.2, at 48.

⁶⁵ See *supra* Part I.A.

⁶⁶ Rothstein, *supra* n.2, at 49 (quoting Harland Bartholomew, who developed and promoted early zoning laws). See also *id.* at 56–57 (explaining that zoning was developed “in part to evade a prohibition on racially explicit zoning” and “attempted to keep African Americans out of white neighborhoods by making it difficult for lower-income families, large numbers of whom were African Americans, to live in expensive white neighborhoods”).

⁶⁷ Rak, *supra* n.59, at 4.

⁶⁸ McGhee, *supra* n.1, at 171.

⁶⁹ Virginia Department of Housing and Community Development (“Virginia DHCD”), *HB854 Statewide Housing Study: Current Efforts, Future Needs, and New Strategies* at 161 (Dec. 2021), available at https://vhc.virginia.gov/hb854-full-report_FINALE.pdf. See Rak, *supra* n.59, at 2 (“Virginia lawmakers ... used zoning through most of the 20th century as a governmental tool to segregate African Americans.”).

⁷⁰ FHA, *Underwriting Manual*, *supra* n.43, ¶ 229 (emphasis added). See also *id.* ¶ 232 (“Adverse influences” also included such “nuisances” as “public playgrounds” and “schools.”).

⁷¹ *Id.* ¶ 227.

covenants. According to the manual, “to be really effective,” restrictive covenants “should strengthen and supplement zoning ordinances” by including a “[p]rohibition of the erection of more than one dwelling per lot” and a “[p]rohibition of the occupancy of properties *except by the race for which they are intended.*”⁷²

Arlington County passed its first comprehensive zoning ordinance in 1930.⁷³ Because “Arlington’s housing production heavily favored single-family residential development” at the time, the 1930 zoning ordinance “perpetuated this pattern.”⁷⁴ The ordinance “classified almost the entire county, including then unsettled land, as ‘A Residential,’” under which duplexes and semi-detached houses were outlawed.⁷⁵ This restriction applied to the Black neighborhood of Green Valley, whose large stock of multi-family housing was made non-conforming.⁷⁶ Arlington County updated its zoning ordinance in 1938 to ban rowhomes, which were “deemed to detract from the single-family character of the County[.]”⁷⁷ The rowhome ban remained in effect from 1938 through 1960,⁷⁸ by which time 90% of Arlington’s land had been developed.⁷⁹ In Arlington and elsewhere—and precisely as originally intended—exclusionary zoning “contributed to the creation of exclusive white suburbs,”⁸⁰ and “[h]ousing choices for African Americans in Arlington were significantly limited by these new laws.”⁸¹

⁷² *Id.* ¶ 284 (emphasis added).

⁷³ Bestebreurtje, *supra* n.8, at 204.

⁷⁴ Mastran, *supra* n.4, at 7.

⁷⁵ Bestebreurtje, *supra* n.8, at 249. While “[a]partment houses and hotels” were nominally permitted, the requirement that they be “set back not less than 100 feet from any lot or street line” made them impractical to build in residential neighborhoods. *See* 1930 Arlington Zoning Ordinance, *supra* n.7, § 3.

⁷⁶ Mastran, *supra* n.4, at 6–7; Bestebreurtje, *supra* n.8, at 205–06 (explaining that outlawing common home types in Green Valley shows how “zoning and planning laws set out to attack black development patterns specifically”).

⁷⁷ Mastran, *supra* n.4, at 10.

⁷⁸ *Id.* at 17.

⁷⁹ *Id.* at 22. The Black population had grown to 8,590 by 1960, but the white population had grown much faster to 163,400, making the Black population only 5% of the total (down from 26% in 1910). *See id.* at 6.

⁸⁰ Rothstein, *supra* n.2, at 56–57.

⁸¹ Bestebreurtje, *supra* n.8, at 199.

C. **Black People in Arlington Were Disenfranchised, Displaced, and Disadvantaged.**

Racially restrictive covenants, exclusionary zoning, and other discriminatory practices did more than exclude Black people from Arlington's new, all-white residential neighborhoods. They also fractured and stifled Arlington's existing Black communities, as did the government's deliberate taking of land where Black residents lived. Making matters worse, the Commonwealth of Virginia and Arlington County disenfranchised Black residents, leaving them unable to prevent or reverse the adoption of racially exclusionary policies.

Arlington County was predominantly Black in the wake of the Civil War.⁸² In 1870, Black Arlingtonians “voted, owned their homes, and held county-wide elective offices in some numbers.”⁸³ Black residents of Washington, DC were drawn to Arlington “as a place that permitted political expression for blacks.”⁸⁴ Many Black families lived in Freedman's Village, a duplex community built by the federal government on the former plantation of Confederate General Robert E. Lee, now part of Arlington National Cemetery.⁸⁵ The government issued eviction notices to Freedman's Village residents in 1887, the last of whom had left by 1900.⁸⁶ “Far from being the end of black Arlington,” however, “the closing of Freedman's Village led to the creation of nearly a dozen African American communities across the county.”⁸⁷ Displaced residents found homes in the existing Black communities of Green Valley and Hall's Hill, which had their “own aesthetics ranging from semi-rural, to suburban, to semi-urban.”⁸⁸ Black-owned

⁸² Shafer, *supra* n.20, at 45.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Bestebreurtje, *supra* n.8, at 55.

⁸⁶ *Id.* at 88.

⁸⁷ *Id.* at 42.

⁸⁸ *Id.*

businesses serving those communities thrived.⁸⁹ At the same time, “Arlington’s white communities also expanded,” both physically with the “formation of new neighborhoods” and ideologically with the “continued solidification of social and political power.”⁹⁰

The turn of the twentieth century marked the beginning of aggressive efforts to smother Black political power in Arlington. The Virginia Constitution of 1902 deprived most Black Virginians of their right to vote,⁹¹ such that “all but a small number of Arlington’s black residents were blocked from voting into the mid-twentieth century.”⁹² In 1930—the same year in which Arlington County adopted its first zoning ordinance—several Black leaders declared their candidacy for public office, to which County officials responded by lobbying the General Assembly to authorize a special election to change Arlington’s form of government.⁹³ The proposal was to abandon single-member districts in favor of county-wide, at-large representation.⁹⁴ A Black candidate could no longer win a County Board seat by prevailing in a single district with a large Black population; every Black candidate would instead have to face the County’s whole majority-white electorate, “decreasing African American voting clout and discouraging them from running for office.”⁹⁵ The measure passed, and in the next local election in 1931, no Black candidate was elected.⁹⁶

⁸⁹ Jones, *supra* n.6, at 24, 55; Bestebreurtje, *supra* n.8, at 292 (“But the population density also meant that Arlington’s black neighborhoods could support new and diverse kinds of all-black businesses and professions.”).

⁹⁰ Bestebreurtje, *supra* n.8, at 118.

⁹¹ See *Taylor v. Northam*, 300 Va. 230, 242 n.3 (2021). The 1902 Constitution conditioned voting rights on either (1) being a Confederate veteran or “son” thereof, (2) owning property and having paid property taxes in the Commonwealth, or (3) interpreting a constitutional provision to a (white) poll tester. Va. Const. art. II § 19 (1902), available at <https://www.lva.virginia.gov/constitutions/discover>; see Shafer, *supra* n.20, at 49. The new constitution was ratified after the General Assembly authorized a referendum on a constitutional convention, which Arlington voters had overwhelmingly opposed. *Id.* at 48. At the convention, a state-imposed rule led to Arlington being represented by Crandall Mackey, with Frank Lyon acting as court reporter. Bestebreurtje, *supra* n.8, at 140–42.

⁹² Bestebreurtje, *supra* n.8, at 311.

⁹³ *Id.* at 215–17.

⁹⁴ *Id.* at 215.

⁹⁵ *Id.* at 217.

⁹⁶ *Id.*

Black political participation in Arlington was further suppressed by violence. The Ku Klux Klan was “active” in Arlington during the 1920s⁹⁷ and conducted “intimidation campaigns against black political activism in the 1920s and ‘30s[.]”⁹⁸ A local “Klavern” operated out of the Ballston neighborhood, and its membership of over a hundred Klansmen “terrorized local black residents through violence and threats of violence.”⁹⁹ The Klan marched through Hall’s Hill, burned crosses in Green Valley, and ran “motor convoys through Arlington’s black neighborhoods on election day to deter voter turnout.”¹⁰⁰

The disenfranchisement of Black people enabled policies that stunted the growth of Arlington’s Black neighborhoods.¹⁰¹ Arlington’s zoning laws “challenged the validity of Arlington’s black community by legislating against the types of homes and environments they created in their neighborhoods.”¹⁰² While cloaked “in language of aesthetics of home design and neighborhood layout,” exclusionary zoning “severely restricted residential choice for African Americans” and kept Arlington’s Black neighborhoods from expanding.¹⁰³ As a result, the Black population that had been dispersed across eleven communities was confined to “three small enclaves.”¹⁰⁴ Arlington County denied those Black neighborhoods basic services that were

⁹⁷ Janet Wamsley, *The K.K.K. in Arlington in the 1920s* at 55, in 10 *Arlington Historical Magazine*, No. 1 (Oct. 1993), available at <https://arlingtonhistoricalsociety.org/wp-content/uploads/2020/02/1993-7-KKK.pdf>. See also Sherman W. Pratt, *Arlington’s At-Large Electoral System: A Study of Its History, Strengths, and Weaknesses* at 22, in 10 *Arlington Historical Magazine*, No. 3 (Oct. 1995), available at <http://arlingtonhistoricalsociety.org/wp-content/uploads/2020/02/1995-3-At-Large.pdf>.

⁹⁸ Bestebreurtje, *supra* n.8, at 40–41.

⁹⁹ *Id.* at 224.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 199 (“With less land to expand, white Arlingtonians sought to keep the best lands for themselves and took measures to prevent black expansion into those lands.”).

¹⁰² *Id.* at 230. See *id.* at 170.

¹⁰³ *Id.* at 116, 396. See *id.* at 116 (“Arlington’s white leaders steadily created zoning, planning, and covenant legislation in an attempt to push out the large and diverse communities[.]”); Jones, *supra* n.6, at 3–4.

¹⁰⁴ Woolf, *supra* n.5, at 20. See Bestebreurtje, *supra* n.8, at 289, 396 (“[O]nly the three African American communities of Hall’s Hill, Johnson’s Hill, and Green Valley were able to survive into the mid-twentieth century.”). But see Jones, *supra* n.6, at 48 (noting that Hall’s Hill’s population grew significantly after World War II).

provided to white neighborhoods.¹⁰⁵ Disenfranchisement fed a vicious cycle that attracted segregationist whites to Arlington while dissuading Black people from living here.¹⁰⁶

Even worse still, many Black residents had their lands taken away. In 1942, the government seized Queen City and East Arlington—a Black community where “[m]ost families owned their own home, either a single-family home or a row house”¹⁰⁷—to construct the Pentagon, the Navy Annex, and Washington National Airport.¹⁰⁸ As with the closure of Freedman’s Village, the taking of Queen City and East Arlington displaced hundreds of Black Arlingtonians.¹⁰⁹ But due to racially restrictive covenants and other exclusionary policies, Black residents displaced from Queen City and East Arlington had few choices: accept temporary accommodations, find homes in one of Arlington’s three remaining Black neighborhoods, or leave Arlington altogether.¹¹⁰ While some lower-cost multifamily housing did exist outside of Black neighborhoods, those homes were largely reserved for whites.¹¹¹

¹⁰⁵ *E.g.* Jones, *supra* n.6, at 76 (describing the lack of public sewer services in Hall’s Hill until the 1950s); Woolf, *supra* n.5, at 20 (“Decades after paved roads eased access to white subdivisions, Black communities were still served by dirt roads and went without municipal services such as sewage, water, and street lights.”).

¹⁰⁶ Shafer, *supra* n.20, at 67. “Arlington’s restrictive racial politics,” which advertising literature “promoted as an advantage of the area,” also attracted white newcomers. Bestebreurtje, *supra* n.8, at 144–45. Those same politics made Arlington “less and less attractive” for Black people. Shafer, *supra* n.20, at 66.

¹⁰⁷ Jessica Wallach, *Stores from Queen City: The Loss of a Neighborhood, the Cost of Progress*, Patch (Oct. 14, 2011), at <https://patch.com/virginia/clarendon/stories-from-queen-city>.

¹⁰⁸ Shafer, *supra* n.20, at 238.

¹⁰⁹ See Nancy Perry, *How Eminent Domain Destroyed an Arlington Community*, in 16 Arlington Historical Magazine, No. 1 (2017), available at <http://arlingtonhistoricalsociety.org/wp-content/uploads/2020/02/2017-2-Eminent.pdf>.

¹¹⁰ Bestebreurtje, *supra* n.8, at 209 (“Residential segregation laws and community-wide restrictive covenants, that limited where African Americans could live, and zoning and planning laws that dictated how they could live, severely hindered continued black neighborhood creation and expansion in Arlington.”).

¹¹¹ Arlington’s first garden apartment development was Colonial Village, which “sought-out exclusively white, middle class people.” Bestebreurtje, *supra* n.8, at 262. The Barcroft Apartments excluded “African Americans ... through unofficial channels of mutual understanding.” Bestebreurtje, *supra* n.8, at 166–67. The Buckingham Village Apartments were also reserved for whites only. The Defense Housing Corporation established the Fairlington neighborhood “as a segregated community exclusively for white people,” and it built several other whites-only developments named after Confederate officers. Mastran, *supra* n.4, at 19; see Shafer, *supra* n.20, at 78.

Throughout the early-to-mid twentieth century, Black Arlingtonians often found homes in neighborhoods that “embraced multi-family housing types[.]”¹¹² Arlington’s diasporic Black communities had housing types that were more diverse than those of the nearby white neighborhoods.¹¹³ There were “duplexes, row homes, and apartments in Arlington’s black areas, including Green Valley,” which white Arlingtonians saw as “threatening to the kind of ideal single family suburb envisioned in Arlington’s planning legislation as far back as 1900.”¹¹⁴

II. ARLINGTON’S RESIDENTIAL NEIGHBORHOODS REMAIN SEGREGATED TODAY.

The “racially explicit policies of federal, state, and local governments” have since been rescinded or invalidated.¹¹⁵ Yet the “public policies of yesterday still shape the racial landscape of today”¹¹⁶ as exclusionary zoning laws continue to “segregate communities by wealth and income.”¹¹⁷ Arlington’s exclusionary zoning scheme remained essentially intact between 1930 and 2022, outlawing multifamily housing on most of the County’s residential land. Today, single-family detached houses in Arlington are valued at 24% more on average than attached rowhomes and townhomes, and two and a half times as much as condominiums.¹¹⁸ By making it illegal to build anything other than the most expensive type of housing, exclusionary zoning has kept “land supply short, house prices high, and multifamily apartment buildings out.”¹¹⁹

¹¹² Bestebreurtje, *supra* n.8, at 256.

¹¹³ *Id.* at 90–91.

¹¹⁴ *Id.* at 202; *see id.* at 44.

¹¹⁵ Rothstein, *supra* n.2, preface.

¹¹⁶ *Id.* at 176–78. *See also* Mastran, *supra* n.4, at iii (“Federal and state laws barred minorities from joining white communities during their founding. ... These policies, along with neighborhood-level segregation through restrictive covenants, led to patterns of racial segregation which are still evident today.”).

¹¹⁷ Rak, *supra* n.59, at 2.

¹¹⁸ *See* Arlington CPHD, *Profile 2024* at 5 (Apr. 2024), available at https://www.arlingtonva.us/files/sharedassets/public/v/3/projects/documents/data-and-research/profile/profile_report_2024_final_4_3_24.pdf (As of January 1, 2024, average assessed values were \$1,180,400 for single-family detached houses, \$952,800 for attached homes, and \$466,235 for condos).

¹¹⁹ McGhee, *supra* n.1, at 172. *See* Rak, *supra* n.59, at 5 (“Exclusionary zoning greatly exacerbates economic segregation by lowering overall housing production and by lowering the percentage of multifamily units in many suburbs.”); Einstein, *supra* n.58, at 9 (arguing that many of the “negative social, economic, and political costs of the

Arlington’s exclusionary zoning laws achieved their original, intended purpose of segregating by race.¹²⁰ Laws prohibiting racial discrimination in housing and employment have not bridged the economic gulf between whites and people of color.¹²¹ “Because the median incomes of Black and Hispanic households tend to be relatively low” compared to white households, exclusionary zoning has “racially disparate impacts,” even where the public officials and citizens of today are not motivated by racial prejudice.¹²² In Arlington, the median income for white households is *more than double* the median income for Black households.¹²³ The typical single-family detached house in Arlington is out-of-reach for a higher share of Black households than for white households.¹²⁴ “By setting aside large parts of the region for high-price, single-family housing,” Arlington’s exclusionary zoning scheme served to “exacerbate racial segregation,”¹²⁵ limiting Black households’ access to most of Arlington’s residential neighborhoods and the civic resources they provide.¹²⁶

The racially exclusionary effects of Arlington’s long-time zoning scheme are readily apparent. The areas of Arlington that had been “zoned primarily for single-detached housing overlap with census Tracts where at least 70% of the population is white[.]”¹²⁷ In the decades

housing crisis are disproportionately felt in communities of color,” especially since housing unavailability “has a profound effect on residential segregation”).

¹²⁰ Rak, *supra* n.59, at 6–7.

¹²¹ Woolf, *supra* n.5, at 21.

¹²² Ellickson, *supra* n.10, at 196–97. *See also* Lens, *supra* n.58, at 434 (“Studies that have investigated the contemporary connections between land use regulations and segregation have consistently concluded that stricter, more locally driven zoning processes lead to higher levels of segregation by class and race.”) (citations omitted).

¹²³ Arlington CPHD, *Demographics by Race/Ethnicity* at 11 (Jan. 2024), available at https://www.arlingtonva.us/files/sharedassets/public/v/1/projects/documents/data-and-research/race-and-ethnicity-dashboard/2022raceethnicitydash_datashet_1_25_2024.pdf.

¹²⁴ *See* Woolf, *supra* n.5, at 21 (“Pricing pressures continue to restrict property ownership among Black families who lack the inherited wealth of white buyers.”).

¹²⁵ *Id.*

¹²⁶ Rak, *supra* n.59, at 2 (adding that these resources include “schools, parks, libraries, sanitation, transportation and other government services”).

¹²⁷ Arlington County Staff Report, *supra* n.17, at 47.

between 1980 and 2009, the Arlington neighborhoods that “increased diversity the least” also tended to have “the most single-family detached homes, the least missing middle housing, and the fewest renter-occupied units[.]”¹²⁸ Arlington’s historically Black neighborhoods saw a “significant decline in the African American population” that began in the 1990s and has continued since,¹²⁹ as the illegality of multi-family housing on most of Arlington’s residential land created a supply-demand imbalance that fueled gentrification.¹³⁰

III. ENDING EXCLUSIONARY ZONING IN ARLINGTON EXPANDS HOUSING OPPORTUNITIES FOR PEOPLE OF COLOR AND CREATES A MORE HARMONIOUS COMMUNITY.

Arlington’s residential neighborhoods cannot be fully integrated without undoing the legal schema that segregated them in the first place. Policy researcher Heather McGhee put it aptly: “Public policy created this problem, and public policy should solve it.”¹³¹

Diversity of housing promotes diversity of residents. As many scholars and policy experts now recognize, the “primary remedy for residential segregation is to allow more housing choices.”¹³² This can be achieved by relaxing “zoning ordinances that prohibit multifamily housing,” which have kept “middle-class families from settling in affluent suburbs.”¹³³ Legalizing “missing middle” home types in neighborhoods where they had been previously banned “provides options to meet demographic changes and promote diversity in communities,”

¹²⁸ Mastran, *supra* n.4, at 28.

¹²⁹ *Id.* at 30.

¹³⁰ See Jones, *supra* n.6, at 182–83 (describing how “gentrification and infill development exploded in Halls Hill” after “the real estate market went into overdrive in 2004-2005”); John Mangin, *The New Exclusionary Zoning*, 25 *Stanford L. & Pol’y Rev.* 91, 95 (2014), available at https://law.stanford.edu/wp-content/uploads/2018/03/mangin_25_stan.1_poly_rev_91.pdf (“If a high-demand, high-cost neighborhood won’t build, developers and people looking for housing will be diverted to the nearest low-cost neighborhoods. That increases demand and development and leads to gentrification.”).

¹³¹ McGhee, *supra* n.1, at 177. See Woolf, *supra* n.5, at 52 (“The lesson of history is clear: if past policies created those inequities, today’s policies can change the future.”).

¹³² Rak, *supra* n.59, at 2.

¹³³ Rothstein, *supra* n.2, at 204. See Rak, *supra* n.59, at 7 (“Ultimately, housing is a racial justice issue, and exclusionary zoning practices have had a significant impact on wealth and racial inequity. Expanding housing choices is a crucial step to addressing these ingrained inequities.”).

while also “moderat[ing] overall housing costs.”¹³⁴ The evolution of Arlington’s garden apartment communities shows how the “luxury” homes of today become the affordable homes of tomorrow. Recognizing these benefits, the Virginia Department of Housing and Community Development has recommended that localities should “remove land use barriers and encourage more inclusive land use strategies.”¹³⁵

Legalizing multifamily homes in residential neighborhoods expands housing opportunities other people of color and drives neighborhood integration in many ways. It increases the supply of homes, which puts downward pressure on housing costs and lets more households live in high-demand neighborhoods.¹³⁶ It allows for torn down houses to become multifamily housing that is far less expensive than the single-family detached houses that would have replaced them otherwise;¹³⁷ in fact, the cheapest new multifamily homes will cost only a *fraction* of the price of new detached houses, making properties redeveloped for multifamily homes attainable to many more households of color than if those properties had become new mansions instead.¹³⁸ It enables the addition of homes that cost less than many existing detached houses,¹³⁹ as well as rentals that give people of color—who rent at higher rates than whites—the

¹³⁴ Rak, *supra* n.59, at 7.

¹³⁵ Virginia DHCD, *HB854 Statewide Housing Study*, *supra* n.69, at 316.

¹³⁶ See Einstein, *supra* n.58, at 9 (“Most economists believe that, to address rising housing costs ... we need to build more housing[.]”); Rak, *supra* n.59, at 7. See also Michael Manville *et al.*, *Zoning and Affordability: A Reply to Rodríguez-Pose and Storper*, 59 *Urban Studies* 36, 39 (2022), available at <https://journals.sagepub.com/doi/epub/10.1177/0042098020910330> (explaining that failing to meet housing demand with new supply increases housing prices “because every available unit now has more people bidding for it”).

¹³⁷ See Mastran, *supra* n.4, at 35 (“When demolitions replace older single-family housing with larger single-family houses, the result is typically more expensive housing stock—new construction is usually more expensive and new single-family houses are much less accessible to lower income or first-time buyers.”).

¹³⁸ Compare Arlington County Staff Report, *supra* n.17, at A15 (“New single-detached housing” has “estimated sales prices ranging from \$1.8 to \$2.8 million”) with *id.* at A13 (homes in six-plexes may be as low as \$520,000).

¹³⁹ See *id.* at A18 (“In higher cost zip codes, existing single-detached homes sell for \$1 million to \$1.6 million. Expanded housing options will provide choices that are less expensive than what is currently available[.]”).

ability to live in high-ownership neighborhoods that had been “rental deserts” before.¹⁴⁰ And it removes impediments to affordable housing developers like Habitat for Humanity building homes that are guaranteed to be affordable to lower- or middle-income households.¹⁴¹

Lifting bans on multifamily homes in residential neighborhoods also helps the County meet its fair housing obligations.¹⁴² As a condition for receiving funds from the U.S. Department of Housing and Urban Development, Arlington County has pledged to affirmatively further fair housing,¹⁴³ consistent with the remedial purposes of the Fair Housing Act of 1965.¹⁴⁴ This requires more than “merely refraining from taking discriminatory actions and banning others from such discrimination”; the County must also “strive to *dismantle* historic patterns of racial segregation.”¹⁴⁵ The Virginia Department of Housing and Community Development recently noted that zoning ordinances “have been targeted as possible barriers to fair housing choice at the state and local levels.”¹⁴⁶ Arlington County worked with other localities in the Washington, DC area to develop a regional fair housing plan that, among other things, calls for the County to

¹⁴⁰ Whitney Airgood-Obrycki *et al.*, *Rental Deserts, Segregation, and Zoning* at 1 (June 2024), at https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_rental_deserts_airgood-obrycki_et_al_2024.pdf (finding that “restrictive zoning and land use regimes are associated with the presence of rental deserts,” which in turn are associated with “a lack of neighborhood-level racial and economic diversity”).

¹⁴¹ See Virginia DHCD, *HB854 Statewide Housing Study*, *supra* n.69, at 316 (“Land use policies, including zoning, have been frequently identified by stakeholders as one of the key barriers to production of affordable housing[.]”)

¹⁴² See generally Ex. 4, Ltr. from M. Hemminger *et al.*, *supra* n.16.

¹⁴³ See, e.g., 24 C.F.R. § 91.225(a)(1) (requiring every HUD program recipient to certify, among other things, “that it will affirmatively further fair housing”).

¹⁴⁴ 42 U.S.C. § 3601 (declaring that “[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States”); *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972) (noting that the Act’s “reach” was to realize “truly integrated and balanced living patterns”).

¹⁴⁵ Restoring Affirmatively Furthering Fair Housing Definitions and Certifications, 86 Fed. Reg. 30,779, 30,780 (June 10, 2021) (emphasis added). *Accord Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 546–47 (2015) (“The Court acknowledges the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.”); *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122, 1134 (2d Cir. 1973) (“Action must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns[.]”)

¹⁴⁶ Virginia DHCD, *Analysis of Impediments to Fair Housing Choice in the Commonwealth of Virginia* at 35–36 (May 2023), available at <https://www.dhcd.virginia.gov/sites/default/files/Docx/consolidated-plan/2023-analysis-of-impediments-to-fair-housing.pdf>.

“[c]onsider new land-use and housing policies to expand the supply of Missing Middle Housing in forms that are limited or nonexistent in Arlington’s current housing stock.”¹⁴⁷

There is no good reason for concern that ending exclusionary zoning will displace anyone. To the contrary, it is *maintaining* exclusionary zoning that inflates housing costs, by restricting the supply of homes and outlawing lower-cost home types.¹⁴⁸ That is precisely why Arlington’s residential neighborhoods have long since gentrified.¹⁴⁹ Allowing small multifamily homes in low-density neighborhoods does not force any homeowner to redevelop. Any increase in property values would be modest at most.¹⁵⁰ And whenever rising property values increase residential real estate taxes, every \$1 of extra tax implies a nearly \$100 increase in assessed value, enriching homeowners with equity that can help them stay in their homes.¹⁵¹

Overall, the expansion and diversification of housing opportunities in Arlington’s residential neighborhoods will improve quality of life for people of color, while allowing all households to enjoy a more dynamic, cohesive, and prosperous community. There is a “10-year

¹⁴⁷ Arlington County, *Regional Fair Housing Plan* at 150 (June 2023), available at <https://www.arlingtonva.us/files/sharedassets/public/v/1/housing/documents/approved-arlington-county-regional-fair-housing-plan-may-2023.pdf>.

¹⁴⁸ See *supra* Part II.

¹⁴⁹ See *supra* n.118.

¹⁵⁰ See, e.g., Daniel Kuhlmann, *Upzoning and Single-Family Housing Prices: A (Very) Early Analysis of the Minneapolis 2040 Plan*, 87 J. of Am. Planning Assoc. 383 (2021) (finding that legalizing duplexes and triplexes in Minneapolis was associated with only a 3-5% increase in home prices). Examples of major corridors near transit hubs being upzoned for high-density development are inapplicable. See Yonah Freemark, *Zoning Change: Upzonings, Downzonings, and Their Impacts on Residential Construction, Housing Costs, and Neighborhood Demographics*, 38 J. Planning Lit. 548, 555–57 (2023), available at <https://yonahfreemark.com/wp-content/uploads/2023/04/Freemark-2023-Zoning-Change.pdf> (“Chicago upzonings impacted mixed-use projects on arterial streets in a small portion of the city; the Minneapolis reform impacted single-family home districts citywide. The former policy may incentivize large projects with pricier apartments more marketable in just a few well-off communities, whereas the latter may encourage more modest three-flat units.”).

¹⁵¹ See, e.g., Lei Ding & Jackelyn Hwang, *Effects of Gentrification on Homeowners: Evidence from a Natural Experiment* at 28 (April 2020), available at <https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2020/wp20-16.pdf> (observing a link between property tax increases and homeowner mobility in Philadelphia but finding “no sign yet that older or longer-term homeowners in gentrifying neighborhoods in Philadelphia are more likely to experience residential displacement”).

difference in life expectancy based on the neighborhood in which you live” in Arlington.¹⁵² One recent study estimates that abolishing restrictive zoning increases economic output per person by almost 8%.¹⁵³ Another study estimates that if the Chicago metro area were no more segregated than the national median, the population’s total income would be \$4.4 billion higher while the homicide rate would be 30% lower.¹⁵⁴ Children benefit significantly from growing up in neighborhoods that are not impoverished,¹⁵⁵ while white students who attend diverse K-12 schools achieve better learning outcomes and higher test scores.¹⁵⁶ Even Plaintiffs, by alleging that legalizing multifamily homes in their neighborhoods will increase their property values,¹⁵⁷ implicitly recognize that ending exclusionary zoning can be a positive-sum project, with benefits for current homeowners and would-be residents too.

CONCLUSION

The status quo was not inevitable. It was a choice, one made by all levels of government to create opportunities for housing, wealth-building, and citizen participation for whites that were denied to Black people. We live with the consequences of that choice today. The exclusionary zoning scheme that the Arlington County government enforced for nearly a century continues to serve its original purpose: keeping Arlington’s residential neighborhoods segregated. Even as that purpose has been largely forgotten, the prior zoning scheme had been causing aging houses

¹⁵² Arlington Destination 2027 Steering Committee, *Arlington’s Plan for Achieving Health Equity by 2027* at 6 (Apr. 2019), available at <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/25/2019/04/A-Decade-of-Difference-D2027-Report.pdf>.

¹⁵³ Gilles Duranton & Diego Puga, *Urban Growth and Its Aggregate Implications* at 33–34 (June 30, 2023), available at <https://diegopuga.org/papers/hcgrowth.pdf>.

¹⁵⁴ Chicago Metropolitan Planning Council, *The Cost of Segregation: Lost Income, Lost Lives, Lost Potential* (2017), at <https://metroplanning.org/wp-content/uploads/2024/01/cost-of-segregation.pdf>.

¹⁵⁵ Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 Am. Econ. Rev. 855, 875 (2016), available at https://scholar.harvard.edu/files/lkatz/files/chk_aer_mto_0416.pdf.

¹⁵⁶ McGhee, *supra* n.1, at 181.

¹⁵⁷ See Amend. Compl. ¶ 98 (alleging that EHO “will result in higher tax assessments to Nordgren’s property due to the higher multiplex use authorized”); see *id.* ¶¶ 106, 112, 126, 132, 140, 145, 151 (similar).


to be replaced almost exclusively with expensive mansions, threatening to make residential neighborhoods even less attainable for people of color and impeding progress toward integration.

The future is not inevitable either. Neighborhood segregation is still a policy choice. Our elected leaders have the power to choose differently. And they have. By legalizing some multifamily housing in Arlington’s residential neighborhoods, the County Board has chosen to remove legal barriers that stand in the way of every neighborhood becoming a mixed-income, racially integrated community. The exclusionary purpose and effects of the prior zoning scheme were—standing alone—enough to make the reasonableness of the Board’s choice “fairly debatable,” if not unassailable.¹⁵⁸ Virginia law empowered the Board to decide that, whatever the impacts on public services or inconveniences to residents might be, it is more important to realize the demonstrable and widely shared benefits of increasing the supply and diversity of homes throughout Arlington.

In taking a giant leap toward ending exclusionary zoning in Arlington, the Board lawfully exercised its authority to stop the “enduring effects of *de jure* segregation,”¹⁵⁹ meet its fair housing commitments, and create a more harmonious community.

Dated: July 1, 2024

Respectfully submitted,

By: 

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Counsel for *Amicus Curiae*
NAACP Arlington Branch

¹⁵⁸ *Bell v. City Council of City of Charlottesville*, 224 Va. 490, 495 (1982).

¹⁵⁹ Rothstein, *supra* n.2, preface.

Exhibit 1

Pretrial Brief of NAACP Arlington Branch as *Amicus Curiae*
July 1, 2024

NAACP[®]

Arlington Branch

March 7, 2022

Honorable Katie Cristol, Chair
Arlington County Board
2100 Clarendon Boulevard
Arlington, VA 22201

Mr. Mark Schwartz
County Manager
Arlington County
2100 Clarendon Boulevard
Arlington, VA 22201

Dear Ms. Cristol and Mr. Schwartz:

Earlier this year, the NAACP Arlington Branch sent a letter to you recommending improvements to the county's draft Fair Housing Plan to improve housing equity in Arlington. As the County moves forward with its plans to affirmatively further fair housing, we urge the county to remember our community's history—specifically, Arlington's history of racist, exclusionary housing policies. To reverse this shameful legacy and remedy the persistent effects of decades of discrimination against many of our most vulnerable residents, we call on the County Board to reform our zoning laws to give residents of color better access to a wider variety of housing at lower cost.

If you look at the “segregation wall” that once separated the Halls Hill neighborhood today, you will see that it has mostly crumbled. Yet many people of color continue to face invisible walls that keep them from enjoying high-quality, affordable housing in Arlington. Halls Hill—along with the other historically Black neighborhoods of Green Valley and Johnson's Hill—became a refuge for Black residents displaced by the demolition of Freedman's Village, which at its peak had housed more than eleven hundred former slaves across more than fifty duplexes. When the federal government closed Freedman's Village in 1900, many Black residents relocated to Queen City, before the federal government burned it down to make way for the Pentagon complex in 1942. Around this time, demand for housing in Arlington spiked, driven by the federal government's hiring of thousands of new workers every month. Yet two zoning ordinances passed by the County Board sharply limited the housing supply: an ordinance in 1938 banning the construction of rowhouses, despite their ubiquity in neighboring Alexandria and Washington and their presence in established Black neighborhoods like Halls Hill, and a subsequent ordinance in 1942 restricting most of the county's residential land for single-family homes. These zoning ordinances, together with racially restrictive covenants and discriminatory lending practices, prevented Black residents from buying into Arlington's rapidly developing neighborhoods.

The result was as predictable as it was reprehensible. In the early 1900s, nearly one out of every four Arlington residents was Black. By 1960, however, the Black share of Arlington's population had plummeted to only about 5%. At the same time, Arlington had become almost 95% white, as the white population

exploded from about 7,600 in 1910 to over 154,000 in 1960. Even as the number of housing units in Arlington tripled between 1940 and 1960, these new homes and apartments were occupied overwhelmingly by white residents. Arlington's mid-century housing boom passed Black people by.

We see this tragic history repeating itself today. People of color are excluded from the housing market by the low supply and high cost of housing. This dire situation gets worse as housing costs continue to rise.

A preliminary analysis from the Missing Middle Housing Study observed that “households of color in Arlington face greater housing affordability challenges than white households ... resulting in fewer opportunities across the county to achieve housing affordability and the benefits that it provides.” That’s because Black and Hispanic residents of Arlington earn, on average, only half the income of white residents. And even among those who are fortunate enough to secure housing in Arlington, nearly a third of Black and Hispanic homeowners—and nearly half of Black and Hispanic renters—spend more than 30% of their household income on housing. White homeowners and renters are far less cost-burdened. The problem isn’t just the inequity that results when white residents can afford housing that is out-of-reach for many of their Black and Brown neighbors; it’s also that many people of color are increasingly denied any opportunity to live here at all.

A major culprit is the county’s zoning laws, which tightly constrain our housing supply and block the construction of new and different types of housing. Outside of Arlington’s planning corridors, almost half of the county’s housing stock still consists of detached single-family homes. For over 70% of Arlington’s residential land, the single-family home is the only type of housing that is allowed. These restrictions have hamstrung Arlington’s efforts to meet the intense demand for new housing as our population grows, and the resulting supply shortages and price increases have disproportionately harmed people of color. As County staff explained in the latest draft of the Consolidated Plan:

Long-standing systematic disparities in housing policies and programs continue to perpetuate unequal access to housing choice and affordability, including the continuing impacts of redlining policies and zoning that limits housing choice. Single-family zoning regulations have perpetuated historical patterns of segregation.

The widespread single-family zoning scheme that prevents the construction of new housing in affluent, mostly white neighborhoods also worsens racial segregation by confining the construction of new affordable housing units to the Columbia Pike corridor and other parts of Arlington with large non-white populations. Racial segregation goes hand-in-hand with economic segregation, as insufficient new housing makes it increasingly difficult for middle-income families of all racial and ethnic backgrounds to live affordably in Arlington.

Exclusionary zoning has been part of the problem; zoning reform must be part of the solution. People of color wishing to live in Arlington deserve meaningful opportunities to choose from a wide variety of housing types, in many parts of the county, at a reasonable cost. Raising the stakes even further is the fact that the segregation of our neighborhoods has led to the segregation of our public schools. However, zoning changes alone will not resolve racial disparities in Arlington’s neighborhoods as well as access to opportunity.

The NAACP Arlington Branch therefore urges the County Board to adopt a comprehensive strategy to reform the county’s zoning laws and related housing policies, including:

- **Displacement Prevention and Mitigation Toolkit** - Develop a displacement prevention and mitigation toolkit to address the unique needs of and the displacement risk experienced by the community in and around site-plan and by-right developments while also helping to address patterns of historical exclusion experienced by members of protected classes. This toolkit must be established prior to or concurrently with the zoning law changes to ensure that future development promotes integration and affordability instead of displacement and rising housing costs. Examples of displacement prevention and mitigation tools might include property tax deferrals for lower-income homeowners, funding for community land trust acquisitions, development of additional on-site Committed Affordable (CAF) units, establish preferences for first-generation homebuyers and market units accordingly, deed-restrict homeownership units to require that they be owner-occupied, establish neighborhood housing stabilization funds for residents at risk of displacement, and more.
- **Inclusive Neighborhoods Zoning Study** - Establish and fund a comprehensive study of Arlington's Zoning Ordinance with a focus on reforming zoning to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. This study would go beyond the scope of the Missing Middle Housing Study and consider the following policies:
 - Assessing each site plan to consider how the size, scope, and scale of the development does or does not continue patterns of historical exclusion and/or contribute to displacement of the existing community, especially displacement of members of protected classes.
 - Requiring that developers select the appropriate tools from the Displacement Prevention and Mitigation Toolkit to address any potential negative impacts of their proposed development on members of protected classes in the surrounding neighborhood.
- **Zoning Reform Priorities** - As part of the Missing Middle Housing Study and the new Inclusive Neighborhoods Zoning Study, prioritize upzoning residential areas in ways that remove barriers to more varied and less expensive housing while fostering livable, integrated, and vibrant neighborhoods, especially in areas previously closed to Black and Brown residents. This includes incentivizing multi-family redevelopment (i.e., duplexes, triplexes, etc.) in existing single-family neighborhoods while discouraging McMansion redevelopment.
- **Improve Engagement with Black and Brown Residents** - Enhance participation levels of Black and Brown residents in planning processes, including by facilitating direct outreach to communities of color regarding planning processes within and outside their neighborhoods (recognizing that residents may be interested in moving into neighborhoods undergoing planning). Residents of color have traditionally been excluded from certain neighborhoods and planning efforts that only consult with current residents (i.e., Langston Boulevard) will continue to exclude these residents without intentional engagement.
- **Desegregate Affordable Housing Placements** - Pursue inclusionary zoning in corridors beyond Columbia Pike and ensure that new affordable housing units are distributed more evenly throughout the county (i.e., Langston Blvd.), while monitoring the beneficiaries of Committed Affordable Units to ensure that Black and Brown residents are not excluded. This includes funding the infrastructure and service improvements in transportation and other areas to ensure that residents of all income levels will be able to thrive in their integrated neighborhoods.
- **Household Composition Reform** - Ease limits on the number of unrelated persons who can live together in the same household, to be more inclusive of non-traditional households living together for socio-economic reasons.
- **Affordable Homeownership** - Implement and adequately fund programs that address racial disparities in homeownership, such as quick-strike land acquisitions, Community Land Trusts,

and targeted homeownership assistance programs. Changing zoning laws will not in-and-of-itself bridge the gap between white and non-white resident homeownership disparities.

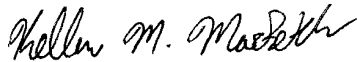
- **Metrics** - Set clearly defined targets for evaluating the effectiveness of these reforms and allocate necessary funding for County staff to monitor and report on whether these targets are being met.
- **Increase Advocacy with the General Assembly** - Seek additional authority and resources from the Virginia General Assembly to address inequity in housing, including greater funding and expanded authority to provide tax relief to struggling homeowners, regulate home purchases and ownership by non-resident investors, and strengthen inclusionary zoning policies.

We support the County's many studies and other initiatives to promote affordable housing, from the Missing Middle Housing Study to Plan Langston Boulevard to the Consolidated Plan. The best way to ensure the success of these initiatives is for the County Board and County Manager to show decisive leadership now and commit to supporting comprehensive zoning reform. We look forward to working with you to discuss these critical policies.

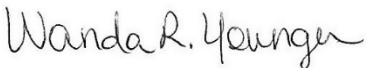
Sincerely,



Julius D. "J.D." Spain, Sr.
Branch President



Kellen M. MacBeth
Chair, Housing Committee



Wanda R. Younger
Branch Secretary

- c: Arlington County Board Members
 Samia Byrd, Chief Race and Equity Officer, Deputy County Manager
 Claude Williamson, Director, CPHD
 Anthony Fusarelli, Jr., CPHD Planning Director
 Anne Venezia, CPHD Housing Director
 Daniel Weir, Chair, Planning Commission
 Eric Berkey, Chair, Housing Commission
 NAACP Arlington Executive Committee & Members

Exhibit 2

Pretrial Brief of NAACP Arlington Branch as *Amicus Curiae*
July 1, 2024



May 23, 2022

Honorable Katie Cristol, Chair
Arlington County Board
2100 Clarendon Boulevard, Suite 300
Arlington, VA 22201

Re: Missing Middle Housing Study Phase 2 Draft Framework

Dear Ms. Cristol:

Arlington's shameful history of racist, exclusionary zoning policies needs reforming, and we urge the County Board to adopt the Missing Middle Housing Study Phase 2 Draft Framework. The framework is a first step in a series of necessary actions to reverse the damage done to Black and Brown residents by governmental and nongovernmental acts designed to segregate and disempower. We appreciate the work county staff have put into the Missing Middle Housing Study and the strength of their recommendations.

The recommendations successfully balance the needs of existing single-family home residents by keeping design standards the same while opening previously closed single-family home neighborhoods to diverse residents by allowing townhouses and buildings with 2-8 units in R-5 to R-20 zones. This change will begin to rebalance Arlington's land-use policies with the makeup of its population; 70% of Arlington's residential land reserved for single-family homes will potentially provide desperately needed housing to many more residents. We are particularly pleased to see the inclusion of 8-plex units because these will be the most attainable for residents making the area median income.

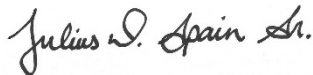
Black and Brown residents have struggled to find affordable homeownership opportunities in Arlington. The proposed zoning changes could result in additional housing attainable to up to 39% of Black households, 39% of Latino households, and 60% of Asian households in the Washington metro area, according to county staff analysis.

The proposed zoning changes also would aid environmental justice by allowing more low- and moderate-income workers to live closer to their places of employment, thereby reducing the negative environmental and social consequences of long commutes. Effects of the proposed changes on tree canopy should be minimal, as the current pattern in Arlington is for small single-family homes to be replaced by very large homes that cover as large a percentage of single-family-zoned lots as would the townhouses and homes with 2-8 units envisioned under the Missing Middle framework.

Allowing missing middle housing to be developed in R-5 to R-20 zones is a foundational element of improving housing affordability broadly, encouraging greater racial and economic integration, and expanding access to homeownership. However, this necessary step is not sufficient to bridge the gap between the market and lower income households and the victims of historical discriminatory practices. We strongly urge the County to commit to increased funding for affordable homeownership that targets first-generation homeowners as well as other programs that seek to affirmatively address the past harms of de jure and de facto racial segregation and associated discriminatory policies.

The proposed zoning changes in the draft framework, in and of themselves, will not repair the harm done to communities of color in Arlington in the last hundred years. However, the proposed Missing Middle framework is an important first step to addressing the legacy of racial discrimination and segregation in the housing market.

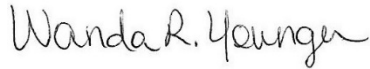
Sincerely,



Julius D. "J.D." Spain, Sr.
President, Arlington Branch NAACP



Kellen M. MacBeth
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Wanda R. Younger
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 Daniel Weir, Chair, Planning Commission
 Eric Berkey, Chair, Housing Commission
 NAACP Arlington Executive Committee & Members

Exhibit 3

Pretrial Brief of NAACP Arlington Branch as *Amicus Curiae*
July 1, 2024



January 19, 2023

Honorable Christian Dorsey, Chair
Arlington County Board
2100 Clarendon Boulevard, Suite 300
Arlington, VA 22201

Re: Missing Middle Housing Request to Advertise Options

Dear Mr. Dorsey,

The NAACP Arlington Branch supports the goals of the Missing Middle Housing Study and is committed to ensuring the most equitable and inclusive outcome possible. We write now to express which options presented in the County Manager's January 13, 2023 request to advertise will best address Arlington County's history of racial discrimination and segregation, as well as provide additional housing opportunities to create a more diverse and prosperous community.

The NAACP Arlington Branch encourages the County to allow up to 8 units per dwelling (Option 1B), so that the most attainable homes can be built, and allow sites larger than one acre to be built under a special use permit process (Option 3A). We also support allowing expanded housing options to have additional flexibility with their maximum lot coverage percentage (Option 4B), as they will likely not have detached garages, and the additional landscaping requirement of planting one shade tree per dwelling unit to offset any reduction of the tree canopy (Option 6A). Furthermore, we ask that the County allow conversions of existing buildings into expanded housing options without a use permit, which would give current owners more flexibility and could be an alternative to teardowns (Option 8A). The County should also allow Missing Middle homes to reduce their parking requirement through a parking study, although we encourage staff to eliminate the parking requirement for lots near transit (Option 5C).

We ask that the County provide flexibility in the density and number of new expanded housing option developments (Options 2A and 7B). A tiering scheme or a cap on these developments would stifle development and are counterproductive to the aim of creating more housing for traditionally vulnerable communities.

The Missing Middle Housing Study recommendations successfully balance the needs of existing single-family home residents by keeping design standards the same while opening previously closed single-family home neighborhoods to diverse residents by allowing townhouses and

buildings with 2-8 units in R-5 to R-20 zones. This change will begin to rebalance Arlington's land-use policies with the makeup of its population. Additionally, the proposed zoning changes could result in additional housing attainable for up to 39% of Black households, 39% of Latino households, and 60% of Asian households in the Washington metro area, according to a county staff analysis.

The proposed zoning changes also advance an environmental justice objective by allowing more low- and moderate-income workers to live closer to their places of employment, thereby reducing the negative environmental and social consequences of long commutes. Effects of the proposed changes on tree economy should be minimal, as the status quo in Arlington is for small single-family homes to be replaced by very large homes that cover as large a percentage of single-family zoned lots as would the townhouses and homes with 2-8 units envisioned under the Missing Middle framework. Moreover, to help offset any reduction of the tree canopy, the proposed additional landscaping provision would require one shade tree per dwelling unit.

Arlington County's zoning and housing laws have a long history of racial discrimination via both de jure and de facto segregation practices committed by governmental and nongovernmental entities that segregated and marginalized people of color. The Missing Middle Housing proposal finally puts an end to exclusionary zoning in Arlington, the roots of which are founded on racism. For us to begin reconciling with those harmful practices of the past, as an inclusive and diverse community, everyone must play an active role in shaping a brighter future.

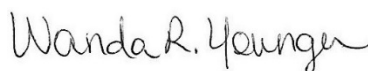
Sincerely,



Michael Hemminger
President, NAACP Arlington Branch



Bryan J. Coleman
Chair, Housing Committee



Wanda Younger
Branch Secretary

- c: Arlington County Board Members
 Samia Byrd, Chief Race and Equity Officer, Deputy County Manager
 Claude Williamson, Director, CPHD
 Anthony Fusarelli, Jr., CPHD Planning Director
 Anne Venezia, CPHD Housing Director
 Devanshi P. Patel, Chair, Planning Commission
 Kellen M. MacBeth, Chair, Housing Commission
 NAACP Arlington Branch Executive Committee & Members

Exhibit 4

Pretrial Brief of NAACP Arlington Branch as *Amicus Curiae*
July 1, 2024



February 1, 2023

Honorable Christian Dorsey, Chair
Arlington County Board
2100 Clarendon Boulevard, Suite 300
Arlington, VA 22201

Re: Inequity and Illegality in Restrictions to the Missing Middle Housing Proposal

Dear Chair Dorsey,

The NAACP Arlington Branch (the “NAACP”) was stunned and deeply disappointed by the County Board’s recent decision to restrict the Missing Middle Housing proposal in ways that would deny attainable homes to people of color as compared to their white counterparts. On January 25, the County Board voted to advertise amendments to the Zoning Ordinance and General Land Use Plan that would legalize some forms of missing middle housing, but only after striking any option for dwellings of more than six homes and adding an option to limit dwellings of more than four homes to large lots. The NAACP fiercely opposes these restrictions and urges the County Board to enact only the set of options that will supply our community with the highest number of attainable homes across all of Arlington’s residential neighborhoods.

The Board’s removal of options for eight-plexes will result in fewer attainable homes and unequal housing opportunities in the same neighborhoods from which people of color have long been historically excluded. This is of the utmost concern to us as we believe it violates federal law. Some homes in six-plex developments are less attainable as compared to those in the eight-plexes that could have been developed otherwise. The county staff’s analysis shows that the lots most suitable for potential eight-plexes tend to be located among Arlington’s whitest and wealthiest neighborhoods.¹

The Arlington County Board imposed these restrictions despite knowing that they would disproportionately exclude and disparately impact people of color.

Many more attainable homes will be denied if the Board adopts its newly-added option to impose high lot size minimums for five-plexes and six-plexes outside of major transit corridors. This option would significantly reduce the number of attainable missing middle homes on lots in predominantly white neighborhoods, while continuing the practice of concentrating attainable housing in other, more diverse neighborhoods.

¹ See Arlington County Staff, *Report on County Board Agenda Item #33 - Meeting of January 21, 2023*, at 69 attach. 6 (Jan. 13, 2023), available at https://arlington.granicus.com/MetaViewer.php?view_id=2&clip_id=4191&meta_id=215699.

Contrary to its resolution “to ensure that our actions and policies implement the County’s vision in an equitable way,”² the Board restricted the number of attainable homes that can be built in the county’s whitest neighborhoods, despite their ample street parking capacity and their outsized share of large lots that can support higher-density dwellings. The County’s own analyses illustrate how these restrictions severely limit housing access to people of color. According to the county staff’s presentation on the Phase 2 framework, a household needs an income of at least \$124,000 to \$160,000 to afford a home in a four-plex, but \$108,000 to \$118,000 to afford a home in a six-plex or eight-plex.³ The 2020 ACS survey estimates presented by county staff show that 1,505 Black households, 1,950 Latino households, and 1,563 multiracial households in Arlington have incomes between \$100,000 and \$149,999.⁴ Homes in a six-plex or eight-plex would be much more attainable to these households of color, but it would be adversely more difficult (if not impossible) for these protected classes to afford homes in a four-plex.

The County Board’s actions to restrict the missing middle housing proposal put the County on a dangerous path to violate federal and state fair housing laws. Title VIII of the Civil Rights Act of 1968, also called the Fair Housing Act, makes it illegal to “make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin.”⁵ The Virginia Fair Housing Law contains nearly identical prohibitions.⁶ Courts have widely recognized that the Fair Housing Act prohibits localities from imposing land use policies that have significant, unjustified disparate impacts on people of color, **regardless of intent.**⁷ As the Supreme Court of the United States explained in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*:

² Arlington County Board, *Equity Resolution* (adopted Sept. 21, 2019), available at <https://www.arlingtonva.us/files/sharedassets/public/county-board/documents/resolutions/equity-resolution-final-09-21-19.pdf>.

³ Arlington County Staff, *Missing Middle Housing Study: Expanding Housing Choice - Phase 2 Analysis and Draft Framework*, at 20 (May 2, 2022), available at https://www.arlingtonva.us/files/sharedassets/public/housing/documents/missing-middle/mmhs-phase-2-public-presentation_05.02.pdf.

⁴ Arlington County Staff, *Demographics by Race/Ethnicity*, at 8 (May 12, 2022), available at https://www.arlingtonva.us/files/sharedassets/public/projects/documents/data-and-research/race-and-ethnicity-dashboard/2020raceethnicitydash_datasheet_5_12_22.pdf.

⁵ 42 U.S.C. § 3604(a) (cleaned up).

⁶ See Va. Code § 36-96.3(A)(1) (“It shall be an unlawful discriminatory housing practice for any person to ... Refuse to sell or rent after the making of a bona fide offer or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, source of funds, familial status, sexual orientation, gender identity, or military status[.]”)

⁷ See, e.g., *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 619 (2d Cir. 2016) (noting that “zoning laws or ordinances prohibiting construction of multi-family dwellings have been found in violation of the FHA”), cited in *Reyes v. Waples Mobile Home Park Ltd. P’ship*, 903 F.3d 415, 427, 430 (4th Cir. 2018) (observing that “determining whether a plaintiff made a prima facie case of disparate-impact liability requires courts to look at whether a protected class is disproportionately affected by a challenged policy”) (emphasis in original).

The FHA, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of our Nation’s economy. These unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification. Suits targeting such practices reside at the heartland of disparate-impact liability.⁸

The Board’s restrictions disparately impact protected households in two ways.⁹ First, the restrictions would cause significant and disproportionate harm to Black and Latino households as compared to white households in Arlington.¹⁰ Raising the affordability threshold for new missing middle homes from \$100,000 to \$150,000 would still allow 44% of white households in Arlington to afford those homes, but only 20.3% of Black households and 24.3% of Latino households.¹¹ The impact of this exclusionary effect would be more adverse for Black households (a 43% decrease) and Latino households (a 38% decrease) than white households (a 32% decrease). Second, the restrictions would “perpetuate segregation and thereby prevent interracial association in the entire community involved.”¹² County staff have acknowledged that “[r]estrictive zoning that prioritizes low-density development at the exclusion of other types of housing ... contributes to segregation by limiting the housing options for households with lower incomes, overrepresented by People of Color.”¹³ Capping density at four-plexes across thousands of parcels would further impede the integration of Arlington’s racially stratified neighborhoods.¹⁴

⁸ 576 U.S. 519, 539–40 (2015) (cleaned up).

⁹ See *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 937 (2d Cir. 1988) (“The discriminatory effect of a rule arises in two contexts: adverse impact on a particular minority group and harm to the community generally by the perpetuation of segregation.”).

¹⁰ See *Reyes*, 903 F.3d at 427 (recognizing a “specific rezoning policy” can have a disparate impact when it “disproportionately decrease[s] the availability of housing for minorities as compared to whites”); *Mhany Management*, 819 F.3d at 607 (crediting “evidence that the original R–M proposal would have created a pool of potential renters with a significantly larger percentage of minority households than the pool of potential renters for the zoning proposal ultimately adopted as law by Garden City”); *Dews v. Town of Sunnyvale, Tex.*, 109 F. Supp. 2d 526, 565 (N.D. Tex. 2000) (concluding that a locality’s “ban on apartments places a disproportionate harm on African–Americans” because “apartments are disproportionately used by African–American households in Dallas County as compared to white households”).

¹¹ See *Demographics by Race/Ethnicity, supra*, at 8.

¹² *Edwards v. Johnston Cnty. Health Dep’t*, 885 F.2d 1215, 1223 (4th Cir. 1989) (cleaned up) (citing *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 987 n.3 (4th Cir. 1984) (explaining that “if a policy perpetuates segregation and thereby prevents interracial association, it will be considered invidious under the Fair Housing Act notwithstanding the fact that it may have no immediate impact”)).

¹³ Arlington County Staff, *Arlington’s Race and Ethnicity Dashboard - 2022 Briefing Report*, at 4–5 (May 16, 2022), available at https://www.arlingtonva.us/files/sharedassets/public/projects/documents/data-and-research/race-and-ethnicity-dashboard/2022-brief-arlington-race-and-ethnicity-dashboard_5-16-22.pdf (adding that “[t]he map from the Missing Middle Housing Study shows that areas of Arlington zoned primarily for single-family detached housing often overlap with Census Tracts where at least 70% of the population is White”).

¹⁴ See *Town of Huntington*, 844 F.2d at 938 (finding “discriminatory effect” from “the disproportionate harm to blacks and the segregative impact on the entire community resulting from the refusal to rezone”); *Town of*

The Board’s restrictions also threaten to violate the Fair Housing Act’s prohibition on disparate treatment of protected classes, as public statements surrounding those actions indicate explicit discriminatory intent.¹⁵ County staff have already acknowledged the racist history and segregative effects of Arlington’s zoning laws, which remain largely unchanged since their adoption over eighty years ago.¹⁶ A major driver of segregation has been the perpetuation of “rental deserts” in residential neighborhoods.¹⁷ County’s staff’s recent equity analysis of the missing middle housing proposal shows that the share of rentals among Arlington’s single-family zoned lots is significantly lower than for the county as a whole.¹⁸ Another report by county staff noted that “Persons of Color are much more likely than White residents to rent.”¹⁹ Nearly 80% of Black households and over 70% of Latino households are renters, compared to only about half of White households.²⁰ Against this backdrop, one County Board Member has repeatedly expressed opposition to allowing eight-plexes on the basis that many of the homes in eight-

Sunnyvale, 109 F. Supp. 2d at 567 (“Sunnyvale’s ban on apartments and stubborn insistence on large lot, low density zoning also perpetuate racial segregation in Dallas County.”).

¹⁵ See *Atkins v. Robinson*, 545 F. Supp. 852, 871 (E.D. Va. 1982) (listing “six factors to be considered in an effort to glean a discriminatory purpose from a defendant’s conduct: (1) the discriminatory impact of the official action; (2) the historical background of the decision; (3) the specific sequence of events leading up to the challenged decision; (4) departures from the normal procedural sequence; (5) departures from normal substantive criteria; and (6) the legislative or administrative history of the decision”) (cleaned up) (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–66 (1977)); see also *Smith v. Town of Clarkton, N.C.*, 682 F.2d 1055, 1066 (4th Cir. 1982) (noting that “in proving discriminatory intent under this test, racially disproportionate impact is a relevant factor for a court to consider”); *Town of Sunnyvale*, 109 F. Supp. 2d at 570 (concluding that “Plaintiffs have successfully demonstrated *more* than a reasonable inference that race was a significant factor in Sunnyvale’s planning decisions over the years,” which included “maintaining one-acre zoning” and “banning apartments”).

¹⁶ See *Agenda Item #33 Report, supra*, at 6 (“[T]he draft GLUP amendment ... provides additional context for Arlington’s land use planning history, particularly how zoning decisions that pre-date the GLUP’s initial adoption in 1961 contributed to racial segregation. The draft text also acknowledges the GLUP’s role in carrying forward inequitable residential land use policies from an earlier era.”); Arlington County Staff, *Expanding Housing Choice: The Missing Middle Housing Study Phase I Report*, at 28 (Nov. 2021), available at https://www.arlingtonva.us/files/sharedassets/public/housing/documents/missing-middle/mmhs_phase-1-report-final-draft.pdf (“[O]ne of the legacies of historic land use and zoning policies designed to segregate neighborhoods is that 75 percent of Arlington’s residential land area is zoned exclusively for single-family neighborhoods.”).

¹⁷ See Whitney Airgood-Obrycki, *Rental Deserts Perpetuate Socioeconomic and Racial Segregation* (Aug. 4, 2022), at <https://www.jchs.harvard.edu/blog/rental-deserts-perpetuate-socioeconomic-and-racial-segregation> (“The lack of rental options in many neighborhoods across the country reinforces enduring patterns of residential segregation.”).

¹⁸ Arlington County Staff, *Missing Middle Housing Study: Expanding Housing Choice - County Board Request to Advertise*, at 33 (Jan. 21, 2022), available at https://arlington.granicus.com/MetaViewer.php?view_id=2&clip_id=4191&meta_id=215695 (noting that “15% of housing in R-5 to R-20 zones is rental, compared to 62% county-wide”).

¹⁹ *2022 Briefing Report, supra*.

²⁰ Arlington County Staff, *Ownership Housing & Barriers to Homeownership in Arlington*, at 3 (Oct. 2022), available at <https://www.arlingtonva.us/files/sharedassets/public/housing/documents/homeownership-study/homeownership-barriers-analysis-10.25.22.pdf>.

plexes will be rentals.²¹ By deliberately acting to restrict the supply of rentals, and thereby causing additional disproportionate harm to households of color in Arlington, the County Board has endorsed anti-renter sentiments and related “‘camouflaged’ racial expressions”²² made to the Board by public commenters²³ and community conversation participants.²⁴

The outcry from predominantly wealthy homeowners provides no defense to violations of federal laws like The Fair Housing Act. Any legitimate concerns could be addressed by less restrictive means than continuing to outlaw seven-plexes and eight-plexes, or other means than requiring massive lot sizes for five-plexes and six-plexes. It would certainly be no defense if the County Board wished to appease critics of the missing middle housing proposal. (Not that critics were actually appeased; only minutes after the Board voted to advertise the missing middle proposal,

²¹ Email from M. de Ferranti, *Labor Day & Our First Debate Tonight* (Sept. 6, 2022 9:47 a.m.) (“I do not support eightplexes because I think the costs for what will likely be rental units are greater than the benefit.”); Teo Armus, *Arlington’s sole county board race a proxy war over ‘missing middle’*, Wash. Post (Oct. 31, 2022), available at <https://www.washingtonpost.com/dc-md-va/2022/10/30/arlington-county-board-election-candidates/> (“de Ferranti defended his approach to the missing middle framework, denying that he was giving into pressure from critics concerned about how the plan will crowd their neighborhoods. The only board member to vocally oppose blanket legalization of eight-unit apartment buildings, he has echoed some talking points from those critics, saying that these ‘eightplexes’ would mostly result in one-bedroom rentals more vulnerable to developer speculation.”).

²² *Town of Clarkton*, 682 F.2d at 1066 (examples include “testimony to the effect that Mayor Fort was concerned about an influx of ‘undesirables,’ and that residents at the March 31, 1980 public hearing opposed public housing since the new occupants would ‘dilute’ the public schools, and that they were concerned about personal safety due to the influx of ‘new’ people, ‘just as bad’ who would move into the houses vacated by those persons moving into the new low-income housing”).

²³ See, e.g., Public Comment by Audrey Clement to the Arlington County Board (Sept. 21, 2022), available at http://arlington.granicus.com/MediaPlayer.php?view_id=2&clip_id=4137 (bemoaning that “the data suggest 80% will be rentals, not owner occupied”); Public Comments to the Arlington County Board (Jan. 21, 2023), available at http://arlington.granicus.com/MediaPlayer.php?view_id=2&clip_id=4191 (“Option 2B is the reasonable and middle position for missing missing to achieve its stated goal of more affordable house ownership not more rentals.”; “There’s ongoing pressure to allow eight plexes on Arlington’s small lots, which county staff state will be one and two bedroom rentals not three-bedroom citizen-owned homes.”).

²⁴ Arlington County Staff, *Community Conversations Notes* (Oct. 28, 2022), at <https://www.arlingtonva.us/files/sharedassets/public/county-board/documents/misc/notes.missingmiddle.communityconversations10.28.22.final.post.pdf> (“Our neighborhoods will have ‘more’ criminal activity with lower income people who will want what their neighbors have.”; “Density, and certain things and people that accompany density, are associated with crime and violence. I pay a price to live in a safe, not dense community and I don’t want to have to move again because the character of my neighborhood changes.”; “Wouldn’t mind a duplex next door, but no 8 plexes. Don’t get to play the racial card.”; “I live in a neighborhood with 3 unit flats that are owned by investors and they create heat pockets, are run-down, have giant dumpsters, and unkempt yards - they are terrible neighbors and they are just another form of rental housing in Arlington.”; “I want to know why Arlington County doesn’t put it’s time into improving South Arlington. If they would improve the schools everyone would live there. It’s a cool place to live, but the schools are terrible.”; “[I] don’t think a 6 or 8 plex built for renters is a good solution.”; “My niece lives in Portland. ... Developer bought the lot, had by-right ability to put up whatever he wanted. He put up a 6-plex. Six adults are living there with 12 cars on a narrow street. ... It is a blight and an eyesore on the street. It has diminished the property values. This is very scary to us when we hear an 8-plex, a 6-plex, even a fourplex.”).

interest groups representing the proposal’s most outspoken critics tweeted screeds condemning it as “hopelessly confusing”²⁵ and “flawed,”²⁶ despite the Board’s concessions.)

The NAACP will continue to vehemently oppose any Arlington County Government policy that disproportionately or intentionally denies fair housing to people of color. In accordance with our bylaws, we are prepared to take additional action as necessary to ensure the County’s compliance with federal and state fair housing laws. **The NAACP will not be a bystander as government policies recreate discriminatory effects of the past by preventing people of color from enjoying the same benefits** as those living in the county’s wealthiest, whitest neighborhoods.

For these reasons, the NAACP cannot support the current missing middle housing proposal unless the County Board allows six-plexes, by right, across all of Arlington’s residential neighborhoods. To do otherwise would not only skirt the stated purpose of the Fair Housing Act “to provide ... for fair housing throughout the United States,”²⁷ but also continue to entrench segregation of Arlington’s neighborhoods that has persisted for nearly a century. The NAACP also expects the County Board to keep its pledge to build on the proposal after its enactment, which must include legalizing seven-plexes and eight-plexes. The Board has aptly defined equity as “all populations having access to community conditions and opportunities needed to reach their full potential and to experience optimal well-being.”²⁸ This outcome does not emerge on its own. It takes bold visioning, sound policymaking, and courageous leadership in the face of forces desperate to protect the status quo.

The NAACP calls on the Arlington County Board to expeditiously enact the missing middle housing proposal without causing any racially discriminatory effects, treatments, or impacts, and to ensure that all elements fully comply with applicable law. Anything less will be met with swift, persistent action from the NAACP.

Sincerely,



Michael Hemminger
President, NAACP Arlington Branch

²⁵ Arlingtonians for Our Sustainable Future (@asfvirginia), Twitter (Jan. 25, 2023 7:47 p.m.), at <https://twitter.com/asfvirginia/status/1618410171642019840>.

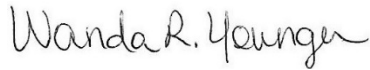
²⁶ Arlingtonians for Upzoning Transparency (@_AFUT), Twitter (Jan. 25, 2023 8:30 p.m.), at https://twitter.com/_AFUT/status/1618421041847762944.

²⁷ 42 U.S.C. § 3601.

²⁸ *Equity Resolution, supra*.



Bryan J. Coleman
Chair, Housing Committee



Wanda Younger
Branch Secretary

cc: Members of the County Board
Mark Schwartz, County Manager
MinhChau Corr, County Attorney
Samia Byrd, Chief Race and Equity Officer, Deputy County Manager
Claude Williamson, Director, CPHD
Anthony Fusarelli, Jr., CPHD Planning Director
Anne Venezia, CPHD Housing Director
Devanshi P. Patel, Chair, Planning Commission
Kellen M. MacBeth, Chair, Housing Commission
NAACP Arlington Branch Executive Committee & Members
NAACP Virginia State Conference
NAACP National General Counsel

Exhibit 5

Pretrial Brief of NAACP Arlington Branch as *Amicus Curiae*
July 1, 2024



NAACP

Office of the General Counsel

March 14, 2023

Christian Dorsey, President
Libby Garvey, Vice-Chair
Katie Cristol
Matt de Ferranti
Takis P. Karantonis
Arlington County Board
2100 Clarendon Blvd., Suite 300
Arlington, VA 22201

Re: Arlington's Proposed Rezoning Initiative

Dear President Dorsey, Vice-Chair Garvey, and Members of the Arlington County Board:

The National Association for the Advancement of Colored People ("NAACP"), the oldest civil rights organization in the nation, has become aware of recent amendments to Arlington's proposed rezoning initiative. This rezoning initiative disproportionately negatively affects Black residents. Rather, Arlington's original rezoning plan would put affordable rental and home-ownership in Arlington in reach of Black and other community members of color.

The Arlington Chapter of the NAACP recently wrote to express its objection to recent amendments to the rezoning plan. Specifically, the Chapter raised concerns that amendments to the Zoning Ordinance and General Land Use Plan would cap the maximum units per lot in much of Arlington at six units instead of the previously proposed eight and thereby put renting or homeownership in Arlington out of reach for many would-be residents of color. We reiterate those concerns. In short, the amendments would prevent Black and other people of color from moving into Arlington. Consequently, the NAACP requests that the County Board explain its reasoning reducing the proposed maximum units per lot in Arlington.

We are gravely concerned that the proposed amendments will hinder the beneficial effects of increasing housing density, disproportionately put affordable housing out of the reach of Arlingtonians of color, and prevent the proposed land use plan from achieving its stated goal of reversing the impact of decades of segregationist housing policy in Arlington.

We request that the County Board reconsider and reverse its decision to reduce the maximum unit size in the proposed Zoning Ordinance and General Land Use Plan. If, however, the Board denies this request, we ask that the Board provide the NAACP with a thorough explanation of the reasoning behind this decision, including any evaluation of the potential effect on Black residents and other residents of color. We await your response and we look forward to speaking with you.

Thank you,

Janette M. Wallace

Janette McCarthy Wallace
General Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2024, I filed the foregoing, and sent a true and exact copy of the foregoing by email to the following counsel of record:

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Counsel for Defendant

By: 

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