VIRGINIA:

In the Court of Appeals of Virginia on **Tuesday** *the* **24th** *day of* **June, 2025**.

County Board of Arlington, Virginia, Appellant,

against Record No. 1923-24-4
Circuit Court No. CL23001513-00

Marcia L. Nordgren, et al., Appellees.

Wilsons Ventures LLC, Appellant,

against Record No. 2122-24-4
Circuit Court No. CL23001513-00

Marcia L. Nordgren, et al., Appellees.

From the Circuit Court of Arlington County

Before Judges Beales, White and Bernhard

Each of these appeals stems from a lawsuit challenging a 2023 zoning ordinance amendment passed by the County Board of Arlington, Virginia. In Record No. 1923-24-4, the Board appeals the circuit court's judgment declaring the amendment void ab initio. In Record No. 2122-24-4, Wilsons Ventures LLC appeals an order denying it leave to intervene in the litigation. The appellees have moved this Court to dismiss Wilsons Ventures's appeal, arguing that its notice of appeal was late. We conclude that the notice of appeal is timely. But we also conclude that appellees failed to join indispensable parties to the litigation below and so must reverse the judgments and remand for further proceedings.[1]

BACKGROUND

Appellees filed a complaint seeking to overturn a zoning ordinance amendment enacted in 2023 ("Amendment"). According to the complaint, the Amendment created an Expanded Housing Option

[1] After examining the briefs and record in this case, the panel unanimously holds that oral argument is unnecessary because "the appeal is wholly without merit." Code § 17.1-403(ii)(a); Rule 5A:27(a).

("EHO") to allow developers to replace single-family houses in low-density zoning areas with multi-unit buildings. The complaint sought a judicial declaration that the Amendment was void. The complaint also asked the circuit court to enjoin the Board from implementing the Amendment or "issuing permits for or approving applications of" EHO development.

The complaint did not name Wilsons Ventures, nor did a subsequent amended complaint. After a trial, the circuit court ruled on September 27, 2024, that the Amendment was void ab initio but did not enter an order reflecting its ruling. The Board moved the circuit court to stay the ruling regarding 45 already-issued EHO permits pending appeal. The Board also notified Wilsons Ventures of the court's ruling and explained that any EHO permits that the Board had issued to Wilsons Ventures were void and that the Board could not "take any further actions" regarding them.

Wilsons Ventures moved for leave to intervene on October 11, 2024. It had received EHO permits issued under the Amendment to construct "multiple housing units" on 25th Street and Quincy Street in Arlington. It had "nearly completed" the units on 25th Street, and they were ready for final inspection. The property on Quincy Street had been subdivided, the existing structure on the property had been demolished, and Wilsons Ventures was developing the property under the EHO permit. Appellees opposed intervention, arguing among other things that Wilsons Ventures was not a necessary party.

After a hearing, the circuit court found that Wilsons Ventures' claims were not germane to the case, it had "unnecessar[ily] delay[ed]" moving to intervene, and it was not a necessary party. Accordingly, the circuit court denied leave to intervene by order entered on October 25, 2024.[2] Also on October 25, the circuit court entered final judgment declaring the Amendment void ab initio; the order "enjoined and prohibited [the Board] from issuing permits for or approving applications of EHO Development." The same day, the circuit court entered an order partially staying its final order regarding 45 EHO permits that were issued before

[2] For the same reasons, the court also denied leave to intervene to five other would-be intervenors, all builders who, like Wilsons Ventures, asserted that they had begun construction of housing with permits issued under the Amendment.

October 27, 2024, subject to the holders of those permits complying with 4 conditions during appeal. The stay order required each permit holder to record in the land records a notice informing potential purchasers that the pending appeal may void their zoning rights and eliminate their right to live in the property.

Appellees moved the circuit court to modify the stay order, and the Board timely noted its appeal of the October 25, 2024 final order. After a hearing, the circuit court entered a superseding stay order on November 14, 2024. This order also required each EHO-permit holder to record a notice that included additional language. It also ordered the Board to ensure that the required notices were recorded in the land records "before additional permits on the property are issued." Wilsons Ventures noted its appeal on December 13, 2024.

ANALYSIS

I. Wilsons Ventures timely noted its appeal, and we have jurisdiction to consider the appeal.

Appellees have moved to dismiss the appeal in Record No. 2122-24-4, arguing that Wilsons Ventures filed its notice of appeal more than 30 days after the order denying intervention.[3] Wilsons Ventures noted its appeal on December 13, 2024, within 30 days of the second stay order but more than 30 days after the original judgment. Thus, appellees argue, the notice of appeal was late and we lack jurisdiction to consider the appeal.

[3] Appellees intimate that our precedent acknowledging that an order denying intervention is an unappealable interlocutory order is "in tension with" *Bonanno v. Quinn*, 299 Va. 722 (2021). That case states that a party whose motion for leave to intervene is denied "may except to and appeal from the ruling." *Id.* at 732 (quoting *Jones v. Rhea*, 130 Va. 345, 362 (1921)). Thus, they argue, Wilsons Ventures was required to appeal the order denying leave to intervene, and because no order stayed, modified, or vacated that order, to do so within 30 days, or by Monday, November 25, 2024. *See* Code § 1-210(B). But an order denying intervention is not a final order; thus, a would-be intervenor must wait until entry of a final order before appealing. *See All. to Save the Mattaponi v. Va. Marine Res. Comm'n*, 43 Va. App. 724, 726 (2004);); *Lewis v. Lewis*, 271 Va. 520, 528 n.5 (2006) (citing *Alliance to Save the Mattaponi* for the proposition that an interlocutory ruling may be challenged in an appeal of the final judgment). *Bonanno* does not say *when* an order denying intervention may be appealed, because the appellant never moved to intervene in the trial court; that failure doomed her appeal in this Court and the Supreme Court. *Id.* at 728-29, 732. We will not create tension where none exists. Wilsons Ventures was required to appeal within 30 days of the final judgment, subject to Rule 5A:3(a), not of the order denying intervention. As explained below, we conclude that Wilsons Ventures timely noted its appeal.

[N]o appeal will be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, . . . counsel files with the clerk of the trial court a notice of appeal." Rule 5A:6(a). But Rule 5A:3(a) provides that when a trial court modifies, vacates, or suspends a final order, "the time for filing [the notice of appeal] is computed from the date of the final judgment entered following such modification, vacation, or suspension." The final order "enjoined and prohibited [the Board] from issuing permits for or approving applications of EHO Development" under the Amendment. Thus, the Board could not take any steps regarding the properties, such as issuing zoning permits, building permits, or certificates of occupancy.

The court immediately entered the first partial-stay order. Then, on November 13, 2024, it entered the superseding stay order. That order, after ordering that would-be intervenors must file notices in the land records, ordered the Board to ensure that the required notices were recorded "before additional permits on the property are issued." Thus, the superseding stay order modified the final order's injunction against the Board, allowing the Board to issue whatever permits and other documents were needed for the EHO permit holders to complete their development. Thus, the time for filing the notice of appeal ran from the entry date of the second stay order—November 13, 2024, and the notice of appeal filed on December 13, 2024 is timely. Rules 5A:3(a), 5A:6(a). We therefore have jurisdiction and deny the appellees' motion to dismiss Wilsons Ventures's appeal.

II. Appellees failed to join necessary parties to the case below.

An indispensable party is one who has a "material interest in the subject matter that is likely to be diminished or defeated" by the suit. *Garner v. Joseph*, 300 Va. 344, 351 (2021). The party may be in "actual enjoyment of the subject matter" or have an interest "in possession or expectancy" of it. *Raney v. Four Thirty Seven Land Co., Inc.*, 233 Va. 513, 519 (1987) (quoting *Gaddess v. Norris*, 102 Va. 625, 630 (1904)). An indispensable party should be joined to a case unless it is "'practically impossible' to join all parties in interest." *Michael E. Siska Revocable Tr. v. Milestone Dev., LLC*, 282 Va. 169, 176 (2011) (quoting *McDougle v. McDougle*, 214 Va. 636, 637 (1974)). Even then, the trial court may not enter a judgment affecting the absent parties unless their interests "are represented by others having the same interests, or

where an absent party's interests are separable from those of the parties before the court." *See id.* Although the necessary-party doctrine does not implicate our subject-matter jurisdiction, we will not adjudicate the merits of an appealed judgment rendered in the absence of a necessary party to the litigation. *See id.* at 177. The usual remedy is to remand the case for the necessary party to be made a "party thereto." *See id.* (quoting *McDougle*, 214 Va. at 638).

Wilsons Ventures's ability to develop the units on 25th Street and Quincy Street under the EHO permits issued under the Amendment is a "material interest in the subject matter that is likely to be diminished or defeated" by the suit. *Garner*, 300 Va. at 351. Indeed, the circuit court purported to require Wilsons Ventures and the other holders of EHO permits to record in the land records a notice to potential purchasers warning them that they might lose the right to live in the property. Wilsons Ventures and the other EHO-permit holders are "affected by the results" of the litigation, making them indispensable parties. *Bonanno v. Quinn*, 299 Va. 722, 731 (2021) (quoting 1 Hamilton Bryson, Va. Civil Proc. § 5.03[1][a][i], at 221 (5th ed. 2020)). We conclude that appellees failed to name an indispensable party to those proceedings.[4] This conclusion requires that we not adjudicate these appeals but reverse the circuit court's judgment and remand for further proceedings.

Thus, we reverse the circuit court's judgment declaring the Amendment void and prohibiting the Board from acting under the Amendment and remand the cases to the court so necessary parties may be added

[4] This Court "may note the failure to join a necessary party sua sponte." *Watson v. Commonwealth*, 297 Va. 347, 353 (2019).

if the appellees are so inclined.[5] *See Garner*, 300 Va. at 353 (reversing and remanding for further proceedings after finding that necessary parties had not been joined); *Milestone Dev.*, 282 Va. at 182 (same).

This order shall be certified to the trial court.

A Copy,

Teste:

A. John Vollino, Clerk

By: 

Deputy Clerk

[5] We make no comment on whether the holders of the EHO permits are the only necessary parties that were not joined below.