VIRGINIA:

In the Court of Appeals of Virginia on **Friday** *the* **5th** *day of* **September, 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.

Upon a Rehearing

Before Judges Beales, White and Bernhard

The County Board of Arlington passed a zoning amendment in 2023 that allowed for the building of multi-unit homes where before only single-unit homes were permitted. Residents of Arlington promptly sued to challenge the amendment. At trial held more than a year later, the residents succeeded in having the amendment struck down; however, by that time, the Board had issued 45 permits under the now-invalid amendment. Wilsons Ventures, a holder of two such permits, moved to intervene after the trial and before entry of the final order. The trial court denied the motion but stayed the final order pending appeal.

The panel initially disposed of both Wilsons Ventures' and the Board's appeal by issuing an order reversing the judgment, finding that Wilsons Ventures was a necessary party. The residents, appellees here, petitioned for rehearing, which the panel granted. Following oral arguments, we again reverse the judgment and remand for Wilsons Ventures to be joined.

BACKGROUND

In 2023, appellant, the County Board of Arlington, passed a zoning ordinance amendment that created an "Expanded Housing Option" (EHO Amendment). The EHO Amendment allowed developers to build multi-unit housing in areas previously zoned for single-family residences to expand Arlington's "missing middle" housing.

Appellees, homeowners and residents of Arlington County, promptly and within 30 days of the passage filed a complaint on April 21, 2023, challenging the EHO Amendment under Code § 15.2-2285(F). Under Code § 15.2-2285(F), a challenge to a zoning ordinance must be filed within 30 days of the ordinance's passage. In their complaint, appellees asked for declaratory and injunctive relief to prevent the EHO Amendment from being implemented prior to its effective date of July 1, 2023. They alleged that the County Board of Arlington failed to exercise its legislative authority within the bounds of Virginia law.

Appellant, residential developer Wilsons Ventures, received two permits under the EHO Amendment in August 2023 and in February 2024. The permits authorized Wilsons Ventures to build two multi-family housing projects in locations where prior to the EHO Amendment it would not have been allowed to build these structures.

The trial court held a bench trial on appellees' complaint in July 2024. On September 27, 2024, the trial court ruled for appellees in an oral decision read into the record, holding the EHO Amendment void and prohibiting Arlington County from issuing permits for or approving applications of EHO development pursuant to the void zoning amendment. Wilsons Ventures was notified by Arlington County on October 1, 2024, that its permits were void and that Arlington County could "not take any further actions and/or process any other permits."

On October 11, two weeks after the oral ruling, Wilsons Ventures moved to intervene in the case, pursuant to Rule 3:14 of the Rules of the Supreme Court of Virginia. On October 25, 2024, the trial court entered a written final order (Final Order), memorializing the previous oral ruling. That same day, the court submitted a "Written Ruling" that detailed its September 27 oral holding.

Also on October 25, the trial court denied the motion to intervene following a hearing. The court was "sympathetic to the holders of EHO permits" and acknowledged that the Final Order "is a burden on them." The trial court explained that if an EHO permit holder "complete[s] their project and sell[s] it to a citizen" prior to the judgment being affirmed on appeal, the citizen "will have bought a house that it prohibited," which is a "problem." The court further stated that the citizen would then have to "call the builder; is the builder going to accept responsibility for that?" But after noting this "general concern" it had for the Final Order's effect on the EHO permit holders, the court denied the motion to intervene.

In its written order entered on the same day, the court explained that Wilsons Ventures "is not a necessary party to the action," its "claims are not germane" to appellees' suit, and that the "statute of limitations of 30 days has run on [Wilsons Ventures'] claim"; accordingly, its motion to intervene "should not be granted due to the unnecessary delay in bringing the motion."

On October 25, 2024, the trial court also partially stayed the Final Order as to "the forty-five EHO permits that have been issued prior to October 27, 2024" while appeal was pending (Partial Stay). The stay that gave temporary respite from the Final Order to the 45 EHO permit holders was subject to 4 conditions. One condition required each permit holder who built "a duplex, three-plex, four-plex, five-plex, or a six-plex housing unit" to provide a notice in the land records with "the following statement: 'To potential purchasers, please be advised that a lawsuit is on appeal to the Court of Appeals that may void your zoning rights to this property and may result in your right to live in this property being eliminated.'" The Partial Stay also required that, as "a condition of this stay," the Board "ensure that this notice has been placed in the land records before additional permits on the property are issued."

On November 13, 2024, the trial court filed a new order "modify[ing] and replac[ing]" the Partial Stay (Amended Partial Stay). The Amended Partial Stay added language expanding the notice requirement to each permit holder who built "any structure allowed by EHO zoning that is the subject of this case, including but not limited to semidetached, townhouses, duplex, three-plex, four-plex, five-plex or six-plex housing units."

The Amended Partial Stay also reiterated the requirement that the Board ensure that these notices were recorded before any additional permits were issued.

On November 22, 2024, the Board filed its notice of appeal for Record No. 1923-24-4. Wilsons Ventures filed its notice of appeal from the trial court for Record No. 2122-24 on December 13, 2024.[1]

ANALYSIS

I. Whether Wilsons Ventures' Notice of Appeal is Timely

Appellees argue we lack jurisdiction over Wilsons Ventures' appeal because its notice of appeal was untimely. They argue it was untimely because the Partial Stay and the Amended Partial Stay were not final appealable orders and did not "somehow reopen[]" the October 25 Final Order. Appellees cite Rule 1:1B's language giving the trial court "limited, concurrent jurisdiction during the pendency of the appeal solely for the purposes of," among other things, "addressing motions to stay the judgment pending appeal." They argue that this language shows that a stay "suspending" a judgment pending appeal does not reopen that judgment.

Appellees contend that the Final Order disposed of the entire case and has never been modified. They assert that the Amended Partial Stay "explicitly state[d]" that it only modified the Partial Stay, not the Final Order. And the Partial Stay simply gave "temporary relief" from the Final Order so that Arlington could continue issuing "permits and authorizations to" the 45 pre-existing EHO permit holders while the appeal process pended. Appellees argue that the appeal process concluded 30 days after October 25 since no notice of appeal was filed within that time, at which point the unmodified Final Order came into force. In short, appellees contend that a stay cannot modify a final order because a stay only delays the order's implementation for appeal without affecting the order itself. Since the stays did not modify the Final Order, appellees maintain that Wilsons Ventures' notice of appeal must be measured from the Final Order and is untimely.

[1] On July 10, 2025, the County Board of Arlington noted an appearance in this case, with the permission of this Court.

A litigant has 30 days after entry of final judgment in which to file a notice of appeal. Rule 5:9(a); Rule 5A:6(a). This 30-day period for filing a notice of appeal "is not extended . . . unless the final judgment is modified, vacated, or suspended by the trial court" while it still has jurisdiction over the final judgment. Rule 5:5(b); Rule 5A:3(a). When a trial court modifies, vacates, or suspends a final judgment, "the time for filing [the notice of appeal] is computed from the date of the final judgment entered following such modification, vacation, or suspension." Rule 5A:3(a).

Here, the Final Order enjoined the Board from issuing permits or certificates under the EHO Amendment. The court immediately stayed the Final Order with the Partial Stay. Within 21 days, this stay was replaced by the Amended Partial Stay. Like the Partial Stay, the Amended Partial Stay ordered certain EHO permit holders to record notices and the Board to ensure that these notices were filed before issuing further permits. But unlike the Partial Stay, the Amended Partial Stay conceivably increased the parties subject to the notice requirement. The Partial Stay required notice to be filed by any of the 45 EHO permit holders who "build a duplex, three-plex, four-plex, five-plex, or a six-plex housing unit." The Amended Partial Stay required notice to be filed by any of the 45 EHO permit holders who "build any structure allowed by EHO zoning that is the subject of this case, including but not limited to semidetached, townhouses, duplex, three-plex, four-plex, five-plex or six-plex housing units." Thus, the Partial Stay modified the Final Order's injunction against the Board by allowing the Board to issue additional permits to the 45 pre-existing EHO permit holders, and the Amended Partial Stay modified the Partial Stay's injunction by introducing more parties into the notice requirement. We do not suggest that every stay modifies a final order. In this case, the trial court did not merely stay the Final Order; it provided additional terms that changed the effect of the Final Order, modifying it for purposes of filing a notice of appeal. "Although a stay 'certainly has some functional overlap with an injunction' by 'preventing some action before the legality of that action has been conclusively determined,' 'a stay achieves this result by temporarily suspending the source of authority to act—the order or judgment in question—not by directing an actor's conduct.'" *NAACP (Hanover Cnty. Chapter) v. Commonwealth ex rel. Va. State Water Control Bd.*, 74 Va. App. 702, 713 (2002) (quoting *Nken v. Holder*,

556 U.S. 418, 428-29 (2009)). Here, the Amended Partial Stay directed the conduct of both the Board and Wilsons Ventures. It also superseded the Partial Stay's injunction, which in turn had superseded the Final Order's injunction, by expanding the class of EHO permit holders affected by the stay. Accordingly, the time for filing the notice of appeal ran from the entry date of the Amended Partial Stay on 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 appellees' motion to dismiss Wilsons Ventures' appeal.

Lastly, appellees argue that Wilsons Ventures is not an "aggrieved" party under Code § 17.1-405 "for purposes of" the stay orders. They asserted at oral arguments that the relevant final order for notice-of-appeal purposes is the order denying Wilsons Ventures' motion to intervene, not the Final Order, and noted that the Amended Partial Stay only modified the Final Order, not the order denying intervention. We are not persuaded by this argument. The final judgment for notice-of-appeal purposes is the one that disposes of the entire case. The order denying the motion to intervene did not do this and could only have been final if it had had language stating that it would be a separately appealable final order. It did not contain such language. Given that a motion to intervene is generally not appealable as a final order, the first time Wilsons Ventures could have appealed the denial of its motion to intervene was when the Final Order—modified by the Partial Stay and Amended Partial Stay—was issued. Thus, the relevant final judgment is the Final Order, not the order denying the motion to intervene. And the denial of a motion to intervene is appealable under Code § 17.1-405. *Bonanno v. Quinn*, 299 Va. 722, 732 (2021) ("This holding [defining 'aggrieved party' under Code § 17.1-405] does not alter our prior cases allowing a person who has sought leave to intervene in a proceeding from appealing a ruling denying it.").

II. Whether the Trial Court Erred in Denying Wilsons Ventures' Motion to Intervene

In denying Wilsons Ventures' motion to intervene, the trial court held

> that the prospective intervenor is not a necessary party to the action, its claims are not germane to the subject lawsuit and judgment, the statute of limitations of 30 days has run on the claim of the prospective intervenor, and the Motion for Leave to Intervene should not be granted due to the unnecessary delay in bringing the Motion.

We "apply an abuse of discretion standard when reviewing a circuit court's decision" regarding a motion to intervene. *See Comm. of the Petitioners for Referendum v. City of Norfolk*, 274 Va. 69, 73 (2007). "Only when reasonable jurists could not differ can we say an abuse of discretion has occurred." *Minh Duy Du v. Commonwealth*, 292 Va. 555, 564 (2016) (quoting *Grattan v. Commonwealth*, 278 Va. 602, 644 (2009)). Our review under this standard includes a determination that the trial court's "discretion was not guided by erroneous legal conclusions." *Carter v. Commonwealth*, 293 Va. 537, 543-44 (2017) (quoting *Porter v. Commonwealth*, 276 Va. 203, 260 (2008)). Indeed, a circuit court "by definition abuses its discretion when it makes an error of law." *Arch Ins. Co. v. FVCbank*, 301 Va. 503, 515 (2022) (quoting *Helmick Fam. Farm, LLC v. Comm'r of Highways*, 297 Va. 777, 794 (2019)). For the reasons set forth below, we hold that the trial court made two errors of law: first, when it held that Wilsons Ventures' claims were not germane to the suit; and second, when it applied a 30-day statute of limitations period from a statute that only addresses parties who *contest* a Board's zoning decision.

Rule 3:14 of the Rules of the Supreme Court of Virginia sets forth that "[a] new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding." The word "germane" means "relevant" and "pertinent." *Germane, Black's Law Dictionary* (11th ed. 2019). Webster's defines germane as "closely akin," "having a close relationship," and "pertinent." *Germane, Webster's Third New International Dictionary* (2002). In line with the word's meaning of close kinship and pertinence, our case law explains that a claim is germane if its connection to the underlying suit is not too "attenuated" or "indirect." *Layton v. Seawall Enters., Inc.*, 231 Va. 402, 406-07 (1986) (where the underlying suit was to assert "title to the subject property," a claim to "assert title to separate property that merely was located in the same general area as the" subject property was not germane). For example, an insurance carrier's lien claim against plaintiff was not germane to the underlying tort suit because no issue in the underlying suit would "affect" or be "affected by" the lien claim, and the carrier did not need to prove defendant's liability to satisfy its lien claim. *Hudson v. Jarret*, 269 Va. 24, 33 (2005). In another example, a discharged attorney's claim for unpaid fees was not germane to the underlying contract

validity suit because the contract had been completed by another lawyer and the attorney was now a "mere bystander." *Eads v. Clark*, 272 Va. 192, 196-97 (2006). Simply showing that the intervenor "may be adversely affected by" the outcome of the underlying suit is likely too indirect to furnish a germane claim. *See Virginian-Pilot Media Cos., LLC v. Dow Jones & Co.*, 280 Va. 464, 471-72 (2010) (Lemons, J., dissenting). Based on the foregoing, an intervenor's claim is sufficiently connected and pertinent to the underlying suit when it "assert[s] some right involved in the suit," *Eads*, 272 Va. at 196 (quoting *Layton*, 231 Va. at 406); it is not enough simply to have a claim against one of the parties or a concern of adverse impact from the ruling.

Having filled out the meaning of "germane," the question now is whether Wilsons Ventures has "any claim that [it] could assert as a plaintiff or defendant that is germane to the issues in the . . . case." *Hudson*, 269 Va. at 33. Issues involved in a case evolve from the pleadings. Appellees' initial filing against the County of Arlington, a 64-page "Verified Complaint for Declaratory Judgment and Injunctive Relief," alleges defects in the notice and legislative procedures used by the local government in passing the zoning amendment. But the manner in which appellees chose to plead their case went beyond allegations only concerning conduct by the local government. The verified complaint's introduction asserts that the EHO Amendment would "lead to the loss of lower-income homes and to the construction of luxury multiplexes affordable only to the most affluent residents in the County." This allegation attacks the ordinance by assuming that Wilsons Ventures would build in a way that would cause the ordinance to violate statutory requirements of affordable housing. In addition, at least 10 of the complaint's 342 numbered paragraphs describe rights, actions, and predicted adverse impacts tied directly to the development by the EHO permit holders. Paragraph 177 sets forth that "[a]s of the Zoning Amendment's enactment, fifty-eight owners and developers can now by-right build multiplexes on their lots each year for five years." Later, in Paragraph 184, appellees assert that "developers will purchase more affordable single-family dwellings to build expensive multiplexes, keeping them out of reach for many Arlingtonians." In the following six paragraphs, appellees allege predictions that the EHO developers' projects will be adverse to access, affordability,

diversity, and size needs. Many of the complaint's allegations could only properly be responded to by developers like Wilsons Ventures. Moreover, this initial filing also sought relief that would directly impact the land owned and already developed by EHO permit holders by enjoining the Board from "issuing permits for or approving applications of EHO Developers." Appellees also requested that the Board be enjoined from taking any action under the zoning ordinance—presumably including the issuance of certificates of occupancy to the developers.

Appellees argue that the trial court properly exercised its discretion in denying Wilsons Ventures' motion to intervene. They contend that the suit's subject matter is "whether the EHO Amendment was validly enacted," so the only necessary parties would be "the challenger and the local governing body." Our Supreme Court has held that under the similarly worded predecessor statute to Code § 15.2-2285(F), the only necessary parties to *institute* a suit challenging a zoning decision are the Board and the contestants. *Friends of Clark Mountain Found., Inc. v. Bd. of Supervisors*, 242 Va. 16, 21 (1991). But once properly instituted, a necessary party whose absence is "noted of record" should be allowed to intervene into the suit. *Id.* The Court concluded that allowing absent but necessary parties to be joined after the zoning complaint is filed "provides a fair and orderly procedure for collecting all necessary parties . . . without prejudicing the contestant who may have failed to identify within 30 days of the governing body's decision every necessary party who should be joined." *Id*. at 21-22.

Here, Wilsons Ventures moved to intervene in a case where appellees made allegations concerning the manner in which they, as EHO permit holders, would develop land in Arlington County. Wilsons Ventures sought a voice in a proceeding that could strongly impact property that they owned and had developed. Appellees' allegations and requested relief against the Board would have more than just a spill-over effect on Wilsons Ventures. Appellees' suit, if successful, would destroy the value of the property that Wilsons Ventures had acquired and built on under the challenged ordinance. Wilsons Ventures' claim is therefore closely related and pertinent to the underlying suit—had it been joined as a defendant, it could have responded to appellees' developer-specific allegations with its own defenses. This connection between claim

and suit is direct because the suit could "affect" or be "affected by" any defenses Wilsons Ventures might have raised, not as a "mere bystander" but as a property owner with jeopardized development projects about which appellees drew numerous negative inferences to support their requested relief. We thus conclude that Wilsons Ventures' claim was germane, and it was an error of law to hold otherwise.

And finally, we find clear error in the trial court's ruling that Wilsons Ventures' motion to intervene was precluded by a statute of limitations. A party's ability to move to intervene does not have a statute of limitations. "[N]ew parties may be added . . . by the court at any time as the ends of justice may require." Code § 8.01-5(A). And "the 30-day period in Code § 15.2-2285(F) is n[ot] a statute of limitations." *Berry v. Bd. of Supervisors*, 302 Va. 114, 133 (2023) (citing *Friends*, 242 Va. at 19-20). Moreover, the plain language of Code § 15.2-2285(F) only requires that the *challenger* file suit within 30 days. Code § 15.2-2285(F) (requiring that an "action contesting a decision of the local governing body" be filed within 30 days of the decision). Wilsons Ventures' claim was not one challenging or contesting the action of the County Board. "In any case involving statutory construction we begin with the language of the statute." *Appalachian Power Co. v. State Corp. Comm'n*, 284 Va. 695, 705 (2012). "When a statute is unambiguous, we must apply the plain meaning of that language." *Id.* at 706 (citing *Halifax Corp. v. First Union Nat'l Bank*, 262 Va. 91, 99-100 (2001)).

In sum, we have jurisdiction over both appeals due to timely filed notices of appeal by the Board and Wilsons Ventures. We also conclude that the trial court abused its discretion in denying Wilsons Ventures' motion to intervene. Accordingly, we reverse the judgment and remand for the addition of Wilsons Ventures as a party to appellees' suit.[2]

[2] "The doctrine of judicial restraint dictates that we decide cases '"on the best and narrowest grounds available."'" *Commonwealth v. Swann*, 290 Va. 194, 196 (2015) (quoting *McGhee v. Commonwealth*, 280 Va. 620, 626 n.4 (2010)). Here, the best and narrowest ground for decision is the discrete question on which the trial court ruled: whether the denial of Wilsons Ventures' motion to intervene pursuant to Rule 3:14 was in error. Because Wilsons Ventures was the only party to appeal the denial of its request to intervene, remanding this case is not an invitation for new parties to seek to intervene under Rule 3:14, consistent with the "law of the case" doctrine. *See City of Charlottesville v. Sclafani*, 300 Va. 212, 218 (2021).

This order shall be certified to the trial court.

A Copy,

Teste:

A. John Vollino, Clerk

By: Kristen M. McKenzie

Deputy Clerk

Further, this Court does not reach the additional but totally different question of whether Wilson Ventures is a necessary and indispensable party-defendant to the challenge of the Arlington County ordinance under the separate analysis established in *Friends*, 246 Va. 16 (1991). That determination is not implicated in the actual analysis that we have undertaken here of whether a party may intervene in a suit under Rule 3:14 as outlined in this order.