

IN THE
SUPREME COURT OF VIRGINIA

Record No. 250919

NORDGREN, et al.,
v.
COUNTY BOARD OF ARLINGTON, VIRGINIA,

Petitioners,
Respondents.

NORDGREN, et al.,
v.
WILSONS VENTURES, LLC,

Petitioners,
Respondents.

**WILSONS VENTURES, LLC, BRIEF IN OPPOSITION TO PETITION
FOR APPEAL**

On Petition for Appeal from the Court of Appeals of Virginia
(Record Nos. 1923-4, 2122-24)

Roy R. Shannon, Jr., VSB No. 66724
Minturn Wright, VSB No. 90402
SHANNON & WRIGHT LLP
124 S. Royal Street
Alexandria, Virginia 22314
571-620-1930
rshannon@shannonwright.law
mwright@shannonwright.law
Counsel for Respondent Wilsons Ventures, LLC

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STATEMENT OF THE CASE AND FACTS

Although the Petitioners would like to frame this case as a simple matter between them and the County Board of Supervisors over the Board's ability to enact an Extended Housing Options ("EHO") zoning ordinance amendment allowing increased density to address a housing shortage, it actually turns on the ability of the Petitioners to yank back the permits already issued to landowners who relied on the EHO amendment,¹ without those landowners' being able to protect their rights after acting in reliance on the County's ordinance. Put another way, this Petition asks the Court to bless the exclusion of the landowners (such as Wilsons Ventures) at the trial court level, barring these necessary parties, known to the Petitioners during the litigation and at trial, from doing anything to protect their property rights.

The Petitioners repeatedly try to cast Wilsons Ventures as a laggard who did not own its land when the EHO amendment was approved, and then sat on its hands until after trial to act. They can only do so by omitting key facts: that Wilsons Ventures and others

¹ At the time of the trial court's final judgment, EHO permits had been issued for some 45 parcels of land.

relied on the EHO amendment in acquiring their land, obtaining the necessary permits, and building residential projects consistent with the approved EHO ordinance. Furthermore, Wilsons Ventures only learned of the trial court's ruling that the EHO amendment was void *ab initio* when the County Zoning Director informed it that the County would no longer issue permits or certifications for its EHO projects, thus stranding Wilsons Ventures with unfinished, unfinishable, and unsellable homes, one of its projects was 90% complete at that time. This information caused Wilsons Ventures (and other landowners) to rush to the trial court to intervene; all motions to intervene were denied.

A. Petitioners Sued to Overturn the EHO Amendment Willfully Ignoring the EHO Developments in Progress.

The Petitioners filed their case on April 21, 2023, seeking to have the EHO amendment overturned in its entirety. R. 7-168. They litigated the action for over a year. During that year, landowners across the County filed for and were granted EHO permits and began work, including getting County approvals for demolition, grading, building, and so on. Although the Petitioners' complaint and amended complaint mentioned an injunction, *e.g.*, R. 7, 69, 6823, 6883, the Petitioners never sought a preliminary injunction barring the County from issuing EHO

permits. Petitioners never sought to warn the EHO applicants that there was litigation that questioned the validity of their EHO permits. More importantly, the Petitioners did not deliver any pleadings or other papers to Wilsons Ventures, despite that its application for EHO permits was a matter of public record, along with the other EHO permit holders. The Petitioners knew of the ongoing EHO developments during the litigation and, at trial, put on evidence of the EHO projects, including Wilsons Ventures' projects, but chose to exclude them from the case.

The Petitioners allege, Pet. at 4, that their case “received significant public attention” once it was filed. R. 10214-15. They fault Wilsons Ventures for not having read the right section of the newspaper that day. In so doing, they hope to distract this Court—as they hoped to distract the Court of Appeals—from the fact that they never gave notice to the EHO permit holders or sought to join them as parties, nor did they seek to stop the EHO developments through a preliminary injunction. They never sought or received leave to serve notice by publication, let alone through service of process. When Wilsons Ventures and others sought leave to intervene, they vociferously

opposed these motions and never offer the trial court the easy solution of making its bench ruling prospective in nature in the final order, thus excluding the 45 existing EHO permits from the applicability of its ruling. The conclusion is clear: the Petitioners did not want the landowners as parties to this case: they wanted to strip them of their property rights with no opportunity to protect them. That remains their position in this Petition.

The Petitioners also seek to fault Wilsons Ventures for not owning its land when the EHO amendment was adopted. Pet. at 4-5. This is irrelevant. Wilsons Ventures acquired land, applied for and obtained permits, and began building, expending considerable funds so to do, all in reliance on the EHO amendment and its EHO permit. R. 6985-86.

B. Wilsons Ventures Moved to Intervene Once It Learned of the Court's Bench Ruling.

Again, the Petitioners seek to blame Wilsons Ventures (and its fellow EHO permit holders) for not seeking to intervene in its lawsuit earlier than they did. Again, they conveniently omit that Wilsons Ventures had no notice of the case. Instead, Wilsons Ventures only learned of the effort to declare the EHO amendment void *ab initio* after the trial court's bench ruling was announced on September 27, 2024,

when it received the County's Zoning Director's October 1 Letter. The letter informed EHO permit holders that no further County action would be taken on their projects, R. 6994; only then did Wilsons Ventures know of the case and its import. R. 6986.

Upon receiving this notice, Wilsons Ventures promptly retained counsel and moved to intervene in this case, filing its motion on October 11. In its motion, Wilsons Ventures noted that it "stands to be deprived of its property rights, without due process and to its great prejudice" if it was not permitted to intervene. R. 6997.

As the Petitioners admit, Wilsons Ventures averred it would suffer great harm to its property rights should the trial court invalidate the EHO amendment on which Wilsons Ventures (and the others) had relied in buying land, obtaining County required permits, and undertaking many thousands of dollars' worth of work pursuant to the EHO amendment. Pet. at 6; R. 6988-89. It was thus a "necessary party" to the litigation, and moved to so assert promptly upon learning its rights were imperiled.

C. The Trial Court Wrongly Denied the Motion to Intervene.

Despite Wilsons Ventures' quick response after learning of the lawsuit through the County's October 1 letter, the trial court was not swayed to hear its position, along with the other proposed intervenors. On October 25, just two weeks after Wilsons Ventures filed its motion to intervene, the trial court denied the motion to intervene. Remarkably, the trial court held that Wilsons Ventures was "not a necessary party to the action", R. 7178—despite that Wilsons Ventures had acted in reliance on the EHO amendment, expended considerable effort and sums, and faced losing its property rights as a result.

As a result of this ruling, Wilsons Ventures (and the other permit holders) could only watch as their property rights were abrogated by the entry of the final order, first by the invalidation of all EHO permits, and later by the imposition of a requirement that rendered their property unsellable if they desired to proceed with trying to continue with their EHO projects. Wilsons Ventures was deprived of its property rights without the opportunity to defend them—a deprivation of due process.

D. Wilsons Ventures, Without Being Heard Was Deprived of Its Rights When the Court Declared the EHO Amendment Void.

As noted, on the same day that it denied the EHO permit holders the opportunity to defend their rights, the trial court also ruled that the

entire EHO amendment was void *ab initio* and enjoined the County from approving applications for EHO projects or issuing any permits in furtherance of those EHO permits already approved. R. 7176-77. All the holders of EHO permits were confronted with the prospect of being unable to complete construction on their projects, and unable to sell homes whose *raison d'être* was invalidated. They face ruin as a result.

The trial court then repeatedly modified the effect of its final order with its “stay” orders in its effort to acknowledge and mitigate the damage it had done to the EHO permit holders whose rights it had just abrogated after a trial that they were unaware of and after being excluded from post-trial proceedings once they became aware of the bench ruling. Not until November 13 did the trial court finally issue its last word on the subject when the trial court issued its last order for a partial stay during the appeal. R. 7252-53.

E. The Trial Court Issued Multiple Modifications of Its Judgment

Once the trial court issued its judgment holding the entire EHO invalid, the County, as the only defendant, was faced with the prospect of having nearly four dozen incomplete and incompletable projects cluttering its neighborhoods and government permitting offices for an

indefinite period of time.² The County requested a partial stay of the trial court’s ruling as it applied to the EHO projects then in progress; the Petitioners strenuously opposed this request.

On October 25, 2024, the trial court issued an order for Partial Stay of Judgment Pending Appeal (“Partial Stay Order”). This stay applied “exclusively to the forty-five EHO permits” already issued but differentiated the EHO permits, giving a blanket stay to all EHO permits, but then burdening some types of EHO permits with significant restrictions, specifically listing the categories in paragraph 2(a) of the Partial Stay Order, “EHO permit holders that build a duplex, three-plex, four-plex, five-plex, or a six-plex housing unit...”, R. 7180. The EHO projects Wilsons Ventures were involved were for “semidetached” and “townhouses” R. 6992-93, so it could proceed under the blanket stay provided in Paragraphs 1 and 3 of the Partial Stay Order, R. 7180, without the onerous restrictions in Paragraph 2. R. 7180. The reprieve in the Partial Stay Order came at great cost if Paragraph 2 applied: among other conditions, the County could only

² One wonders how the Petitioners, who claimed to be acting to save neighborhoods, would take to such eyesores. Ironically, no Petitioners live next to the 45 parcels with EHO permits that are in limbo.

issue permits to the holders of the existing EHO permits for the listed project types after making sure those permit holders had recorded, in the land records, notices to prospective purchasers of their houses that the houses could be found to be in violation of the zoning ordinance *id.*, thus placing a cloud on their title. In other words, the EHO permit holders for the categories listed in Paragraph 2(a) could only complete construction of its EHO projects if they recorded notices that would render their property unmarketable.

Responding to concerns about confusion over the terms of the Partial Stay Order, and at the request of the Petitioners, the trial court issued a new order on November 13, 2024. R. 7252-53 (“New Partial Stay Order”). While the Petitioners describe the amendments in the New Partial Stay Order they sought as “technical”, Pet. at 9, among the changes were additions the list of the categories of EHO projects covered:

2. This Partial Stay shall be subject to the following conditions:

A. EHO permit holders that 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, shall provide a notice in the land records that a case is pending in the Court of Appeals with the

following statement “To potential purchasers, please be advised that a lawsuit is on appeal to the Court of Appeals of Virginia and then perhaps to the Supreme Court of Virginia that may void your zoning rights to this property and may result in your right to live in this property being eliminated.

R. 7180. Emphasis added. The Court added “semidetached” and “townhouses”, and now Wilsons Ventures was subject to the extremely burdensome Paragraph 2, including the requirement of putting a cloud on its title in order to mitigate the harm that would result in an unfinished project. R. 7180. Thus, the New Partial Stay Order changed how the final order applied to Wilsons Ventures in these circumstances. In the space of 19 days, Wilsons Ventures’ projects had gone from barred completely, to allowed, to allowed, but with major restrictions, making it as if it was barred completely again.

F. The Court of Appeals Agreed with Wilsons Ventures.

Against the Petitioners’ energetic opposition, the Court of Appeals ruled in favor of Wilsons Ventures’ appeal in multiple instances and on multiple grounds. First, it held that Wilsons Ventures appeal was timely filed, correctly calculating the deadline from the issuance of the New Partial Stay Order that clarified the applicability of the final order to Wilsons Ventures. The Court of Appeals noted that the stay orders

modified the final order, thus extending the deadline for filing a notice of appeal. Opinion at 5. The Court of Appeals also correctly determined that Wilsons Ventures, as the owner of property affected by the judgment and the stay orders, was sufficiently “aggrieved” by those orders to be entitled to appeal. Opinion at 6.

Turning to the merits of the appeal, the Court of Appeals held that the trial court had abused its discretion in denying Wilsons Ventures’ motion to intervene. In keeping with recent rulings regarding affected landowners and holders of rights to land as necessary parties to litigation that could impair or affect their land rights, the Court of Appeals ruled that Wilsons Ventures sought, and should have been granted, “a voice in a proceeding that could strongly [affect] property that they owned” and had devoted effort and money. Opinion at 9. This is the most important sentence in the appellate ruling.

The Petitioners complain that the Court of Appeals did not identify any specific claims that Wilsons Ventures had raised. They offer no authority requiring such specificity, and they gloss over that the Court of Appeals did specifically mention Wilsons Ventures’ property rights—among the most sacred rights in our legal system. See,

e.g., *Taylor v. Taylor*, 103 Va. 750, 758 (1905) (“the right of property [is] an absolute and unconditional right”); *accord*, *Sensabaugh v. Sensabaugh*, 232 Va. 250, 258 (1986) (discussing the “‘sacred right’ to property”). Given the shifting nature of this litigation, the Court of Appeals wisely chose to leave the specific arguments and their treatment to the trial court.

Petitioners complain that not only did the Court of Appeals not identify a specific claim that Wilsons Ventures’ could or would raise in litigation, they also complain that Wilsons Ventures was late to the party, only filing its motion after trial. They elide over their complete failure to give notice to Wilsons Ventures, to name it as a necessary party in interest, or even to seek a preliminary injunction that would keep the County from issuing permits to Wilsons Ventures and other unsuspecting land owners.

Petitioners were aware the County was issuing EHO permits during the litigation³, and they even introduced evidence at trial of the

³ Petitioner Mabel Gabig in Response to Interrogatory No. 10, on March 22, 2024 (108 days before trial), identified 18 approved EHO permits, including both of Wilsons Ventures’ permits. R. 12232-34. Her entire discovery response was Petitioners’ Trial Ex, 27. R. 12226-48.

EHO Permits. Petitioners' Trial Ex. 95 identifies 34 approved EHO permits, 4 accepted EHO permits, and 19 other EHO permits (57 applications in total) at various stages, including denials were known to the Petitioners well before trial started on July 8, 2024. R. 12924-52.

Yet, Petitioners did not seek a preliminary injunction, barring the issuance of these permits from the enactment on July 1, 2023, through trial in July 2024.

Thus, leaving Wilsons Ventures, and other EHO permit holders, to learn their rights were to be impaired after it had already happened.

When Wilsons Ventures learned of this peril, it immediately tried to intervene at the trial court, but the Petitioners successfully excluded them. When Wilsons Ventures appealed its exclusion, the Court of Appeals agreed that its rights had been trampled. Petitioners now seek to have this Court overturn the wisdom of the Court of Appeals. The Petition should be denied.

STANDARD OF REVIEW

Upon a petition for a discretionary review, a question of the application of law to established facts is reviewed *de novo*. *Virginia Fuel Corp. v. Lambert Coal Co.*, 291 Va. 89, 97, 781 S.E.2d 162 (2016); see

also *Long v. Commonwealth*, 7 Va. App. 503 (1988). Findings of fact and the inferences to be drawn from them are accepted, and viewed in the light most favorable to the responding party unless the inferences are forced, strained, or contrary to reason. *Fultz v. Delhaize America, Inc.*, 278 Va. 84, 88 (2009). Exercises of discretion are reviewed by an abuse of discretion standard, as long as there is no underlying mistake. *Lawlor v. Commonwealth*, 285 Va. 187, 212-13 (2013).

ARGUMENT⁴

This case presents significant issues as to the necessity of including the owners of affected land in litigation intended to impair their rights pertaining to the land. Petitioners wish to exclude those landowners. Respondent Wilsons Ventures, as one of the affected landowners, intended to intervene and will use its opportunity at the trial court on remand to protect and defend its property rights, as it sought to back in October of 2024.

Petitioners attempt to fault Wilsons Ventures because—as they claim—the motion papers did not identify a “specific claim or defense”

⁴ Wilsons Ventures adopts the arguments asserted by the County Board of Arlington in its Brief in Opposition to Petition for Appeal filed today, October 27, 2025.

Wilson's Ventures intended to raise in support of the EHO amendment. Pet. at 6. Petitioners do not include a citation to authority, and the reason is apparent: Rule 3:14 does not require a would-be intervenor to set out the specific "claim or defense germane to the subject matter" it would pursue (if granted leave to intervene) in its motion, nor should it: intervention might only be granted as to part of an ongoing case. A distinguishing and unique fact in this case was the Court issued a bench ruling prior to Wilson's Ventures even knowing about the lawsuit, thus by the time it knew of the Court's ruling, it was clear from the ruling that its property rights were significantly impacted in a most negative way. This was not an ongoing case in the traditional sense, because trial had already occurred and the trial court issued a bench ruling, thus the impact of the ruling was known by the time a motion for intervention was possible. While trial had taken place and a bench ruling issued, the motion to intervene was filed prior to the trial court issuing a written opinion and entering its final order, as well as two separate stay orders. The trial court erred in denying the motion to intervene.

Moreover, *assuming arguendo*, Rule 3:14 requires, an intervenor to state a claim or defense, Wilsons Ventures specifically asserted in its Motion for Leave to Intervene that “[its] rights are thus implicated, it is a necessary and indispensable party, and it wishes to assert claims and defenses germane to the subject matter of this proceeding.” R. 6997. The County in its Answer and Affirmative Defenses never raised the defense that Wilsons Ventures or any of the EHO permit holders, known to the County and the Petitioners, prior to trial were necessary or indispensable parties. R. 2193-2194. The Motion to Intervene was based on the defense of Wilsons Ventures being a necessary and indispensable party to the case.

Further, Wilsons Ventures argues in its Memorandum of Points and Authorities:

[i]n this case, the Court has not yet issued a letter opinion or entered a final order, and [Wilsons Ventures] is timely in seeking **to defend** its property rights and material interest which will be diminished or defeated in this action. ...

For the reasons set out and discussed *supra*, the not yet final ruling in this action has impaired the property rights of [Wilsons Ventures], to its significant detriment. In order to protect **and defend** its rights, [Wilsons Ventures] should be given leave to intervene in this action.

R. 6990-91. Emphasis added. The Court of Appeals was correct in its ruling in reversing the judgment and remanding it for “the addition of Wilssons Ventures as a party to [Petitioners’] suit.” Wilsons Ventures expects that now that leave has been granted to intervene, it would be up to the trial court to require it to set a process and time for it to file a responsive pleading as a defendant / interested party. It is clear that Wilsons Ventures asserted a defense and the Petitioner’s argument fails.

CONCLUSION

For the reasons set out and discussed *supra*, and for each of them, the Court of Appeals reached the correct conclusions in its consideration of this matter. There are no issues worthy of consideration by this Honorable Court. The instant Petition should be denied, and the matter returned to the trial court below for further action consistent with the ruling of the Court of Appeals.

Respectfully submitted,
WILSON'S VENTURES, LLC,
A Virginia limited liability company,

/s/ Roy R. Shannon, Jr.

Roy R. Shannon, Jr., VSB No. 66724
Minturn Wright, VSB No. 90402
SHANNON & WRIGHT LLP
124 S. Royal Street
Alexandria, Virginia 22314
571-620-1930
rshannon@shannonwright.law
mwright@shannonwright.law
Respondent

CERTIFICATE OF SERVICE AND FILING

I certify that that this Brief in Opposition complies with, excluding the cover page, table of contents, table of authorities, and certificate, the word limit and contains 3,629 words, and that on October 27, 2025, an electronic copy of this Brief in Opposition was filed with the Clerk of this Court in Portable Document Format (PDF), and served on the parties to this action by electronic mail on the following:

Gifford Hampshire
David Gogal
Blankingship & Keith, PC.
4020 University Drive, Suite 300
Fairfax, Virginia 22030
ghampshire@bklawva.com
dgogal@bklawva.com

Matthew R. McGuire
Arktouros PLLC

1717 N St., N.W., Suite 1
Washington, D.C. 20036
(804) 301-0921
mmcguire@arktouros.co
Counsel for Petitioners

Ryan C. Samuel
Acting County Attorney
Whitney A. Davis
2100 Clarendon Blvd., Suite 403
Arlington, Virginia 22201
rsamuel@arlingtonva.us
wdavis1@arlingtonva.us

Monica Monday
Ryan Starks
Michael Finney
Noah Sullivan
Gentry Locke
919 E. Main Street, Suite 1130
Richmond, Virginia 23219
monday@gentrylocke.com
starks@gentrylocke.com
finney@gentrylocke.com
nsullivan@gentrylocke.com
Counsel for Respondent, County Board

/s/ Roy R. Shannon, Jr.
Counsel