VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 28th day of December, 2017.

U-Haul Real Estate Company, Appellant,

against Record No. 170292
Circuit Court No. CL15-1837-01

City Council of the City of Falls Church, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Arlington County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is error in the judgment of the circuit court.

U-Haul Real Estate Company owns property in the City of Falls Church. The adjacent land, which is owned by Northern Virginia Regional Park Authority ("NVRPA"), borders a stream bed. Due to their proximity to the stream, a portion of U-Haul's property and nearly all of NVRPA's property are located within a resource protection area ("RPA"), as designated by the Falls Church City Code ("City Code").

In 2013, U-Haul hired a contractor to repave a 1,941 square foot portion of its parking lot, 1,670 square feet of which was within the RPA. Neither U-Haul nor the contractor submitted a site plan to the City or obtained a permit before commencing this project. An inspector for the City noticed the ongoing work and discovered that debris was being deposited "onto and over the stream bank" on NVRPA's property. The City immediately issued a stop work order. It then informed U-Haul that the order would be lifted only after U-Haul submitted a site plan that complied with (1) the City's "stormwater" requirements to restore NVRPA's land in the RPA, and (2) all other zoning requirements applicable to U-Haul's original repaving project.

U-Haul submitted a "draft plan," which claimed that U-Haul's contractor dumped debris onto 2,680 square feet of NVRPA's land. However, nearly a year later, the City had not approved this plan because it only addressed the City's stormwater requirements. Eager to begin

the restoration of the RPA, the City sent a letter to U-Haul stating, "[n]otwithstanding the requirement for an approved site plan, the Department of Public Works views [U-Haul's] draft plan as sufficient to begin restoration work in the RPA." Nevertheless, the City maintained that U-Haul was still required to submit an edited site plan that complied with all zoning requirements applicable to the original repaving project.

U-Haul completed the restoration work but did not submit an edited site plan because, in its view, such a plan was not required to repave a small portion of its parking lot. Rather, it requested a ruling from the Zoning Administrator, who determined that City Code §§ 48-1134(a)(1) and (5) required a site plan because "the work redevelops a paved area that significantly affects pedestrian, vehicular or drainage facilities, and . . . took place within a [RPA]." U-Haul appealed to the Board of Zoning Appeals ("BZA"), which reversed the Zoning Administrator's decision upon finding that (1) the project's effect on "pedestrian, vehicular or drainage facilities" was not "significant," (2) the area of NVRPA's land that was disturbed by the contractor should not be included when calculating the total area of land disturbed by U-Haul's project, and (3) U-Haul's project did not disturb more than 2,500 square feet and therefore did not fall within the purview of § 1134(a)(5).

Upon the City's petition, the circuit court issued a writ of certiorari and reversed the BZA's decision. After acknowledging that there was "no basis to dispute the BZA's factual conclusion" that the project's effect was not "significant," the court turned to City Code § 1134(a)(5), which states that "[a] site plan shall be required for"

> [a]ny disturbance of land exceeding 2,500 square feet and all development or redevelopment in a Chesapeake Bay preservation area overlay district, resource protection area or resource management area as defined in article IV, division 16 of this chapter.

The court concluded that this provision required U-Haul to obtain a site plan because its project "disturbed" in excess of 2,500 square feet and constituted a "development" in a RPA. Its analysis relied on City Code § 48-2, which provides definitions to be "used in the interpretation and construction of [Chapter 48]" "*[u]nless the context otherwise requires.*" City Code § 48-2(a) (emphasis added). Relevant here, it defines "development" as

> any manmade change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading streets and *paving*, excavation or drilling operations, or storage of equipment or materials.

City Code § 48-2 (emphasis added).

On appeal, U-Haul initially contends that the context of City Code § 1134(a)(5) requires that its terms be defined not by § 48-2, but by article IV, division 16 of Chapter 48. This argument presents "a pure question of law, subject to review de novo on appeal." *Board of Zoning Appeals v. Eastern Shore Dev. Corp.*, 277 Va. 198, 200, 671 S.E.2d 160, 161 (2009).

While City Code § 1134(a) generally outlines those construction activities within the City for which a site plan is required, the context of subsection (a)(5) is more specific. It details when a site plan is required for construction within "a Chesapeake Bay preservation area overlay district, resource protection area or resource management area *as defined in article IV, division 16* of [Chapter 48]." City Code § 1134(a)(5) (emphasis added).

Notably, article IV, division 16 is entitled "Chesapeake Bay Preservation Area Overlay District." City Code § 48-824 (repealed). Its "purpose" is "to protect and improve the water quality of the Chesapeake Bay." *Id.* To that end, it "establishes criteria for the [C]ity *to use* in determining whether or not to grant, deny, or modify requests to . . . *obtain an approved site plan in Chesapeake Bay preservation areas*." *Id.* (emphases added). Moreover, article IV, division 16, defines *all* of the terms appearing in City Code § 48-1134(a)(5), including "land disturbance," "development," "redevelopment," "Chesapeake Bay preservation area," "resource protection area," and "resource management area." *Id.* City Code § 48-2, on the other hand, only defines the term "development."

Thus, article IV, division 16 and City Code § 1134(a)(5) are contextually interwoven. Article IV, division 16 explicitly states that its provisions are to be used by the City when determining whether to approve site plans for work in RPAs, and it supplies a comprehensive set of definitions that are necessary for this analysis. City Code § 1134(a)(5), in turn, explicitly references the definitional section of article IV, division 16 and uses terms that are defined

therein. Given this context, we conclude that the definitions provided by article IV, division 16 apply to the terms in City Code § 1134(a)(5).[1]

In light of this conclusion, we now consider whether U-Haul's plans to repave a portion of its parking lot required a site plan. As noted, City Code § 1134(a)(5) states that "[a] site plan shall be required" for "[a]ny disturbance of land exceeding 2,500 square feet" and "all development or redevelopment in a . . . [RPA]." As explained below, we conclude that neither of these criteria apply to the facts of this case.

From its inception, the scope of U-Haul's project was limited to repaving a 1,941 square foot portion of its parking lot, well below the 2,500 square feet threshold that triggers the requirement for a site plan. *Id.* Nevertheless, the circuit court concluded that "U-Haul disturbed . . . more than 2,500 square feet" "either by removing and repaving *or by improperly dumping onto [NVRPA] land.*" (emphasis added). Thus, the circuit court's analysis turns on its determination that the 2,680 square feet of NVRPA's land that was disturbed by U-Haul's contractor must be considered when deciding whether a site plan was required.

The City Code requires that the owner of any property subject to a site plan "join[] in the site plan and agree[] to be bound by [its] requirements." City Code § 48-1137(4). Plainly, U-Haul did not own any of NVRPA's property, and NVRPA did not agree for any of its property to be used in U-Haul's project. *See* City Code § 48-2 (defining "[s]ite area, gross" as "all that property shown on a site plan which, at the time of the site plan submittal, is owned or controlled by the person or entity under whose authority the site plan is being submitted"). In fact, NVRPA's property was disturbed only as a result of the illegal and unforeseen actions of U-Haul's contractor. Consequently, U-Haul could not obtain a site plan encompassing this

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[1] Article IV, division 16 of Chapter 48 was repealed in March 2013, six months before the stop work order was issued. Nevertheless, City Code § 48-1134(a)(5) has not been amended and therefore continues to explicitly incorporate the definitions of article IV, division 16 by reference. Generally speaking, "[a] statute of specific reference incorporates the provisions referred to from the statute *as of the time of adoption* without subsequent amendments." *State Highway & Transportation Commissioner v. Gordon*, 222 Va. 712, 714, 284 S.E.2d 593, 594 (1981) (emphasis in original) (quoting 2A Sutherland Statutory Construction § 51.08 (4th ed. 1973)). Accordingly, the "repeal of the statute referred to will have no effect on the reference statute." *Id.* (emphasis removed). Thus, the repeal of article IV, division 16 does not affect our conclusion that its definitions apply to the terms in City Code § 1134(a)(5).

property, and the illegally disturbed area cannot be considered when determining whether such a site plan is necessary.

This is not to say that U-Haul can avoid the consequences of its contractor's actions. Indeed, U-Haul accepted responsibility and, at significant expense, restored the disturbed land. But the City cannot use this illegally disturbed land to require U-Haul to obtain a site plan for a project that would not otherwise need one. Thus, excluding NVRPA's land from the analysis, we are left with only the 1,941 square feet of U-Haul's parking lot that was repaved. Land disturbances of this magnitude do not require a site plan under City Code § 1134(a)(5).

Turning to the second criteria under City Code § 1134(a)(5), U-Haul would still be required to obtain a site plan if its project constitutes a "development" in a RPA. Article IV, division 16 defines "development" as "any alteration of the natural environment of improved and unimproved real estate . . . including, but not limited to, demolition, grading, filling, excavation, and building." City Code § 48-828. Under this definition, the question becomes whether U-Haul's project resulted in an "alteration of the natural environment." We conclude that it did not.

"[W]hen general and specific words are grouped [in a statute], the general words are limited by the specific and will be construed to embrace only objects similar in nature to those things identified by the specific words." *Martin v. Commonwealth*, 224 Va. 298, 302, 295 S.E.2d 890, 893 (1982). In the above provision, the general phrase "any alteration of the natural environment" is associated with a list of specific examples, "demolition, grading, filling, excavation, and building." City Code § 48-828. Notably, each of these examples contemplates a project that causes the property to assume different and new characteristics.[2] As such, the meaning of the phrase "alteration of the natural environment" must be restricted to encompass similar activities. Webster's Third New International Dictionary 63 (1993) (defining "alter" to mean "to cause to become different in some particular characteristic.").

U-Haul's project did not result in new or differing characteristics on its property. Rather, by replacing the old asphalt in its parking lot with new asphalt, U-Haul was *maintaining* the property's already existing characteristics. Such maintenance does not constitute a

[2] Such alterations are important in Chesapeake Bay preservation areas as they may affect runoff into nearby tributaries and other state waters.

"development" under article IV, division 16.[3] Indeed, to hold otherwise would mean that even repairing a pothole within a RPA could trigger the need for a site plan.

In sum, U-Haul's project was neither a "disturbance of land exceeding 2,500 square feet" nor a "development . . . in a . . . [RPA]." Accordingly, the circuit court erred by holding that U-Haul was required to obtain a site plan under City Code § 1134(a)(5). We therefore reverse the judgment of the circuit court, affirm the decision of the BZA, and enter final judgment in favor of U-Haul.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Clerk

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[3] Even if we applied the definition of "development" in City Code § 48-2, as urged by the City, we would still conclude that U-Haul's project does not require a site plan. Under § 48-2, "development" is defined as

> any *manmade change* to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading streets and *paving*, excavation or drilling operations, or storage of equipment or materials.

City Code § 48-2 (emphases added). In this definition, the meaning of the general phrase "any manmade change" must be "construed to embrace only objects similar in nature to" the listed examples. *Martin*, 224 Va. at 302, 295 S.E.2d at 893. The City seizes upon the word "paving" in this list to argue that repaving U-Haul's parking lot was a development. However, § 48-2 does not list "paving" by itself as an example of a development. Rather, it identifies "grading streets and paving" as a *single* example. Indeed, each of the listed examples contemplates construction that affects a change in the characteristics of the real estate. As U-Haul's project did not effect such a change, but rather maintained the existing characteristics of the property, it was not a "development" under City Code § 48-2.