Circuit Court for Garrett County
Case No. C-11-CV-24-000046

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1764

September Term, 2024

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IN THE MATTER OF WILLIAM DODSON

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Berger,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: January 13, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case arises from a disagreement between neighbors -- William and Catherine Dodson ("the Dodsons") and Brian and Cristina Weaver ("the Weavers") -- who both own adjoining residential properties adjacent to Deep Creek Lake ("the Lake"). The disagreement concerns the placement of the Dodsons' and Weavers' respective docks in the waters of the Lake. Because the Lake is owned by the State and subject to the regulations of the Department of Natural Resources ("the Department"), waterfront property owners like the Dodsons and Weavers are required to obtain a permit from the Department prior to placing a dock in the Lake. Such permits allow a permittee to place a dock only within a specific area determined by the regulations ("area of use").

In October 2023, the Dodsons applied to move their dock from its current location, which is within their designated area of use, to a location 20 feet north. On November 21, 2023, the Department denied the Dodsons' request after concluding that the requested move would not only be outside of the Dodsons' area of use but would also place the dock within the Weavers' designated area of use.

The Dodsons appealed the Department's decision to the Office of Administrative Hearings ("OAH"). Thereafter, the Department moved for summary decision, which the Administrative Law Judge ("ALJ") granted. The Dodsons subsequently appealed the ALJ's decision to the Circuit Court for Garrett County which reversed after concluding that material facts were in dispute. The Department filed a timely appeal.

On appeal, the Department presents one question for our review, which we have rephrased as follows:[1]

> Whether the Administrative Law Judge correctly granted summary decision in favor of the Department after concluding that no material facts were in dispute and that the Department's denial of Dodson's dock relocation request complied with the Code of Maryland Regulations.

For the following reasons, we shall reverse the judgment of the circuit court and remand with instructions to affirm the decision of the Administrative Law Judge.

## BACKGROUND

### *Regulatory Background*

In 2000, the State acquired Deep Creek Lake ("the Lake") in Garrett County when it purchased both the land under the Lake and the surrounding buffer strip from the Pennsylvania Electric Company ("Penelec"). COMAR 08.08.01.01B; *see also Deep Creek Lake NRMA: History*, MD. DEP'T OF NAT. RES., https://dnr.maryland.gov/publiclands/Pages/western/deepcreeknrma.aspx#hist [https://perma.cc/TJX9-VL53] (last visited Nov. 6, 2025). Under the State Park System, the Department of Natural Resources ("the Department") manages the Lake and the buffer strip as the Deep Creek Lake Natural Resources Management Area. COMAR 08.07.06.02F(5). The Department regulates the

[1] The Department phrased the question as follows:

> Did the ALJ correctly grant summary decision in favor of the Department, where no material facts were in dispute and the Department's denial of Mr. Dodson's dock relocation request complied with the Deep Creek Lake regulations?

use of both the Lake and the surrounding buffer strip for the purpose of protecting the Lake as a natural resource, preserving the Lake's ecological balance, and furthering the highest use of the Lake as a recreational resource. COMAR 08.08.01.01A.

The buffer strip is the ribbon of land surrounding the Lake, which borders the waters of the Lake on one side and private residential and commercial properties on the other side.[2] Between 2001 and 2007, the State endeavored to recoup some of the costs associated with acquiring the Lake and surrounding buffer strip by conducting a buydown land sale program. Under this program, the State offered non-commercial landowners whose property is immediately adjacent to the buffer strip ("adjacent landowners") the opportunity to "buy down" a portion of the buffer strip between the property line of their original fee simple parcel ("build lot") and a point closer to the waters of the Lake ("buydown parcel"). Buydown parcels, therefore, are situated between the property line of a build lot adjacent to the buffer strip ("the Penelec line") and the remaining buffer strip which the State maintains sole ownership of. Buydown parcels are subject to a Conservation Easement held by the State to the use of the Department. The Conservation Easement runs with the land and is therefore binding on all future owners of the buydown parcel. Additionally, the Conservation Easement restricts buydown parcel owners' use of their respective buydown parcels.

[2] The Code of Maryland Regulations more specifically defines the buffer strip as "an area above the 2,462 feet lake elevation and not presently fenced or posted by the Department to limit or exclude use by the public." COMAR 08.08.01.02B(2).

Pursuant to the Code of Maryland Regulations ("Regulations" or "COMAR"), the general public -- "including persons who own property adjacent to the buffer strip" -- may utilize the buffer strip for certain permissible uses. COMAR 08.08.03.01A. Such permissible uses include "walk[ing] along any portion of the buffer strip," "us[ing] any portion of the buffer strip for access to and from" the Lake in an emergency, and, with a valid fishing license, "fish[ing] from the buffer strip." COMAR 08.08.03.01B. All other uses not prohibited by the Regulations require a permit issued from the Department. COMAR 08.08.03.01C. Use of the Lake and the buffer strip, by permit or otherwise, is allowed "only as a matter of privilege." COMAR 08.08.01.01B; *see also* COMAR 08.08.05.01A(1) ("A permit does not constitute an interest in property or a proprietary right in the buffer strip or the lake.").

To use the buffer strip for a non-prohibited purpose outside of the purposes for which the general public may use the buffer strip, adjacent landowners may apply for a variety of different permits, including a Buffer Strip Use Permit ("BSU Permit"). COMAR 08.08.01.02B(1); 08.08.05.02. A BSU Permit allows adjacent landowners to make certain uses of the buffer strip, such as installing a dock subject to certain conditions. COMAR 08.08.05.03. BSU Permits are issued by the Department through the lake manager, who is the "official of the Department who is designated to manage the lake on behalf of the Department in accordance with [the Regulations]." COMAR 08.08.01.02B(13). Under the Regulations,

> [t]he lake manager may deny a permit application, or limit the use, location, type, or position of a facility authorized under a permit, if the lake manager determines that this action is

> necessary to protect public safety or welfare or to carry out the polices set forth in COMAR 08.08.01.01.

COMAR 08.08.05.01D(1)(a).

Upon approving a permit application, "[t]he lake manager shall designate on the permit the area of the buffer strip which the lake manager has determined may be used by [the] permittee." COMAR 08.08.05.01C(4). What constitutes this so-called area of use is determined pursuant to the Regulations. COMAR 08.08.05.01C. Typically, as is the situation here, the area of use is "that area of the buffer strip located directly in front of the property through which the permittee claims access to the buffer strip as is determined by extending the permittee's property lines to the water's edge." COMAR 08.08.05.01C(1). When certain property related factors would produce an anomalous result using this method, such as when a property is located in a cove, different rules not relevant here apply. *See* COMAR 08.08.05.01C(2).

***Factual Background***

In October 2019, William and Catherine Dodson ("the Dodsons") purchased lakefront property ("the Dodson Property") from Patricia Doorenbos ("Doorenbos"). The Dodson Property consists of two parcels -- a build lot and a buydown parcel.[3] According to the Dodsons' deed, the build lot has 110.2 feet of frontage on the Lake, as measured by the Penelec line. The width of the Dodsons' buydown parcel, on the other hand, is 112.09 feet. When purchased in 2019, the Dodson Property was undeveloped. Thereafter, the

[3] The buydown parcel was purchased in 2002 by Maryland Land Development, LP, and was conveyed to Doorenbos in 2004.

Dodsons subsequently built a residence on the build lot.

William Dodson ("Dodson") first obtained a BSU Permit in 2019 and has renewed it annually since. Between 2019 and 2021, Dodson obtained a Miscellaneous Use BSU Permit which did not authorize him to place a dock in the Lake. Since 2022, however, Dodson has obtained a Type A BSU Permit which allows him to place a dock extending into the Lake from the portion of the buffer strip designated as his area of use. The area of use assigned to Dodson for his BSU Permit is approximately 40 feet wide. When Dodson first obtained his Type A BSU Permit, the lake manager came to the Dodson Property to mark the designated area of use within which the Dodsons could place their dock. Thereafter, the Dodsons placed their dock within the 40-foot-wide designated area of use.

On October 15, 2023, Dodson submitted a BSU Permit Application to the Department requesting to relocate his dock along a portion of the buffer strip 20 feet north of the dock's current location ("dock relocation request"). By letter dated November 21, 2023, the lake manager denied Dodson's request, citing the "historic files" concerning the respective areas of use for the Dodson Property and the neighboring property to the north, owned by the Weavers.[4] The lake manager's denial letter further provided that:

[4] At the time, Eric Null ("Null") served as the lake manager. Null resigned from the position effective August 13, 2024, and an acting lake manager was appointed. *Property Owners' Association of Deep Creek Lake Updates*, DEEP CREEK TIMES, https://deepcreektimes.com/property-owners-association-of-deep-creek-lake-updates/ [https://perma.cc/K8J3-J598] (last visited Nov. 6, 2025). Thereafter, Cristina Sanders was appointed to serve as lake manager, effective May 14, 2025. *Deep Creek Lake NRMA: Meet the Team*, MD. DEP'T OF NAT. RES., https://dnr.maryland.gov/publiclands/Pages/western/deepcreeknrma.aspx#team [https://perma.cc/KHQ8-23R8] (last visited Nov. 6, 2025). Because precisely who was serving as lake manager is

> The proposed move to the north would locate the dock structure in the area of use for [the Weavers' BSU Permit]. This area of use for [the Weavers' BSU permit] was established in 2004 by the then-Lake Manager based on COMAR 08.08.05.01C(1). As a result of this area of use assignment, your dock structure must remain in the approximately 40 feet [sic] area of use where it is currently installed; you may not relocate it as you requested in your application as that would encroach on the designated area of use for [the Weavers' BSU Permit].

The lake manager enclosed in the denial letter a 2004 correspondence from the lake manager to Doorenbos and the Weavers ("2004 correspondence"). The 2004 correspondence was sent amidst "ongoing disputes" between Doorenbos and the Weavers regarding their "respective buffer strip use sites and the Doorenbos buydown parcel." The 2004 correspondence further noted that "[r]egardless of the configuration of a buydown parcel, specifically that recently acquired by the Doorenboses, the historic use and configuration of each property owner's [BSU Permit] site remains unchanged." Finally, the 2004 correspondence included a "plat delineating the[] historic sites" which illustrated the approximately 40-foot-wide area of use assigned to what is now the Dodson Property and a larger area of use assigned to the Weavers. According to the plat, the Weavers' area of use includes a portion of the buffer strip located directly in front of both the Dodsons' buydown parcel and the Penelec line of the Dodsons' build lot.

irrelevant to our forthcoming analysis, we shall simply use the term "lake manager" regardless of who was serving in the role at the time.

***The Administrative Proceeding***

On December 12, 2023, Dodson requested that the Office of Administrative Hearings ("OAH") conduct an appeal hearing concerning the lake manager's denial of his dock relocation request. Thereafter, the Department filed a motion for summary decision. In its motion, the Department contended that the denial of Dodson's dock relocation request complied with the Regulations and that Dodson failed to present a genuine dispute of material fact concerning whether the Department's denial of his dock relocation request was proper. Further, the Department underscored the lake manager's discretion in configuring areas of use under the Regulations. The Department, therefore, asserted that it was entitled to summary decision as a matter of law. In support of its motion, the Department included an affidavit of the lake manager stating that his denial of Dodson's dock relocation request was based on three things: the areas of use for the Dodsons' and Weavers' respective BSU Permits as determined by an application of the applicable Regulations, his review of the permit files for both the Dodsons and the Weavers, and his familiarity with both the Dodson and Weaver properties.

Dodson opposed the Department's motion, arguing that there were material facts in dispute, namely the correct area of use. Specifically, Dodson argued that his area of use should be 110 feet wide to match the frontage of his build lot. In support of his motion, Dodson included an affidavit in which he noted that the Weavers' dock was located in front of the Dodsons' buydown parcel. Additionally, Dodson noted in his affidavit that, when he first applied for a BSU Permit to install a dock, the lake manager "stated that [the Department] allowed the adjacent owners, the Weavers, to place their dock in front of [the

Dodson Property] because the water was deeper than in front of the Weavers' property and [the Dodson] property was not developed."

On March 29, 2024, the OAH Administrative Law Judge ("ALJ") granted the Department's motion for summary decision. The ALJ concluded that the correct area of use for Dodson's BSU Permit "is not a difference in material fact" because Dodson's "contention regarding the proper 'area of use' relies on the agreed-upon fact that his []Penelec frontage is approximately 110 feet." Further, the ALJ concluded that the Department's interpretation and application of COMAR 08.08.05.01C(1) was correct:

> [Dodson's] assertion that his property is associated not only with frontage of about 110 feet, but also with an area of use of about 110 feet, relies upon a curious and fundamental misinterpretation of COMAR 08.08.05.01C, which is the regulatory framework for determining a permittee's unique area of use. Specifically, "[a] permittee may use the area of the buffer strip located directly in front of the property through which the permittee claims access to the buffer strip *as is determined by extending the permittee's property lines to the water's edge*." COMAR 08.08.05.01C(1) (emphasis added).
>
> To conclude that [Dodson's] area of use is approximately 110 feet[] . . . one must draw lines *perpendicular to the shoreline of the lake* from each of the two corners of the [Dodson build lot] that are closest to the water. . . . However, notably, in defining area of use the regulation does not equate the term to frontage. If the Department meant to define "area of use" simply as equivalent to a property owner's frontage[] . . . "as is determined by extending the permittee's property lines to the water's age"[] would be entirely extraneous. . . .
>
> In short, [Dodson's] asserted area of use is not based on an "extension" of property lines to the water's edge, as contemplated by COMAR 08.08.05.01C(1); rather, . . . [] it requires using two points (corners) on [Dodson's] property lines to draw entirely new lines perpendicular to the Buffer

> Strip line. In contrast, the area of use as described by the Department (and upon which [the lake manager] relied in the denial) uses the lines delineating the property's northern and southern borders and extends them to the water's edge, consistent with COMAR 08.08.05.01C(1). . . . If "extending" property lines instead meant drawing lines parallel to the Buffer Strip line, property lines would never intersect, which would render superfluous COMAR 08.08.05.01C(2) (which addresses conflicts caused by intersecting extended property lines).

The ALJ went on to conclude that, even if Dodson's interpretation "was not contrary to COMAR 08.08.05.01C, the relevant provisions make clear that the determination of 'area of use' is ultimately made by and thus subject to the discretion of the lake manager[.]" Accordingly, the ALJ concluded that the Department was entitled to summary decision as a matter of law.

***The Circuit Court Proceeding***

On April 15, 2024, Dodson filed a Petition for Judicial Review in the Circuit Court for Garrett County. The Weavers intervened as interested parties because Dodson's relocation request would interfere with their designated area of use. Dodson argued that the ALJ erred in concluding that no material facts were in dispute and that the lake manager has discretion to determine a permittee's area of use. The Weavers agreed that determining the area of use for a permittee is not within the lake manager's discretion but asserted that the Regulations had been properly applied in determining the areas of use for both the Weavers' and Dodsons' BSU Permits. The Department largely reiterated the arguments it made to the ALJ. A hearing was held on September 24, 2024, and by order issued on October 8, 2024, the circuit court reversed the ALJ's decision and remanded for further

hearing. The circuit court explained the grounds upon which it was reversing the ALJ's order as follows:

> Upon hearing the arguments of the parties, this Court finds that the Lake Manager's consideration, or lack thereof, of i) the development of [Dodson's] lot subsequent to the determination of the [Weavers'] "area of use," and ii) the impact of the purchase of the Buydown Parcel by [Dodson] are material facts in dispute.

The Department filed a timely appeal.

## STANDARD OF REVIEW

When we are called upon to review "the final decision of an administrative agency such as the [OAH], . . . we look[] through the circuit court's" decision. *People's Couns. for Balt. Cnty. v. Surina*, 400 Md. 662, 681 (2007) (citation omitted). Our inquiry, therefore "is not whether the [circuit court] erred, but whether the administrative agency erred." *Frederick Classical Charter Sch., Inc. v. Frederick Cnty. Bd. of Educ.*, 454 Md. 330, 369 (2017) (quoting *Spencer v. Md. State Bd. of Pharmacy*, 380 Md. 515, 524 (2004)).

In the present case, the agency decision we are asked to review is an ALJ's order granting summary decision in the Department's favor. "It is well-settled that the propriety of granting a motion for summary [decision] is a legal question which we review de novo." *Brawner Builders, Inc. v. State Highway Admin.*, 476 Md. 15, 30–31 (2021) (citing *Rossello v. Zurich Am. Ins. Co.*, 468 Md. 92, 102 (2020)). We must, therefore, "step into the shoes" of the ALJ and determine whether summary decision was proper under COMAR 28.02.01.12. *Id.* at 31. "[A]ppellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency." *In re HRVC Ltd. P'ship*, 266

Md. App. 391, 430 (2025) (quoting *Chelsey v. City of Annapolis*, 176 Md. App. 413, 426 n.7 (2007)). We, therefore, cannot "pass upon issues presented . . . for the first time on judicial review and that are not encompassed in the final decision of the [ALJ]." *Dep't of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 123 (2001).

In conducting our review, "[w]e construe all facts in favor of . . . the non-moving party, and we 'independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law."[5] *Burr v. Md. State Ret. & Pension Sys. of Md.*, 217 Md. App. 196, 203 (2014) (quoting *Suder v. Whiteford, Taylor & Preston, LLP*, 413 Md. 230, 239 (2010)); *see also* COMAR 28.02.01.12D(5). Material facts are those "that will somehow affect the outcome of the case." *Nerenberg v. RICA of S. Md.*, 131 Md. App. 646, 660 (2000) (citation and internal quotation omitted). Accordingly, "[e]ven where there are alleged factual disputes, if the factual disputes are irrelevant, they will not prevent the entry of summary [decision]." *Brawner Builders, Inc.*, 476 Md. at 31 (citation omitted).

## DISCUSSION

### I. The Administrative Law Judge properly granted summary decision in favor of the Department.

On appeal, the Department contends that the ALJ correctly granted summary decision in its favor because Dodson failed to dispute any material fact and the

[5] Because this standard mirrors "that applied in the courts in determining whether to grant summary judgment to a party," cases interpreting the rules of summary judgment are instructive in the summary decision context. *Assateague Coastkeeper v. Md. Dep't of Env't*, 200 Md. App. 665, 699 (2011).

Department's denial of Dodson's dock relocation request complied with the relevant Regulations. Specifically, the Department argues that the key material fact which Dodson disputed in the proceedings before the ALJ -- the correct area of use associated with his BSU Permit -- did not, in fact, amount to a difference in material fact. The Department reasons that, because the differing assertions of the correct area of use associated with Dodson's BSU Permit depend not on Dodson's frontage, which the parties agree is approximately 110 feet, but on the legal interpretation of the area of use regulation, the dispute is of a legal, rather than a factual, nature. Accordingly, because the ALJ properly concluded that the Department's interpretation of COMAR 08.08.05.01C(1) was correct, summary decision in favor of the Department was proper.

Dodson disagrees and argues that the ALJ erred in granting summary decision to the Department for three reasons. First, Dodson contends that there were material facts in dispute, namely the Department's custom and practice as it relates to determining a permittee's area of use which, if applied to the Dodson Property, would have resulted in his designated area of use being 110 feet wide. Next, Dodson asserts that the ALJ improperly determined witness credibility and decided issues of fact when it stated it was "not persuaded" by several of Dodson's assertions. Finally, Dodson argues that COMAR 08.08.05.01C(1) requires that a permittee's area of use be equivalent to the frontage of their build lot, therefore the ALJ erroneously concluded that the Regulations vest the lake manager with discretion in determining a permittee's area of use. As we shall explain, we agree with the Department that there are no material facts in dispute and the Department is entitled to judgment as a matter of law.

**A. There are no material facts in dispute.**

We first must determine whether there exists any dispute of material fact such that summary decision was improper. Dodson contends that, in addition to the two material facts that the circuit court concluded were in dispute, the Department's custom and practice in interpreting and applying COMAR 08.08.05.01C(1) was a material fact in dispute which should have precluded summary decision. We shall address each of Dodson's contentions in turn.

First, Dodson argues that the ALJ failed to consider his factual assertion that, had the Department applied its custom and practice in determining areas of use to his property, he would have been afforded an area of use spanning the length of his frontage -- 110 feet -- rather than the 40-foot-wide area of use he is currently afforded. The Department counters that what Dodson disputes, namely the correct area of use associated with his BSU Permit, is not an issue of material fact. Rather, the Department contends that Dodson's purported factual assertion is a legal argument that the ALJ properly ignored when determining whether there were any material facts in dispute.

A question of fact requires the determination of what happened. *See, e.g.*, *Tyson Farms, Inc. v. Uninsured Emps. Fund*, 471 Md. 386, 406–07 (2020) ("[T]he question of whether an employer-employee relationship exists is a question of fact."). The interpretation of a regulation, on the other hand, is a question of law. *Md. Dep't of the Env't v. Assateague Coastal Tr.*, 484 Md. 399, 450–51 (2023) ("An agency decision based on regulatory and statutory interpretation is a conclusion of law.").

Here, the dispute concerning the correct area of use associated with Dodson's BSU Permit does not depend on any disputed fact.[6] Indeed, both Dodson and the Department agree that the frontage of Dodson's build lot is approximately 110 feet and that Dodson's current area of use is 40 feet wide. Instead, the dispute concerns a question of law, namely the interpretation and application of COMAR 08.08.05.01C(1). As we shall explain further below, this dispute depends on precisely what it means to "extend[] the permittee's property lines to the water's edge." COMAR 08.08.05.01C(1). Because the dispute as to the correct area of use associated with Dodson's BSU Permit depends on a question of law, rather than a question of fact, we conclude that such dispute did not raise an issue of material fact.

Next, Dodson argues that the two material facts which the circuit court found warranted reversal of the ALJ's decision were also in dispute during the administrative proceedings and should have precluded summary decision. Specifically, the circuit court found "that the Lake Manager's consideration, or lack thereof, of i) the development of [Dodson's] lot subsequent to the determination of the [Weavers'] 'area of use,' and ii) the

[6] To the extent that Dodson's assertion contains a factual element (e.g., whether the Department deviated from its custom and practice of determining an area of use when it determined Dodson's area of use), we note that Dodson failed to make more than a general allegation. *See, e.g.*, *Davis v. Regency Lane, LLC*, 249 Md. App. 187, 204 (2021) ("General allegations that 'do not show facts in detail and with precision are insufficient to prevent summary [decision].'"). Indeed, Dodson did not provide any evidence that the Department has determined any other permittee's area of use in the manner which he asserts is the Department's custom and practice. Accordingly, even if the correct area of use associated with Dodson's BSU Permit was a question of fact, Dodson's bare allegations regarding the Department's custom and practice were insufficient to preclude summary decision in favor of the Department.

impact of the purchase of the Buydown Parcel by [Dodson]" were material facts in dispute. We shall address each in turn.

The Department urges us to reject Dodson's contention that the extent to which the lake manager considered the development of the Dodson Property after the Weavers' area of use was determined was a material fact in dispute because Dodson failed to raise the issue in the summary decision proceedings before the ALJ. Our review of the record leads us to agree with the Department.

Notably, in neither his opposition to the Department's motion for summary decision nor his accompanying affidavit did Dodson assert that the lake manager failed to consider the construction of a residence on his build lot subsequent to the lake manager's determination of the areas of use associated with either the Weavers' or Dodsons' BSU Permit. The only asserted fact before the ALJ regarding changes to the involved properties was the lake manager's statement that "[t]here have been no changes in the private parcels . . . that would require a change to the Area of Use [associated with Dodson's BSU Permit]." Dodson did not dispute this factual assertion in the proceedings before the ALJ. It was not until he appealed the ALJ's decision to the circuit court that Dodson asserted the lake manager should have considered the construction of a residence on his property when determining whether to approve his dock relocation request. We, therefore, conclude that the extent to which the lake manger considered the development of a residence on the Dodson Property after the area of use was memorialized in the 2004 correspondence was not a fact -- material or not -- in dispute at the time the ALJ rendered its decision.

Finally, the Department contends that, contrary to Dodson's assertion and the circuit court's conclusion, the lake manager's consideration, or lack thereof, of the "impact of the purchase of the Buydown Parcel by [Dodson]" was not in dispute. The Department reasons that Dodson failed to dispute the lake manager's attestation that "regardless of the configuration of a buydown parcel, the historic use and configuration of each property owner's Area of Use remains unchanged pre- and post-buydown" because Dodson failed to provide any evidence to controvert this fact.

We, again, agree with the Department. Indeed, Dodson did not provide any evidence or argument to dispute the lake manager's assertion that the acquisition of a buydown parcel does not affect a permittee's area of use. What's more, as the ALJ noted, Dodson's argument that his area of use should be 110 feet wide (representing the frontage of Dodson's build lot) -- rather than 112 feet wide (representing the width of Dodson's buydown parcel) -- is indicative that Dodson was not even arguing that his buydown parcel should affect his designated area of use. Accordingly, we conclude that the lake manager's consideration, or lack thereof, of the impact of Dodson's buydown parcel was not a disputed material fact. The ALJ, therefore, was correct to conclude that there was no dispute as to any material fact.

**B. The ALJ did not make credibility determinations or decide issues of fact.**

We next address Dodson's contention that the ALJ improperly made witness credibility determinations and decided issues of fact when deciding to grant summary decision in favor of the Department. In considering a motion for summary decision, an ALJ may not "decide any issue of fact or credibility." *Eng'g Mgmt. Servs., Inc. v. Md.*

*State Highway Admin.*, 375 Md. 211, 226 (2003). Rather, an ALJ is constrained to determine only "whether such issues exist." *Id.*

Dodson argues that the ALJ improperly decided issues of fact or credibility in two instances. Specifically, Dodson suggests that the ALJ's statements -- "I am not persuaded" and "I am unpersuaded" -- are indicative of the ALJ making factual and credibility determinations. The State counters that in the two instances to which Dodson refers, the ALJ was discussing Dodson's legal assertions rather than making any factual or credibility determinations with respect to the lake manager's testimony or any other evidence. We agree with the Department that the instances to which Dodson cites did not involve issues of fact or credibility, and instead concerned legal arguments which the ALJ properly rejected.

The first instance Dodson cites occurred during the ALJ's discussion of the lake manager's discretion to determine areas of use under the Regulations. Specifically, Dodson objects to the ALJ's statement that "[c]ertainly the lake manager's discretion is both guided and limited by the regulatory framework for determining an area of use; here, I am unpersuaded that the determination was not within that framework." Given this context, it is evident that the ALJ was not deciding any issue of fact or credibility. Rather, the ALJ was making a legal conclusion -- namely that the Department's denial of Dodson's dock relocation request complied with the Regulations -- based on undisputed facts. Indeed, as discussed *supra*, there was no dispute concerning either the frontage of Dodson's build lot or his current area of use. Accordingly, in our view, what the ALJ was

"unpersuaded" by here was Dodson's interpretation of the Regulations which is a legal, rather than factual, argument.

The next occurrence that Dodson cites arose when the ALJ was discussing the lake manager's consideration of the 2004 correspondence memorializing the areas of use associated with the Weavers' and Doorenbos' BSU Permits. There, the ALJ stated: "I am not persuaded that [the lake manager's] consideration of the 2004 Correspondence, which [Dodson] has characterized as 'not a final decision' and 'not subject to administrative appeal,' was in any way improper when the Department made its decision on the [dock relocation request]." In our view, this is merely another example of the ALJ making a legal conclusion, rather than a factual or credibility determination. To be sure, the ALJ went on to explain that Dodson had failed to refute the lake manager's assertion that the 2004 correspondence was only a factor in the decision to deny Dodson's dock relocation request and was not determinative. In this context, therefore, it is clear that the ALJ was making the legal conclusion that the lake manager's consideration of the 2004 correspondence complied with the Regulations. Accordingly, we conclude that neither cited instance is indicative of the ALJ making improper factual or credibility determinations.

**C. The Department is entitled to judgment as a matter of law.**

Having concluded that there is no genuine dispute as to any material fact, we now turn to the question of whether the Department was entitled to judgment as a matter of law. Because the propriety of the Department's denial of Dodson's dock relocation request is inextricably linked to the question of the correct areas of use to be associated with the Dodsons' and Weavers' BSU Permits, our analysis here turns on the interpretation of the

area of use regulation. We must, therefore, consider the parties' conflicting interpretations of COMAR 08.08.05.01C(1).

"When we construe a[] . . . regulation, 'the principles governing our interpretation of a statute apply.'" *Concerned Citizens of Cloverly v. Montgomery Cnty. Plan. Bd.*, 254 Md. App. 575, 605 (2022) (quoting *Hranicka v. Chesapeake Surgical, Ltd.*, 443 Md. 289, 298 (2015)). We, therefore, "begin[] with the 'plain meaning' of the [regula]tory language and may end there if the meaning is plain enough." *Id.* at 605–06 (quoting *State v. Roshchin*, 446 Md. 128, 140 (2016)). "We 'will give effect to the [regulation] as it is written' so long as 'the words of the [regulation], construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning.'" *Id.* at 606 (quoting *Moore v. RealPage Util. Mgmt., Inc.*, 476 Md. 501, 511 (2021)).

The relevant area of use regulation, COMAR 08.08.05.01C(1), provides that "[a] permittee may use that area of the buffer strip located directly in front of the property through which the permittee claims access to the buffer strip as is determined by extending the permittee's property lines to the water's edge." The parties disagree as to what it means to "extend[] the permittee's property lines to the water's edge."

According to the Department, this provision requires an extension of the side property lines of a permittee's eligible lot to the water's edge. Further, the Department asserts that the Regulations vest the lake manager with discretion in configuring a permittee's area of use. Under the Department's interpretation, therefore, Dodson's designated 40-foot-wide area of use complies with COMAR 08.08.05.01C(1) because it

was configured by extending the side property lines of Dodson's build lot[7] from markers on the Penelec line to the water's edge.

Dodson counters that in the typical situation, like that at issue here, the Regulations command that the lake manager's task in configuring a permittee's area of use be mechanical, rather than discretionary.[8] According to Dodson, in such situations,

[7] Dodson does not argue that the area of use associated with his BSU Permit should be configured by extending the property lines of his buydown parcel. Notably, as discussed *supra*, the area of use which Dodson asserts is correct -- 110 feet -- is tied to his build lot, rather than his buydown parcel. Accordingly, we assume, without deciding, that the Department is correct that an area of use is to be configured based on a permittee's build lot under COMAR 08.08.05.01C(1).

[8] Dodson acknowledges that the Regulations do vest the lake manager with some discretion when it comes to configuring a permittee's area of use. Indeed, under COMAR 08.08.05.01D(1)(a):

> The lake manager may deny a permit application, or limit the use, location, type, or position of a facility authorized under a permit, if the lake manager determines that this action is necessary to protect public safety or welfare or to carry out the policies set forth in COMAR 08.08.01.01. In making a determination to grant or deny a permit, the lake manager shall consider:
>
> (i) Public safety;
> (ii) The configuration of the lake frontage;
> (iii) Fluctuation of the water line;
> (iv) Depth of water at the proposed site;
> (v) Density of existing boat usage or other recreational uses;
> (vi) Number of existing, permitted docks in the area;
> (vii) Potential navigational problems;
> (viii) Preservation of aquatic vegetation and wildlife in the area; and
> (ix) Protection of the ecological balance of the lake.

"frontage" and "area of use" are synonymous. COMAR 08.08.05.01C(1), therefore, dictates that a permittee's designated area of use be equivalent to their frontage. In Dodson's case, this interpretation would require that his area of use be 110 feet wide. As we shall explain, we agree with the Department's interpretation and application of COMAR 08.08.05.01C(1) and, therefore, conclude that the Department was entitled to judgment as a matter of law.

Notably, and contrary to Dodson's asserted interpretation, the relevant regulation does not equate a permittee's area of use to their frontage. In fact, COMAR 08.08.05.01C(1) does not use the word "frontage" at all. Rather, the relevant provision directs the lake manager to determine a permittee's area of use by "extending the permittee's property lines to the water's edge." COMAR 08.08.05.01C(1). The meaning of "extend[]," therefore, is central to the interpretation of COMAR 08.08.05.01C(1).

Merriam-Webster defines extend as "to cause to be longer." "[E]xtending the permittee's property lines to the water's edge," therefore, requires a continuation of a permittee's existing property lines. Because an extension of a permittee's property lines running parallel to the buffer strip would not reach the water's edge, the plain language of

Here, it is undisputed that the lake manager did not utilize these criteria in deciding to deny Dodson's dock relocation request. Further, it is the Department's position that these criteria are only relevant to determining whether to grant or deny a permit, which is a prerequisite to determining a permittee's area of use. Dodson does not argue that the lake manager was required to consider these criteria when reviewing his dock relocation request. Accordingly, we assume, without deciding, that the Department is correct that COMAR 08.08.05.01D(1)(a) is inapplicable here. We, therefore, do not address the extent to which this provision vests the lake manager with discretion in the configuration of a permittee's area of use.

the Regulation clearly requires an extension of a permittee's side property lines. It is then that area of the buffer strip -- between the extended side property lines -- that becomes a permittee's area of use under COMAR 08.08.05.01C(1). The Department's interpretation, which requires extending the side property lines of a permittee's build lot, is, therefore, all that COMAR 08.08.05.01C(1) requires.

Dodson's interpretation, on the other hand, is irreconcilable with the plain meaning of COMAR 08.08.05.01C(1). As the ALJ noted, Dodson's interpretation relies on a "curious and fundamental misinterpretation" of the area of use regulation. Indeed, Dodson's interpretation -- that a permittee's area of use must be equivalent to their frontage -- would require that perpendicular lines be drawn from the two corners of a permittee's build lot closest to the buffer strip to the water's edge. Rather than "extending the permittee's property lines," Dodson's interpretation would require drawing entirely new lines perpendicular to the buffer strip. COMAR 08.08.05.01C(1) does not require that a permittee's area of use be configured in such a manner. We, therefore, are unpersuaded by Dodson's interpretation and instead adopt the Department's interpretation of COMAR 08.08.05.01C(1).

The only question remaining, therefore, is whether the Department complied with its legally correct interpretation of COMAR 08.08.05.01C(1) when configuring the areas of use associated with the Dodsons' and Weavers' BSU Permits. We are satisfied that it did. Indeed, the lake manager appended a plat illustrating the areas of use for the Dodsons' predecessor and the Weavers to the 2004 correspondence, which was sent with the letter denying Dodson's dock relocation request. Both areas of use depicted in the plat are

comprised of that area of the buffer strip between the extended side property lines of the respective properties. Because we conclude that the Department's interpretation of COMAR 08.08.05.01C(1) is correct and there is no genuine dispute as to any material fact, we conclude that the Department is entitled to judgment as a matter of law.[9]

## CONCLUSION

For the foregoing reasons, we conclude that there is no dispute as to any material fact concerning the Department's denial of Dodson's dock relocation request. We also conclude that the Department's interpretation of COMAR 08.08.05.01C(1) is legally correct, and the Department is entitled to judgment as a matter of law. We, therefore, reverse the judgment of the circuit court and remand with instructions to affirm the ruling of the Administrative Law Judge.

**JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY REVERSED. CASE REMANDED WITH INSTRUCTIONS TO AFFIRM THE RULING OF THE ADMINISTRATIVE LAW JUDGE. COSTS TO BE PAID BY APPELLEE.**

[9] Dodson also argues that the ALJ erred in concluding that the Regulations vest the lake manager with discretion in configuring a permittee's areas of use. The ALJ's conclusion as to the lake manager's discretion was an alternative ruling. Indeed, the ALJ stated that "[e]ven if [Dodson's] interpretation of 'area of use' was not contrary to COMAR 08.08.05.01C, the relevant provisions make clear that the determination of 'area of use' is ultimately made by and thus subject to the discretion of the lake manager[.]" Because we conclude that the Department's interpretation of COMAR 08.08.05.01C(1) is legally correct and that such an interpretation was applied in the present case, we decline to consider whether a permittee's area of use is subject to the discretion of the lake manager.