Circuit Court for Baltimore City
Case No. 24C20003418

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

Nos. 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, & 123

September Term, 2022

IN THE MATTER OF THE PETITION OF GHENRETNSAE G. MANGISTEAB, *et al.*

Graeff,
Kehoe,
Zic,

JJ.

Opinion by Graeff, J.

Filed: December 20, 2022

In this consolidated appeal, appellants, owners and lessees of 31 liquor stores in Baltimore City ("Owners"), challenge the decision of the Baltimore City Board of Municipal and Zoning Appeals ("BMZA") upholding the validity of the Baltimore City Zoning Code, Article 32 § 18-701 (2017), a zoning ordinance requiring liquor store operations in residential zones to discontinue as of June 5, 2019, after a two-year period of amortization. Owners each filed individual petitions for judicial review in the Circuit Court for Baltimore City. The circuit court consolidated the petitions and affirmed the decision of the BMZA.

On appeal, Owners present the following question for this Court's review:

Is Zoning Code § 18-701 (2017) illegal and unenforceable?[1]

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In 1971, the Mayor and City Council of Baltimore ("the City") enacted zoning laws prohibiting the sale of alcoholic beverages in residential zoning districts. BALT. CITY, MD.,

[1] Owners listed the following subheadings after the question presented:

A. "Mandatory Termination of Lawful Use after [an] Amortization Period is Unconstitutional and *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 129 A.2d 363 (1957) and its Progeny should be overturned";
B. "The two (2) year amortization period is not a reasonable amortization period over which the use may be continued"; and
C. "By passing ordinances granting a rezoning from a residential to a commercial zone to other affected liquor stores without any distinction, does enforcement against these Appellants result in an arbitrary and capricious distinction without any rational basis in violation of the equal protection guarantees of the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights."

ZONING ORDINANCE 1051 (1971). Although liquor stores, at the time referred to as liquor stores–package goods, were no longer "permitted uses" in residential zones, the ordinance provided that liquor stores currently in existence were allowed to continue operating as a nonconforming use. ZONING ORDINANCE 1051, ch. 8 § 8.0-3(d) (1971) (providing that such uses could continue unless they were discontinued for 18 consecutive months). *See Trip Assocs., Inc. v. Mayor & City Council of Baltimore*, 392 Md. 563, 573 (2006) ("A valid and lawful nonconforming use is established if a property owner can demonstrate that before, and at the time of, the adoption of a new zoning ordinance, the property was being used in a then-lawful manner for a use that, by later legislation, became non-permitted.").

On December 5, 2016, after the Baltimore City Council voted in favor of new zoning reforms, the Mayor signed into law a comprehensive new zoning ordinance, Article 32 of the Baltimore City Zoning Code. The legislation, dubbed "Transform Baltimore," included restrictions on liquor stores, now referred to as retail goods establishments, with alcoholic beverage sales. Section 18-701 of Article 32 provides:

> § **18-701. Retail goods establishment – with alcoholic beverage sales.**
>
> (a) *In general.*
>
> Except as provided in subsection (b) of this section, retail goods establishments with alcoholic beverage sales in a residential district must be terminated as follows:
>
> (1) for an establishment with alcoholic beverage sales that existed as a lawful nonconforming use before June 5, 2017, no later than June 4, 2019, notwithstanding the issuance of any prior use permit as a nonconforming package goods liquor store; and
>
> (2) for an establishment that becomes nonconforming on or after June 5, 2017, whether by the enactment of this Code, by the enactment of an amendment to this Code, or by the

> reclassification of the property, no later than 3 years after the date on which the use became nonconforming.[2]

BALT. CITY, MD., ZONING CODE, art. 32 § 18-701 (2016). In June 2019, the Baltimore City Department of Housing and Community Development ("HCD") began issuing violation notices to Owners who continued to sell liquor.

Owners appealed to the BMZA, challenging the validity of § 18-701 as a matter of law. Owners argued that § 18-701 was illegal and unenforceable as an unconstitutional taking of a vested property right. Although they acknowledged that, in *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301 (1957), the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[3] held that amortization without compensation was proper if amortization provisions were reasonable, they argued that this decision should be overturned. They argued that Maryland should follow Pennsylvania's approach, set forth in *Pennsylvania Northwest Distributors, Inc. v. Zoning Hearing Board of Township of Moon*, 526 Pa. 186, 195 (1991), and conclude that a protected vested property right cannot be taken without compensation under Maryland's Declaration of Rights.

[2] The ordinance provided for an extension due to hardship. Counsel for appellants represented to BMZA that none of the Owners qualified for a hardship extension, and there are no issues raised on appeal in this regard.

[3] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

Alternatively, Owners argued that, even if imposing an amortization period on a nonconforming use was not *per se* illegal, the two-year amortization period for liquor sales in residential areas was unreasonable. Owners stated:

> It is inconceivable under any circumstances that a liquor store could recoup its investment after only two (2) years. All of the liquor stores have been lawful non-conforming uses since at least 1971 (with the exception of the liquor stores that were re-zoned from commercial to residential, but were in existence for many years prior thereto).
>
> Based upon the investment into the liquor store business, both in money and time and effort, the nature of the liquor store business and the virtual uselessness of the structure without a liquor store business use, a two (2) year amortization period to realize its investment is unreasonable. Liquor licenses are depreciated under IRS regulations at fifteen (15) years. Real property is depreciated at thirty-nine (39) years. The structures housing the liquor stores will in all likelihood be rendered useless and abandoned upon discontinuance.

Additionally, Owners contended that moving to another location was not a viable option because other provisions of the zoning code "severely limit[] where those liquor stores could be relocated in a commercial zone."

Attached to their memorandum, Owners included: documents reflecting real estate data for their properties, including copies of deeds for the properties; copies of HCD violation notices issued to Owners who sold liquor after June 4, 2019; and letters sent by the Baltimore City Solicitor to City Council in 2018 and 2019, recommending that the City Council deny proposed bills to re-zone other liquor stores from residential to commercial. The City Solicitor's letters argued that such rezoning bills would create "unlawful spot zoning [that] would be only for the benefit of the property owner."

The City argued that § 18-701 was reasonable and enforceable as written, and Owners were "pursu[ing] this appeal without valid legal basis for the purpose of delaying enforcement" of the law. The City asserted that Maryland law was clear that amortization laws phasing out non-conforming uses were constitutional, and not takings, when the amortization period constitutes a reasonable balance of the public interest with private losses. It argued that the two-year amortization period was reasonable, noting that the purpose of § 18-701 was to reduce violence in Baltimore's neighborhoods, and Owners had "failed to provide evidence of any losses, let alone any that outweigh the public interest here."

The City attached exhibits to its memorandum, including, in pertinent part:

(1) a copy of a notice from the Baltimore City Planning Commission to liquor licensees, dated July 12, 2012, informing them of "an informational meeting to discuss proposed zoning legislation that will impact your business";

(2) sign in sheets showing a list of individuals who attended a hearing about Transform Baltimore on July 20, 2012, including counsel for appellants;

(3) local news articles documenting public hearings about Transform Baltimore;

(4) a copy of notices from HCD sent to Owners in January 2018, stating that § 18-701 prohibited use of the property for liquor sales and the use must be terminated by June 4, 2019;[4]

(5) a conditional use application granted by the City to one building owner who sought to use the bottom floor of his residential building as a grocery store and deli;

[4] The notices advised that a waiver of hardship extension could be granted if the appellant met the factors set forth in § 18-701(2)(c) of the Zoning Code and if the request was received no later than June 4, 2018.

(6) a map showing the locations of the 105 nonconforming liquor licenses which were subject to discontinuance under §18-701[5];

(7) a 2013 memorandum from a community organization advocating for amortization as a solution to "crime clusters around liquor establishments";
(8) a 2013 memorandum from the Baltimore City Health Department to the BMZA, discussing the public health benefits of phasing out nonconforming liquor stores, citing studies showing an association between off-premise alcohol sales and violent crime, and stating that Transform Baltimore would positively impact rates of violent crime, obesity, physical activity and pedestrian safety, and diet and nutrition among City residents;

(9) an October 3, 2013 transcript of the Health Department's comments at a zoning hearing for Transform Baltimore, stating that the Health Department supports the passage of Transform Baltimore, including its provisions phasing out nonconforming liquor stores and limiting new liquor stores, because the bill would "promote and protect the health of a city through its zoning code" and eliminate liquor stores, which are "strongly and consistently associated with higher rates of violent crime[,] murder, rape, and aggravated assault"; and

(10) a 2013 Johns Hopkins University study, which the Health Department used in its comments at the October 3, 2013 hearing, concluding that "off-premise alcohol outlets double the risk of violent crime and are specifically associated with increased homicide rates."

On October 8, 2019, the BMZA held a hearing on all of Owners' appeals, captioned as *In re: 2643 Cecil Avenue, et al*.[6] The BMZA consolidated the cases so that it could

[5] All of the nonconforming liquor licenses were Class A licenses for off-premise liquor sales.

[6] The case caption listed above appears on the hearing transcript. The BMZA's resolution refers to the case as *In the Matter of the Petition of: SEO Cheong Weon, et al., C/O Peter A. Prevas*. The hearing consolidated Appeal Nos. 2019-145 to 2019-157, 2019-173 to 2019-177, 2019-196 to 2019-206, 2019-286; 2019-304 to 2019-319, 2019-321 to 2019-329, 2019-331 to 2019-337.

address all parties under one legal standard, while providing each appellant with the opportunity to make factual arguments.

Peter Prevas, representing all Owners, called Melvin Kodenski, an attorney who specialized in liquor laws and licensing and represented several of the appellants in obtaining their liquor licenses. Mr. Kodenski testified that, under the new zoning code, Owners with liquor licenses had limited options to relocate their businesses, noting that they could apply to relocate only within their same district, and they had to be located more than 300 feet away from any religious institution, educational institution, or other liquor store. Owners could seek a change of zoning for their location. Alternatively, they could negotiate a transfer of their liquor license to another business already zoned to allow liquor sales, but this would be "a tough road."

Virginia Ferguson, owner of Jemella's Liquors & Cutrate at 1831 Mosher Street, testified that she sold liquor and convenience-type items at her store, such as "snacks, paper towels, toilet paper, sodas, candies, things like that." She owned the store for 32 years, and in 2018, she received a notice by mail, informing her that she may need to shut down her store. She did not undertake any efforts to relocate after receiving the notice, however, because she "wasn't really aware that [she] could move . . . And then there is no place really to move the business to."

Owners argued that § 18-701 was facially unreasonable because nonconforming uses are lawful uses, and lawful uses are vested property rights that cannot be taken without compensation. Alternatively, they argued that, even if an amortization period could validly

phase out liquor stores in residential areas, two years was an insufficient amount of time because Owners faced limited options for relocation. Although they could, in theory, attempt to obtain rezoning, they asserted that this would require Owners to wait for at least six to nine months, and their chances of success depended on if their City Councilperson received "a favor" in exchange for "get[ting] a new bill passed." Similarly, Owners could change their business models to sell goods other than alcohol, but this would mean much smaller profits. Owners also argued that some Owners who purchased their storefronts after 2012 were not aware of the change in the law. Additionally, the study from Johns Hopkins University, showing a relationship between liquor stores and violent crime, was not persuasive because "[y]ou can take a liquor store in a low income area, you could replace it with a barber shop, bail bond business. You're going to get the same result . . . convenience stores without liquor licenses . . . have the same exact issues." Owners argued that, even if amortization periods generally are lawful, the two-year period imposed under §18-701 should be discarded in favor of a 15-year period, running from the effective date of the law.

The City argued that the two-year amortization period was constitutional *per se* because *Grant* permitted the City to phase out "nonconforming disfavored uses" and exercise its police power to remove liquor stores that "attract harmful behavior through no fault of the owners." The law also was valid as applied to Owners because they had sufficient time to make other plans, and they "knew this was coming. And they have been able to amortize their investment over time." The City asserted that Owners' business

losses did not exceed the public benefits of enforcing § 18-701, and Owners failed to explain why two years was an insufficient time to phase out alcohol sales. It argued that

> there would be a huge value . . . in having these stores operate as food stores . . . . [S]helves that hold bottles could easily hold cans of soup or groceries. So there's no investment in the physical plan of the store that's specific to the prohibited use . . . .
>
> There are many things that the owners could have done to try and amortize their investments . . . . These are two- and three-story properties. They could have residences upstairs. They could be used for many things. The properties have value independent of the stores.

At the conclusion of the hearing, a BMZA Chairman read into the record a letter from one Baltimore City Councilperson to the BMZA supporting "the City's efforts to uphold the validity of the termination of alcohol sales" at four of Owners' liquor stores located in her district.[7] The letter provided that

> [t]he presence of alcohol sales in these areas in the midst of otherwise residential properties too often represent disruptions to safety and occasions of loitering and even drug trafficking. So late in the process it is frustrating that so many establishments have ignored this termination and bought time with this appeal while still selling alcohol. We ask this Board to reject this appeal.

On July 28, 2020, the BMZA issued its resolution. It found that § 18-701 did not constitute an unconstitutional taking, and "the mandatory termination of retail goods establishments with alcoholic beverage sales in residential zoning districts was constitutionally valid." It noted that amortization without compensation, when reasonable, is a valid means of discontinuing a nonconforming use, and the evidence showed that the

[7] The properties included "2643 Cecil Avenue; 2701 Hugo Avenue; 1601 East 29th Street; and 1700 Cliftview Avenue."

legislation was passed to fight an increased crime rate that accompanied an oversaturation of liquor stores in residential districts, sufficient notice was given to Owners, and Owners failed to show why their investment could not be amortized over the two-year time period. Additionally, the BMZA noted that Owners held no vested right in their storefronts, nor in their liquor licenses, because they should have expected that the liquor licenses would be phased out over time and were on notice that the licenses were only valid for use at a "suitable premises zoned for the sale of liquor."

The BMZA then found that two years was a reasonable amortization period for the termination of liquor stores in residential zoning districts. It found that the evidence on the social harm, i.e., the increase in crime "related to the oversaturation of liquor stores in residential areas," was probative, and the City Council "was not arbitrary or capricious in enacting comprehensive rezoning to rectify this harm." It cited to other examples involving similar amortization periods. *See, e.g.*, *Eutaw Enterprises, Inc. v. County of Baltimore*, 241 Md. 686, 697–98 (1966) (finding an 18-month amortization period for check-cashing operations in residential and office zones reasonable). The BMZA concluded that, "considering the evidence of social harm, an amortization period of two to three years for the termination of liquor stores in residential neighborhoods is not unreasonable." It further noted that, although "the Code revisions prohibit alcohol beverage sales in residential districts, they do not prohibit a host of other commercial uses," such as "grocery stores, bakeries, clothing stores, barbershops, and other similar uses."

The BMZA then addressed Owners' reasonableness "as applied" challenge. It noted that no Owner had demonstrated that the mandatory termination of the sale of alcohol beverages, as applied, was "'unduly oppressive' or 'burdensome' such that it outweigh[ed] the public's gain." Owners could not show hardship because they always knew, regardless of how long they had been in business, that there was a substantial risk to their investments: (1) Owners who bought their storefronts after June 2017 had actual or constructive notice of the law and were obligated to exercise "reasonable diligence" in discovering any defects in the title to their properties; (2) Owners who bought their properties between 2012 and 2017 were on notice because they began selling alcohol after the legislation was introduced; and (3) Owners who acquired their properties between 1971 and 2012 had actual or constructive notice because liquor sales in residential districts had been nonconforming since 1971. With respect to Charles W. White Jr., the sole Owner who obtained his property before 1971, the BMZA found that he failed to show that the legislation was unduly oppressive, compared to the public benefit of termination of liquor stores, because he "had over forty years of operation as a nonconforming . . . disfavored use" and was provided "sufficient time to find an alternative use for the property" during the amortization period. Accordingly, the BMZA denied Owners' constitutional challenge to the validity of § 18-701.

On August 10, 2020, Owners filed petitions for judicial review. The Circuit Court for Baltimore City consolidated the petitions and affirmed. The court stated that "use of a property is not a vested property right," and for Owners to prevail in their challenge, they

had to show that "[t]he private loss [they would] sustain by the termination of their nonconforming use [was] so burdensome as to outweigh the public gain achieved by the enforcement of the ordinance." It noted the evidence of the public gain and the absence of compelling evidence that the ordinances were overly burdensome to Owners, who "failed to quantify or adequately describe the loss." The court concluded that there was a rational basis for the legislation and the amortization period was not unreasonable. It stated:

> the record contains substantial evidence upon which the resolution was issued. This [c]ourt does not find specifically for this record that the resolution is unconstitutional, that it was somehow issued without due process of law to all interested individuals and affected parties who had standing . . .
>
> The resolution with respect to the passage of 18-701 does not exceed the statutory authority or jurisdiction of [BMZA].

This appeal followed.[8]

STANDARD OF REVIEW

In *Board of Trustees for the Fire & Police Employees' Retirement System of the City of Baltimore v. Mitchell*, 145 Md. App. 1 (2002), this Court interpreted a provision of the Baltimore City Code and set forth the following standard of review:

[8] Thirty-one (31) Owners filed notices of appeal, including: Ghenretnsae G. Mangisteab, *et al.*, *t/a* New Fulton Liquors; Dol Bok Bae, *et al.*, *t/a* Biddle Liquors; Lance Joon Kim, *et al.*, *t/a* Young's Liquors; Dreamers LLC, *et al.*, *t/a* Payson's Corner; Bao Ying Lin, *et al.*, *t/a* Yuan & Zheng Liquor & Grocery; Charles W. White, Jr.; T&S Brothers, Inc., *t/a* Eden Café; Jae Sun Lee, *et al.*, *t/a* Decker Liquor; Hyung Man Lee, *et al.*, *t/a* Fox Liquor; Byung Kwon Kang, *et al.*, *t/a* J&M Food Market; Stee LLC, *et al.*, *t/a* Wolfe Liquors; Kyung Silk Yoo, *et al.*, *t/a* Cliftview Market; Young Kim, *et al.*, *t/a* Royal Liquors; Geul Lee, *et al.*, *t/a* Grossman's Liquor; William Ferguson, *et al.*, *t/a* Jemella's Liquors & Cutrate; Michael Sium, *et al.*, *t/a* Didi Liquors; Cheong W. Seo, *et al.*, *t/a* H&S

> In reviewing an administrative decision, such as the one before us, our role "is precisely the same as that of the circuit court." *Dep't of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 303-04, 641 A.2d 899 (1994). We review the decision of the administrative agency itself, *Ahalt v. Montgomery County*, 113 Md. App. 14, 20, 686 A.2d 683 (1996), and not the findings of fact and conclusions of law made by the circuit court. *Consumer Protection Division v. Luskin's, Inc.*, 120 Md. App. 1, 22, 706 A.2d 102 (1998), *rev'd in part on other grounds*, 353 Md. 335, 726 A.2d 702 (1999). We further note that . . . a "final determination of the hearing examiner" is "presumptively correct" and it may not be disturbed on appeal unless it is "arbitrary, illegal, capricious or discriminatory."

Id. at 8–9. A decision by a zoning agency is presumptively correct and not arbitrary, capricious, or illegal if it satisfies the "fairly debatable test," i.e., the agency had substantial evidence on the record supporting its decision, such that "reasonable persons could come to different conclusions." *Purich v. Draper Props., Inc.*, 395 Md. 694, 706 (2006) (quoting *White v. North*, 356 Md. 31, 44 (1999)).

DISCUSSION

Owners contend that § 18-701 is illegal and unenforceable for three reasons. First, the mandatory termination provisions of the law "are an unconstitutional taking of a vested property right" and *Grant* and its progeny should be overturned. Second, the two-year amortization period "is not a reasonable amortization period over which the use may be

Market; Felix Maria Mendoza, *et al.*, *t/a/* B&M Deli & Grocery; Jung Ho Lee, *et al.*, *t/a* Denison Liquors; Sook Pak, *et al.*, *t/a* East Curley Liquor; Ung Suk Hong, *et al.*, *t/a* Elmley Deli; Gebrebrhan K. Gebezgi, *et al.*, *t/a* D & J Beer and Wine; Kun Hi Yoo, *et al.*, *t/a* Al's Liquor; Duk Choon Kim, *et al.*, *t/a* Corner Liquor Market; Rafael de Jesus Basilio Checo, *et al.*, *t/a* Madeline Deli Grocery, Beer and Wine; Michael Ghebru, *et al.*, *t/a* Doc's Liquor; Xiuqin Yang, *et al.*, *t/a* Gordon's Cut Rate; Sallie D. Mayfield, *et al.*, *t/a* Dasmir Liquor & Grocery Store; Dahlak Partners LLC, *et al.*, *t/a* Seven Day Store; 4300 Falls Road LLC, *et al.*, *t/a* Medfield Mini Mart; and Domingo Kim, *et al.*, *t/a* Upland Liquors.

continued." Third, by passing ordinances granting rezonings to other "affected liquor stores," the City created an "arbitrary and capricious distinction without any rational basis." We will address each argument, in turn.

I.

Mandatory Termination Provisions are Unconstitutional

Owners argue that a provision requiring the mandatory termination of a lawful use after an amortization period is an unconstitutional taking of a vested property right. As Owners acknowledge, however, Maryland appellate courts have repeatedly held that it is constitutional to terminate a nonconforming use by amortization without compensation, as long as there is a reasonable time period to end the use. *Grant*, 212 Md. at 315. *Accord Lone v. Montgomery County*, 85 Md. App. 477, 498 (1991) ("The constitutionality of terminating nonconforming uses by amortization, after a reasonable and appropriate specified time, has long been established in Maryland.").

In *Grant*, 212 Md. at 314, the Supreme Court noted that "[e]very zoning ordinance impairs some vested rights because it affects property owned at its effective date." An "ordinance that restricts future uses and one that requires existing uses to stop after a reasonable time" is "not a difference in kind but one of degree." *Id.* at 315. The Court held that amortization was a proper way to eliminate a nonconforming use. *Id.* at 316.

The ordinance in *Grant* provided that billboards in residential districts in Baltimore City must be removed within five years. *Id.* at 305. The City Council passed the ordinance after considering "numerous complaints" made about the billboards, including that there

had been fires near the signs and bottles deposited around them, and that the billboards were nuisances contributing to the "'downhill' blight of the neighborhood." *Id.* at 318. The City Council also heard testimony from: (1) a consultant for the Baltimore City Planning Commission, who stated that the billboards had a "depreciating effect" on property values; and (2) lay witnesses who similarly expressed that the billboards negatively affected their quality of life. *Id.* at 318–19.

The owners of the billboards and lessees of the properties where they were situated argued that the amortization period was an unconstitutional taking of their vested property rights without compensation. The Court rejected that argument. It stated:

> The elimination of existing uses within a reasonable time does not amount to a taking of property nor does it necessarily restrict the use of property so that it cannot be used for any reasonable purpose. Use of a reasonable amortization scheme provides an equitable means of reconciliation of the conflicting interests in satisfaction of due process requirements.

Id. at 312 (quoting *City of Los Angeles v. Gage*, 274 P.2d 34, 40 (1954)). The Court held that an amortization period of five years to remove nonconforming billboards in residential areas was valid and reasonable, noting the presumptive validity of legislative findings, the extended hearings on the issue, the evidence of the harm that billboards caused in residential areas, and the lack of evidence in the record that any harm to the owners or lessees was "sufficiently substantial compared to the public good." *Id.* at 316, 321.

Since the *Grant* decision in 1957, Maryland's appellate courts have discussed the concept of amortization of nonconforming uses on several occasions. *See Trip Assocs., Inc.*, 392 Md. at 575 (A nonconforming use is not favored and "may be reduced to

conformance or eliminated . . . by 'amortization,' that is, requiring its termination over a reasonable period of time."); *Gough v. Bd. of Zoning Appeals for Calvert Cnty.*, 21 Md. App. 697, 706 (1974) (As long as there is a reasonable relationship between the amortization period in the ordinance and the nature of the nonconforming uses, the ordinance is not unconstitutional). Thus, the constitutionality of a termination of a nonconforming use with a reasonable amortization period is well established.

Owners believe, however, that *Grant* and its progeny should be overturned. As counsel for appellant acknowledged at oral argument, however, if that were to occur, it must be done by the Supreme Court of Maryland, not this Court. *Foster v. State*, 247 Md. App. 642, 651 (2020) ("It is not up to this Court . . . to overrule a decision of the [Supreme Court] that is directly on point . . . . The rulings of the [Supreme Court] remain the law of this State . . . unless those decisions are either explained away or overruled by the [Supreme Court] itself."), *cert. denied*, 475 Md. 687, 257 A.3d 1156 (2021) (cleaned up). *Johns Hopkins Hosp. v. Correia*, 174 Md. App. 359, 382 (2007) ("[T]his Court does not have the option of disregarding [Supreme Court] decisions that have not been overruled, no matter how old the precedent may be."), *aff'd*, 405 Md. 509 (2008). *Accord Livesay v. Baltimore County*, 384 Md. 1, 14 (2004) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)) (*Stare decisis* "is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."). We will not,

therefore, overrule *Grant* and hold that termination of a nonconforming use after a reasonable amortization is unconstitutional.

II.

Reasonable Period of Amortization

Owners next contend that, assuming the validity of a zoning ordinance that provides for a reasonable period of amortization for discontinuance of a nonconforming use, the two-year amortization is not a reasonable time period. Owners cite to the following explanation of the constitutionality of amortization to eliminate nonconforming uses, set forth in 4 Rathkopf's *The Law of Zoning and Planning* § 74:23 (4th ed. 2022):

> [W]hen requiring the termination of a nonconforming use within a specified period of time as a proper exercise of police power, the public benefit must outweigh the private injury—i.e., not only must the ordinance requiring the termination of a nonconforming use be reasonable in and of itself, it must also be reasonable as it applied to a particular property owner. In other words . . . the trial court must first determine whether the ordinance provision is facially reasonable, that is, whether the subject of compulsory termination and the time allotted for them to discontinue operation appear to be reasonable. If the trial court finds the ordinance to be reasonable on its face, it must then determine, after an evidentiary hearing, whether the ordinance is reasonable as applied to the plaintiff.

Owners contend that "discontinuance of a lawful use after only two (2) years is per se unreasonable."[9]

[9] Counsel for Owners conceded at oral argument that there was insufficient evidence of actual losses incurred by the individual Owners due to the amortization provisions, and therefore, Owners were challenging the BMZA's determination that the two-year period was facially reasonable, not the determination that the ordinance "as applied" to Owners was reasonable.

In *Harris v. Mayor & City Council of Baltimore*, 35 Md. App. 572, 580, *cert. denied*, 280 Md. 731 (1977), this Court explained:

> In ascertaining the reasonable period during which an owner of property must be allowed to continue a non-conforming use, a balance must be found between social harm and private injury. We cannot say that a legislative body may not in any case, after consideration of the factors involved, conclude that the termination of a use after a period of time sufficient to allow a property owner an opportunity to amortize his investment and make other plans is a valid method of solving the problem.

Reasonableness "depends . . . on the importance of the public gain in relation to the private loss." *Grant*, 212 Md. at 315. As long as an ordinance providing for amortization "provides for a reasonable relationship between the amortization and the nature of the nonconforming use," it is not unconstitutional. *Trip Assocs., Inc.*, 392 Md. at 575.

Here, the record demonstrates that the purpose of § 18-701 was to remediate the detrimental effects created by liquor stores in residential areas, which had been non-conforming for nearly 50 years. There was ample evidence showing a relationship between off-premise liquor sales and violent crime in Baltimore City. Based on this evidence regarding the harmful effects of liquor stores, including all the testimony given to the City before passing the ordinance by both the public and health and safety experts, the BMZA concluded that it could not find that the ordinance was facially unreasonable.

In *Grant*, 212 Md. at 316, the Court stated that, "[i]f it does not clearly appear that this legislative finding was unreasonable and arbitrary—almost demonstrably wrong from the record—the courts may not disturb it." In that case, the Court found no evidence to rebut the presumptive validity of the amortization period in that case, noting that it was

enacted "[o]nly after extended hearings and full consideration of the views of both proponents and opponents." *Id.* at 317.

The same conclusion applies here, particularly given that the liquor stores had two years to amortize, a length of time that the United States Supreme Court has held to be reasonable. *See Eutaw*, 241 Md. at 697–98 (An amortization period "of eighteen months for the elimination of Eutaw's business is as long as many which have been judicially approved as reasonable."). The BMZA properly found that the ordinance is not arbitrary and unconstitutional on its face.

III.

Unconstitutional, Arbitrary and Capricious Rezoning

Owners contend that, because the City restricted liquor sales for Owners, but passed separate ordinances rezoning other liquor stores from a residential zone to a commercial zone, it created "arbitrary and irrational treatment, favoring some liquor stores in residential zones and not others." They assert, therefore, that enforcement of the two-year discontinuance period under § 18-701 should be unenforceable against them.

The City contends that § 18-701 is not arbitrary and capricious, either *per se* or as applied to Owners. It asserts that the City's ordinances rezoning other businesses are not at issue in this case, and even if they were, Owners "failed to show how these rezoning decisions 'arbitrarily and irrationally discriminate[] between' the businesses who sought rezoning and the [Owners], who did not."

During the hearing, Owners submitted into evidence four bills that were passed, in which the City granted requests to re-zone other liquor stores from a residential zone to a commercial zone. They were admitted as part of the evidence regarding the alternatives available for Owners to continue operating their liquor stores. Owners' arguments during the hearing, however, were solely focused on the validity and reasonableness of § 18-701, rather than the propriety of other rezoning bills. Although there was passing mention regarding City Council members taking "favors" in exchange for "get[ting] a new bill passed," Owners did not make an explicit argument, as they do on appeal, that it was arbitrary and capricious for the City to grant rezoning bills for other liquor stores in residential areas. As a result, the BMZA did not discuss this issue.

In *Concerned Citizens of Cloverly v. Montgomery County Planning Board*, 254 Md. App. 575, 603 (2022), this Court found that appellants had not properly preserved an issue for appeal based on a "passing reference to an issue, without making clear the substance of the claim." There, appellants' "brief reference" to a state agency "in a written document in a lengthy record did not fairly raise the issue presented on appeal" because appellants did not raise it with "sufficient precision, clarity, and emphasis to give the agency a fair opportunity to address it." *Id.* at 602–03 (citing *Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 588, 602 (D.C. Cir. 2015)).

Here, Owners' arguments related to: (1) whether § 18-701 was constitutional; and (2) whether the two-year amortization imposed by the ordinance was reasonable. Although the difficulty in obtaining rezoning was discussed, with a reference to Councilpersons

taking "favors" in exchange for rezoning bills, Owners never argued that § 18-701 was invalid due to some liquor stores obtaining rezoning, and there was no argument that this rendered § 18-701 "arbitrary and capricious." Accordingly, the issue is not preserved for this Court's review.[10]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[10] Although this issue is not preserved for review, we note that an agency decision may be considered arbitrary and capricious "if similarly situated individuals are treated differently without a rational basis for such a deviation." *Harvey v. Marshall*, 389 Md. 243, 304 (2005). Here, Owners cannot show that they were treated differently from those liquor store owners who obtained rezonings because, as Owners conceded during argument before this Court, the only way to acquire rezoning is to formally request it from City Council, and none of the Owners made such a request.