

Circuit Court for Charles County
Case No. C-08-CV-21-000349

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 942

September Term, 2022

IN RE: NU LIQUOR, LLC, T/A FAULKNER
WINE & SPIRITS, *ET AL.*

Nazarian,
Tang,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 19, 2023

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

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

Nu Liquor, LLC and its joint owners, Santosh Dhakal and Ritika Pandit¹ applied for an alcoholic beverage license to open a new liquor store. After a hearing at which several members of the public testified, the Board of License Commissioners for Charles County (“the Board”) denied Nu Liquor’s application on the grounds that the license wasn’t “necessary to accommodate the public.” Nu Liquor filed a petition for judicial review, and the Circuit Court for Charles County reversed the Board’s decision. The Board and PSL Brothers, LLC (“PSL Brothers”), a competing liquor store owner and participant at the hearing before the Board, appeal. We reverse the judgment of the circuit court and remand with instructions that the court enter judgment affirming the Board’s decision to deny Nu Liquor’s application.

I. BACKGROUND

On May 20, 2021, Nu Liquor applied for an alcoholic beverage license (“liquor license”) to open a liquor store trading as “Faulkner Wine & Spirits” in Faulkner; the proposed location falls within the Fourth Election District of Charles County. Nu Liquor owned the proposed store’s premises at the time it submitted its application.

A. June 10, 2021, Board Hearing.

On June 10, 2021, the Board held a hearing on Nu Liquor’s application. Several individuals attended, some to support and some to oppose. Mr. Dhakal testified first and explained that after researching daily traffic patterns and local demographics (based on

¹ We’ll collectively refer to Nu Liquor LLC, Mr. Dhakal, and Ms. Pandit as “Nu Liquor” unless we say otherwise.

publicly available data), he concluded that the proposed location was “a suitable site for [Faulkner Wine & Spirits].” Mr. Dhakal reasoned that because a Circle K gas station and convenience store was planned for the adjoining property, this was a desirable location for a liquor store. At the time of the hearing, Mr. Dhakal wasn’t aware of the cost of buildout, the amount of inventory the store would carry, or how many customers the store would attract. Mr. Dhakal’s wife, Ritika Pandit, testified that she intended to run the store in a manner that maintained peace and safety in the surrounding area. Other members of the public spoke in support of Nu Liquor’s application based on their positive experiences, both personally and professionally, with Mr. Dhakal. Michael Foster, Mr. Dhakal’s former colleague, testified that Nu Liquor’s store also would satisfy the local need for specialty products, such as craft beers.

In opposition, several members of the public testified that they didn’t believe another liquor store in the area was needed since there were already several liquor stores nearby. Rulx Rosemond, a member of the public, testified that Nu Liquor’s proposed location was only a half-mile from the next closest liquor store, and that there were three other liquor stores within a three-mile radius of the proposed store. Some members expressed concern that a liquor store in the vicinity would attract “undesirables” and increase the presence of trash on the streets. Owners of nearby liquor stores also opposed Nu Liquor’s application because they were concerned that another liquor store would increase competition among nearby stores and result in loss of income.

Along with testimony at the hearing, two petitions opposing the grant of Nu Liquor’s application were submitted. The first petition contained a letter from Dilpreet Singh and attached 120 signatures. In his letter, Mr. Singh expressed that “adding . . . an additional store will only lead to excessive competition which might result in losses.” Mr. Singh explained that he told signers verbally the purpose of the petition before they signed it. In response, counsel for Nu Liquor noted for the record “that a good number of the signatures [we]re clearly outside the election district.”

The second petition, offered during the testimony of Sachia Kadijan, was signed by individuals who “believe the issuance of [Nu Liquor’s] license will negatively impact the general health and welfare of [their] community and will adversely affect other licensees in close proximity who have been serving the needs of this community for many years.” Mr. Kadijan clarified that each person who signed the petition was made aware that they were signing a petition in opposition to Nu Liquor obtaining a liquor license for the proposed location. Counsel for Nu Liquor noted that most of the signees didn’t provide their addresses when they signed the petition, but there was no further objection.

The Board then heard closing arguments. Counsel for Nu Liquor maintained that no one disputed that Mr. Dhakal and Ms. Pandit were fit to operate a liquor store at the proposed location. He asserted that the public’s concerns about an increased presence of trash and traffic were immaterial since those concerns couldn’t be attributed solely to the addition of Nu Liquor’s proposed store; indeed, a Circle K gas station was going to be constructed in that area regardless of whether the Board issued Nu Liquor a license and

that addition likely would cause similar issues. Counsel for Nu Liquor asserted that the proposed store was necessary for public need under the standard defined in *Baltimore County Licensed Beverage Ass'n v. Kwon*, 135 Md. App. 178 (2000).² He elaborated that because the gas station was going to be constructed nearby the proposed location, it would be convenient for those going to the gas station to also stop by an adjoining liquor store if they desired. Counsel for Nu Liquor argued that “competition is American,” and that Nu Liquor should not be precluded from obtaining a liquor license because of competition between liquor stores in the area. He claimed that in Maryland, many establishments with liquor licenses are near one another and that Nu Liquor’s proposed location shouldn’t be treated any differently.

In opposition, counsel appearing on behalf of PSL Brothers, the owner of a nearby liquor store, argued that all the individuals who spoke in support of Nu Liquor’s application had either a business or personal relationship to Nu Liquor’s owner, Mr. Dhakal. Counsel further claimed that four members of the public who lived in the vicinity of the proposed location opposed the application because they didn’t “need another liquor store” in that area and explained how the exhibits submitted to the Board demonstrated that the area already had “liquor stores on top of liquor stores.” She closed by asserting that the Board

² In *Kwon*, we found that granting a liquor license is “necessary” if granting the license for a particular location would be “convenient, useful, appropriate, suitable, proper, or conducive’ to the public in that area.” *Id.* at 193–94 (2000) (cleaned up). More on that case below.

wasn't obligated to issue a license merely because a license was available and that it would be prudent to save the license for an application in a better suited location.

During the Board's on-the-record discussion of the application, some of the Board members expressed concern that the property on which Nu Liquor wanted to open a liquor store had not yet been developed, and that it was like putting the "cart before the horse" to obtain a license before constructing the store. Other Board members expressed concern that the community didn't want a liquor store in that location and that there were sufficient liquor stores already in the area. The Board then conducted a roll-call vote for Nu Liquor's application: one member voted in favor of granting the application and three Board members voted against granting the application on the grounds that a liquor store at the proposed location wouldn't be "an accommodation to the public."

The Board issued a written order denying Nu Liquor's Application on August 2, 2021. The order stated that the Board had considered both the testimony of several members of the public who opposed granting the application because the area was served by existing stores adequately, and the testimony of individuals who supported granting Nu Liquor's application because of the "upstanding character of the applicants and the ability of the applicants to successfully operate the proposed liquor store, as well as the benefits to greater competition in the marketplace." The Board also recognized the two petitions opposing the application. Ultimately, the Board denied the application based on a finding that the public didn't need an additional liquor store in the proposed location:

In the instant case, the Board finds, based on the testimony provided by members of the public, that there did not exist a

need nor a desire for an additional license at the proposed location. Based upon the number of current licenses and their proximity to the proposed location, the Board deemed the area of Faulkner to be adequately served by existing establishments. Additionally, the convenience that may eventually exist as a result of the development at the proposed location, to include a Circle K convenience store was too speculative at this juncture to warrant issuance of the license as an accommodation to its customers. In addition to other enumerated grounds for denial of a license application, Annotated Code of Maryland, §[]4-210(b)(i) provides that a licensed application shall be denied if the granting of the license is not necessary to accommodate the public.

Nothing in the Board’s decision, in the order or in its statements on the record, was grounded in the products the new liquor store planned to offer.

On August 9, 2021, Nu Liquor filed a petition for judicial review of the Board’s decision. Notices of Nu Liquor’s petition for judicial review were sent to the Board, Mr. Dhakal, Ms. Pandit, and Nu Liquor; PSL Brothers was not notified of Nu Liquor’s petition. The matter was set for a hearing on April 4, 2022.

B. April 4, 2022, Circuit Court Hearing On Nu Liquor’s Petition For Judicial Review.

In the circuit court, Nu Liquor argued that the Board’s decision should be reversed. Citing the analysis in *Kwon*, Nu Liquor asserted that the Board didn’t have substantial evidence to support a denial of their application since the Board relied on the public’s desire (or lack thereof) for a liquor store in the proposed location and the potential increase in competition among nearby liquor stores in making its decision. According to Nu Liquor, the Board needed only to focus on “the primary purpose of protecting the public and promoting general welfare, . . . not to benefit and protect individual license holders.” Nu

Liquor maintained that its store “was going to have more craft beer, higher end wine, . . . different local spirits and things of that nature that maybe some of the other stores don’t carry,” which “would be a good thing for the public”

The Board responded that *Kwon* was decided before the statute governing applications for liquor licenses was “significantly amended,” and that the Board was now required under Maryland Code (2016), Section 4-210(a) of the Alcoholic Beverages Article (“AB”)³ to consider “public need and desire for the license, . . . the number and location of existing license holders, [and] the potential effect on existing license holders of the license for which the application is made.” The Board argued that several members of the public expressed concern over increased traffic and trash as a result of issuing Nu Liquor a license and that the existing liquor stores in the area already met the community’s needs. The Board stressed that the standard to overturn its decision is high, and that the Board found correctly, based on the evidence before it, that a liquor license for the proposed location was not necessary.

The court scheduled a follow-up session for April 18, 2022 and delivered its opinion orally. It found that the public’s issues with trash and increased traffic would arise with any type of establishment in the proposed location and was unpersuaded that these concerns should preclude Nu Liquor from obtaining a liquor license. The court reasoned that members of the public were merely stating that they “don’t need another liquor store”

³ As of May 2023, this article of the Maryland Code has been renamed the “Alcoholic Beverages and Cannabis” article. *See* 2023 Md. Laws, Chap. 254.

without a stronger basis to support their opposition. The court ultimately decided to remand the matter to the Board to collect more evidence on the proposed store’s market offerings and on how Nu Liquor will differentiate its store from other liquor stores. On April 22, 2022, the court issued a written order reversing the Board’s decision denying Nu Liquor’s application and remanding for more factfinding “about the unique features and potential market offerings of [Nu Liquor’s] proposed business.”

The Board filed a motion to reconsider on May 2, 2022. The Board alleged that the record already included information about Nu Liquor’s intention to offer craft beer and specialty wines, which “encompassed the entirety of [Nu Liquor’s] testimony on the uniqueness of his proposed establishment.” The Board argued that it was free to weigh testimony about Nu Liquor’s intention to offer unique products against the testimony “tending to show the license was not needed nor desired by the public” in determining whether the license should be granted, that its overall decision was supported by substantial evidence, and that the court should affirm the Board’s decision.

Nu Liquor opposed the motion and maintained that the Board’s decision was not supported by substantial evidence. It accused competing liquor store owners of “creat[ing] the petitions as a part of their efforts to ambush [Nu Liquor] at the [h]earing and to protect their economic interests.” Nu Liquor also argued that the court was correct in remanding for additional evidence on the uniqueness of the products their store would introduce to the

area, and that Mr. Dhakal should have been questioned further about the unique products he intended to offer to develop the record.⁴

On the same day the Board filed its motion to reconsider, PSL Brothers filed a motion to alter or amend the judgment on the grounds that had not been notified of Nu Liquor’s petition for judicial review. It argued that it was a party to the proceeding under Maryland Rule 7-202 because it had appeared at the hearing through its representative and expressed opposition to Nu Liquor’s application, and thus was entitled to notice of Nu Liquor’s petition for judicial review so it could participate in those proceedings. PSL Brothers asked that the court amend its decision and permit PSL Brothers to oppose Nu Liquor’s petition “by filing a Memorandum and appearing at any hearing to be scheduled on the merits.”

On July 7, 2022, the court denied both the Board’s motion for reconsideration and PSL Brothers’ motion to alter or amend the judgment. The Board and PSL Brothers both filed timely notices of appeal.

⁴ At oral argument, Nu Liquor conceded that it had a full opportunity at the initial hearing to present evidence about its market offerings and has never sought a remand for further factfinding on the uniqueness of the products that it planned to offer. There is, therefore, no basis on which to grant Nu Liquor another hearing on these grounds. *See Diamond Point Plaza Ltd. P’ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 760 (2007) (“Absent some extraordinary circumstance, the party does not get two bites at the apple. It would be unfair, after . . . all of the evidence has been presented, for the court to say, ‘well, you haven’t convinced me, but see if you can get me some better evidence’”).

II. DISCUSSION

This appeal presents two issues:⁵ *first*, whether there was substantial evidence in the record to support the Board’s denial of Nu Liquor’s application, and *second*, whether the court erred in denying PSL Brothers’ motion to alter or amend the judgment.

⁵ The Board phrased its Question Presented as follows:

Did the circuit court err in its decision to reverse and remand the decision of the Board without a finding that the Board lacked substantial evidence in the record to support the Board’s decision to deny issuance of a liquor license; or, if the circuit court’s order “to complete an incomplete record” is to be interpreted as a finding by the circuit court that the Board lacked substantial evidence in the record to support its decision to deny issuance of the liquor license, was that determination by the circuit court an error?

PSL Brothers phrased its Questions Presented as follows:

1. Was there substantial evidence to support the Board of License Commissioners’ decision that the Class A, Beer, Wine and Liquor alcoholic beverages license was not necessary to accommodate the public?
2. Did the Circuit Court err in reversing the decision of the Board of License Commissioners and remanding for the taking of additional evidence when [Nu Liquor] failed to meet the burden of proof to issue the Class A, Beer, Wine and Liquor alcoholic beverages license?
3. Did the Circuit Court err in denying Appellant PSL Brothers’ Motion to Alter or Amend and/or Revise Decision and Judgment when Appellant was not given notice of the Petition for Judicial Review?

Nu Liquor phrased its Questions Presented as follows:

1. Whether the Board’s decision to deny [Nu Liquor’s] application was supported by substantial evidence?
2. Whether the Circuit Court correctly denied PSL’s Motion to Alter or Amend and/or Revise Decision and Judgment?

When reviewing an administrative agency’s decision, we “perform[] the same function as the circuit court. We review the decision of the agency, not that of the circuit court.” *Dakrish, LLC v. Raich*, 209 Md. App. 119, 141 (2012) (quoting *Board of License Comm’rs for Prince George’s Cnty. v. Global Express Money Orders, Inc.*, 168 Md. App. 339, 344 (2006) (citations omitted)). Our role at this juncture is to determine whether “there is ‘substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.’” *Global Express*, 168 Md. App. at 345 (quoting *United Parcel Serv., Inc. v. People’s Counsel for Balt. Cnty.*, 336 Md. 569, 577 (1994)). “[S]ubstantial evidence” is evidence that a “reasonable mind might accept as adequate to support a conclusion.” *Blackburn v. Bd. of Liquor License Comm’rs for Balt. City*, 130 Md. App. 614, 634 (2000) (quoting *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978)). When applying the substantial evidence test, we won’t substitute our own judgment for that of the Board. *Global Express*, 168 Md. App. at 345. So although we examine the evidence considered by the Board, we won’t re-weigh it. *Commissioner, Balt. City Police Dep’t v. Cason*, 34 Md. App. 487, 499 (1977). When reviewing the Board’s factfinding, we review the Board’s decision “in the light most favorable to the [Board] since its decision is prima facie correct and carries with it the presumption of validity.” *Global Express*, 168 Md. App. at 345.

The Board and PSL Brothers argue that the Board’s decision to deny Nu Liquor’s application was supported by substantial evidence. AB § 4-905 requires us to presume that

the Board’s decision “best served the public interest” and places the burden to prove that the Board’s decision is not supported by substantial evidence on the party challenging the Board’s decision, in this case Nu Liquor:

(a) *Presumption.* — On the hearing of a petition under this subtitle, the court shall presume that the action of the local licensing board was proper and best served the public interest.

(b) *Burden of proof.* — A petitioner has the burden of proof to show that the decision of the local licensing board being reviewed was:

- (1) against the public interest; and
- (2) (i) not honestly and fairly arrived at;
 - (ii) arbitrary;
 - (iii) procured by fraud;
 - (iv) unsupported by substantial evidence;
 - (v) unreasonable;
 - (vi) beyond the powers of the board; or
 - (vii) illegal.

We conclude that the Board’s decision to deny Nu Liquor’s application for a liquor license was supported by substantial evidence and that the circuit court erred by ordering a remand.

Under AB § 4-210(b), the Board must deny a license application if the license isn’t “necessary to accommodate the public,” if the applicant is unfit to receive the license, or if the applicant has committed any fraudulent acts related to their application:

(b) *Grounds for denial of license application.* — The local licensing board shall deny a license application:

- (1) if the local licensing board determines that:
 - (i) the granting of the license is not *necessary to accommodate the public*;

(ii) the applicant is not a fit person to receive the license;

(iii) the applicant has made a material false statement in the application;

(iv) the applicant has acted fraudulently in connection with the application; or

(v) if the license is issued, the operation authorized by the license would unduly disturb the peace of the residents of the neighborhood of the location described in the application; or

(2) for other reasons that the local licensing board considers sufficient.

(Emphasis added.) In *Kwon*, we interpreted the term “necessary” in the context of granting or transferring a liquor license and concluded that it “means . . . ‘convenient, useful, appropriate, suitable, proper, or conducive’ to the public in that area.” 135 Md. App. at 193–94 (quoting *Black’s Law Dictionary* 714 (abridged 6th ed. 1991)).

In this case, the Board found that granting Nu Liquor a liquor license wasn’t necessary to accommodate the public. In reaching that conclusion, the Board was required to consider a list of factors:

- (1) the public need and desire for the license;
- (2) the number and location of existing license holders;
- (3) the potential effect on existing license holders of the license for which application is made;
- (4) the potential commonality or uniqueness of the services and products to be offered by the business of the applicant;
- (5) the impact of the license for which application is made on the health, safety, and welfare of the community, including issues relating to crime, traffic, parking, or convenience; and
- (6) any other factor that the local licensing board considers necessary.

AB § 4-210(a).

The Board must consider these factors but isn't required to "set forth specific findings of fact and conclusions of law" in its written decision. *Blackburn*, 130 Md. App. at 624. Nor is the Board required to go through each factor one-by-one and explain whether it supports or weighs against granting Nu Liquor's application. *Dakrish*, 209 Md. App. at 144 ("[No] provision of law . . . requires the Board to address seriatim the factors that it must consider under the statute."). For the decision to satisfy "any meaningful review," though, the Board must analyze its factual findings against the statutory factors. *Blackburn*, 130 Md. App. at 624. And here, it did.

With regard to the first factor—"public need and desire for the license"—the administrative record contained evidence of the public's resistance to granting Nu Liquor a license for the proposed location. At the hearing, nine individuals⁶ testified that another liquor store in Faulkner wasn't needed because that area was adequately served by the existing liquor stores. The two petitions⁷ opposing Nu Liquor's application, which contained 120 signatures and 217 signatures, respectively, also expressed a degree of public aversion to Nu Liquor's proposed store.

⁶ Only seven out of the nine individuals who spoke provided testimony that was relevant to the Board's analysis of the required factors. Two of the individuals came only to support friends and neighbors and said as much.

⁷ Nu Liquor attempts to cast doubt on the credibility of these petitions. But the Board credited them in its findings, and the record reveals that the signatories were informed of their purpose when they signed, and it is not our role to second-guess the weight the Board gave them. *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999) ("A reviewing court should defer to the agency's fact-finding and drawing of inferences if they are supported by the record.").

The record also contained evidence of the public’s desire for the Board to grant Nu Liquor’s application. One member testified that he was “excited about the opportunity” to purchase craft beers and specialty wines in Faulkner if the Board issued the license. Those who supported Nu Liquor’s application testified that they believed the store would be successful under Mr. Dhakal’s leadership. Aside from evidence presented at the hearing, Nu Liquor argued in this Court that the availability of a license for the proposed location itself serves as evidence of need to grant an additional liquor license in that district. Reasonable Board members might weigh the competing evidence differently, but a reasonable person could conclude, as the Board did, that the public did not need or desire this additional license.

The record also contained evidence about the number of existing license holders near the proposed location and the potential effect on nearby liquor store owners, the second and third factors the Board was required to consider. Mr. Rosemond, a nearby resident, presented evidence showing that there was an existing liquor store, Drive-In Liquors, a half-mile from the proposed location and three others within a three-mile radius of the proposed location. Two owners of competing liquor stores in the area testified that granting Nu Liquor’s application would result in “a loss of income[and] excessive competition” for existing license holders in the area.

As for the fourth factor—“the potential commonality or uniqueness of the services and products to be offered by the business of the applicant”—Mr. Dhakal testified that his new store would offer a variety of products such as craft beers and specialty wines. He also

intended to promote local breweries and distilleries by selling their products at his store along with popular beers, wines, and spirits. There was not, therefore, an absence of evidence on this topic—Nu Liquor had the opportunity to present testimony on its proposed product offerings and did.

Finally, the Board heard evidence on the fifth factor— “the impact of the license . . . on the health, safety, and welfare of the community, including issues relating to crime, traffic, parking, or convenience.” Mr. Dhakal testified that the proposed Circle K gas station and convenience store on the adjoining property would make it convenient for customers to make one trip to get gas, grocery store items, and, with the addition of Nu Liquor’s proposed store, alcoholic beverages. In opposition, one member of the public expressed concern about increased trash and traffic if Nu Liquor’s license was granted.

The Board concluded “based on the testimony provided by members of the public, that there did not exist a need nor a desire for an additional license at the proposed location” and denied Nu Liquor’s application. The Board reasoned that the area around the proposed location for the liquor store was “adequately served by existing establishments” and found that any additional convenience from the addition of a Circle K gas station in the area “was too speculative at this juncture to warrant issuance of the license as an accommodation to its customers.” Viewing the record in the light most favorable to the Board, a “reasonable mind” could have readily concluded that granting Nu Liquor a license was not “necessary to accommodate the public.” AB § 4-210(b). We hold, therefore, that the Board’s decision was supported by substantial evidence.

Nu Liquor relies on our decision in *Kwon* to argue that “people coming in and protesting” without “actual data, surveys, analysis, or financial information” to support their concerns didn’t and couldn’t provide substantial evidence to support the Board’s decision. This argument fails for several reasons.

First, Nu Liquor overreads *Kwon*. In that case, the Board of License Commissioners for Baltimore County held a hearing on an application for the transfer of an off-sale liquor license to a different location. 135 Md. App. at 183. At the hearing, the Kwons presented lay and expert testimony demonstrating “need” for a liquor store at the proposed location. *Id.* The Kwons also presented a petition in support of the transfer. *Id.* at 183–84. In opposition, liquor license holders in the area testified that the liquor store at the proposed site wasn’t needed to serve the public and that an additional store might increase competition between liquor stores in the vicinity. *Id.* at 184. Two members of the community also testified that the public was served adequately by the existing stores. *Id.* at 184–85. Based solely on this competition testimony, the Board denied the Kwons’ application and reasoned that the Kwons had not “shown that the transfer was necessary for the accommodation of the public.” *Id.* at 185. The circuit court reversed the Board’s denial of the Kwons’ application, and we affirmed on the basis that there wasn’t substantial evidence on the record to support denying the Kwons’ transfer application. *Id.* We reasoned that the Board “may not subvert the ‘necessity’ standard to use it to shield license holders from increased competition,” *id.* at 188, and that the only reasonable conclusion based on the record was that a liquor store at the proposed location “would be an accommodation

and convenience to members of the public.” *Id.* at 195.

Our holding in *Kwon* doesn’t mean that the Board in this case erred in considering the testimony of competitors simply because it was unsupported by data and studies, nor does it mean that a successful application requires data, experts, or studies. The application in *Kwon* sought to transfer an existing license, not to grant a new one, and there was no dispute about the fitness or capability of the owners to serve the public. *Kwon* stands for the proposition that competition evidence by itself, and especially thin competition evidence, can’t defeat an otherwise well-supported application. The competitors’ testimony about shorter lines or lack of business at existing liquor stores, the only opposition before the Board in that case, “bore no connection whatsoever to the state of affairs at the [proposed transfer location],” and, therefore, was insufficient support to deny the Kwons’ transfer of their liquor license. *Id.* at 195. And moreover, the statute governing the grant of liquor licenses was amended the year after *Kwon* was decided and now *requires* the Board to consider the potential effect that granting a license will have on existing license holders. AB § 4-210(a)(3); *see also* 2001 Md. Laws, Chap. 475. That’s exactly what the Board did here.

Nu Liquor hasn’t pointed to any other authority that requires the Board to consider data, surveys, or statistics before granting or denying a license. And indeed, local liquor boards are expected to consider public opinion, since they are mandated by statute to give notice to the public every time an application for a liquor license is submitted for consideration, AB § 4-208(a)–(b), and to allow any member of the public to “address any

relevant issue at the hearing.” AB § 4-209(b). It fell within the Board’s discretion as the factfinder to give lay witness testimony the weight it found appropriate, and the Board was permitted to credit the testimony of the public as they did here. *Cason*, 34 Md. App. at 499.

Next, although Nu Liquor highlights the opposition’s failure to present technical data or studies, Nu Liquor didn’t present any expert testimony, financial analyses, or studies supporting the grant of their application either. Nu Liquor presented traffic data that described how many people passed by the proposed location for the liquor store and information on the demographics of that population, but even that submission didn’t describe how much traffic their store would get or whether there was demand for an additional liquor store in Faulkner. In fact, Nu Liquor didn’t present any empirical evidence about whether the public needed or desired a liquor store in the proposed location, despite now contending that the opposition was required to present “actual data, surveys, analysis, or financial information.” And remember, Nu Liquor bore the burden to persuade the Board that their license should be granted; the opposition had no burden to refute the need for a license. *Baines v. Bd. of Liquor License Comm’rs for Balt. City*, 100 Md. App. 136, 140 (1994). As counsel (rightly) acknowledged at argument in this Court, Nu Liquor had a full and unrestricted opportunity to present any testimony or evidence it wanted to support granting its application. Nothing Nu Liquor offered was excluded, nor was Nu Liquor denied any opportunity to present testimony during the hearing.

The Board had an appropriate record before it, examined and addressed the statutory factors in AB § 4-210(a), and made specific findings of fact. The Board’s ultimate decision

to deny Nu Liquor’s application was supported by substantial evidence from the record, so we reverse the judgment of the circuit court and remand with instructions that the court enter judgment affirming the Board’s decision to deny Nu Liquor’s application. We need not, and do not, address PSL Brothers’ motion to alter or amend the circuit court’s order.

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY REVERSED
AND CASE REMANDED WITH
INSTRUCTIONS TO ENTER JUDGMENT
AFFIRMING THE DECISION OF THE
BOARD OF LICENSE COMMISSIONERS
OF CHARLES COUNTY. APPELLEE TO
PAY COSTS.**