Circuit Court for Baltimore City
Case No. 24-C-18-000192

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3485

September Term, 2018

LOUISE KEELTY

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

Graeff,
Nazarian,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: March 23, 2020

If this case had been tried before a court of public opinion (such as Robespierre's Committee of Public Safety during the French Revolution in 1793–94), there may have been a chance that the heads of the members of the Baltimore City Council (the "City Council") who voted to approve RPP 47 (the Guilford Area Residential Permit Parking Area ("RPP")) would fill the basket at the base of the guillotine for extending a perceived benefit to the gentry. Fortunately for the City Council, we and the Circuit Court for Baltimore City are courts of law, constrained in our consideration of challenges to such legislative enactments.

In 2014 and 2016, respectively, the City Council adopted ordinances 14-0349, 14-0462, and 16-0717,[1] thereby creating the Guilford Area RPP 47, within which, on a basis of twenty-four hours a day, seven days a week, parking was limited to permit holders (and their guests) in the "zone." Beseeched by the residents of the Guilford Area, the City Council took the initiative to enact these ordinances, under its power to regulate city streets,[2] ignoring seemingly the administrative process it had established previously[3] for the consideration and establishment of parking zones.[4] Perceiving herself aggrieved by these legislative acts, Appellant, Louise Keelty ("Keelty"), who resides in a residential

[1] These ordinances were codified in the Baltimore City Code as Art. 31 § 10-38.
[2] *See* Balt. City Charter, Art. 2, §§34(a) and (d) and §47.
[3] Balt. City Code, Art. 31 §§ 10-13, et seq.
[4] Also bypassing the administrative process prescribed in Balt. City Code, Art. 31 § 10-13, et seq., the City Council had created directly on at least five other occasions parking zones—Pimlico Racetrack Area, Little Italy Area, Fells Point Area, Cross Street Market Area, and Camden Yards Stadium Area.

midrise condominium ("the St. James") directly across North Charles Street from the Guilford Area, filed in September 2018 a complaint against the Mayor and City Council of Baltimore (the "City") in the Circuit Court for Baltimore City. In her complaint, she claimed that the enactment of the Guilford Area RPP 47 was an invalid exercise of the City's municipal powers. After discovery, the parties filed cross-motions for summary judgment. The circuit court granted the City's motion and denied Keelty's. This timely appeal followed.

QUESTION PRESENTED

Keelty frames a single question:

> Did the Circuit Court err in ruling that the three bills creating exclusive parking rights for a small number of neighborhood residents, to the exclusion of other neighborhood residents, was a valid exercise of legislative powers by the Baltimore City Council?

The City recasts the question, based on its perception of the arguments in Keelty's brief, into three parts:

> 1. Was the circuit court correct that the administrative method for creating residential permit parking areas, that the City Council legislated in Baltimore City Code, Article 31, Sections 10-12 through 10-19, is not exclusive and does not prevent the City Council from creating residential permit parking areas directly through legislation?
> 2. Was the circuit court correct that the residential permit parking area (even if it prohibits non-resident parking on a public street) serves a valid public purpose of enhancing residential life, ensuring access to residents' homes, and supporting well-being of the citizens who live where there are parking problems?
> 3. Was the circuit court correct that the legislative creation of the Guil[]ford residential permit parking area had a rational basis and was therefore a reasonable exercise of the City Council's legislative authority?

We are constrained to respond "no" to Keelty's question and, accordingly, affirm

the judgment of the circuit court.

UNDISPUTED MATERIAL AND/OR CONTEXTUAL FACTS

The battleground for this litigation is a residential community identified as the Guilford Area in Baltimore City. The main portion of the Guilford Area (ordinance 14-0349) consists of nineteen single-family, detached homes whose driveways have access only on St. Martins Road or East Bishop's Road, both public streets. St. Martins Road and East Bishop's Road form an elongated, horseshoe-shape (a cul-de-sac, of sorts) and, consequently, are not through-streets. Both roads are accessed only off the east side of North Charles Street. The original Guilford Area RPP 47 was supplemented (ordinances 14-0462 and 16-0717) by the addition of four homes[5] that abut the original Guilford Area, but have North Charles Street addresses. Despite having North Charles addresses, two of these homes have driveways on St. Martins Road only, with the other two having driveways accessed only via the east side of North Charles Street.[6]

Across from the Guilford Area, on the west side of North Charles Street, is the seventy-seven unit, fifteen-story residential condominium known as the St. James. South of the Guilford Area and the St. James (which has on-site, off-street parking for its residents) is The Johns Hopkins University Homewood Campus and athletic fields.

[5] One of these homes is a community center. The addresses of the four added dwellings are 3701, 3703, 3705 and 3801 North Charles Street.

[6] The driveway of the homes at 3705 and 3801 North Charles Street are on St. Martins Road. The access driveways of the homes at 3701 and 3703 North Charles Street are on North Charles Street.

Student housing is sprinkled throughout the surrounding area.

The resident citizens of the original Guilford Area became concerned about the periodic influx of non-residents (particularly attendees of athletic and/or social events at the University) parking principally on St. Martins and East Bishop's Roads, often blocking driveways, parking over the sidewalks, and otherwise inconveniencing the residents and their guests in the enjoyment of their enclave.[7] After informal conversations with the Executive Manager of Residential Permit Parking at the City Parking Authority regarding the likelihood of success for the Guilford Area residents mounting a petition to establish a more restrictive parking zone, during which the manager expressed pessimism about such an initiative, the decision was made by the residents to ask their City Council member about a straight-to-legislation approach for the original Guilford Area. This approach would avoid the need for a parking study,[8] other technical and procedural standards,[9] and direct public notice to neighbor requirements[10] of the City Code when a parking zone was sought by a citizen-initiated petition. The legislative effort was crowned with success.

Bill 14-0349, for the original Guilford Area, was introduced. It received a single general public hearing notice, i.e., publication in *The Daily Record* and on the City Council's website. At the public testimonial hearing, only proponents for the bill from the

[7] This continued, according to the Guilford Area residents, despite the earlier imposition of a less restrictive parking zone shared by the Guilford Area with the adjacent Tuscany-Canterbury neighborhoods.
[8] Balt. City Code, Art. 31 § 10-14.
[9] Balt. City Code, Art. 31 § 10-13 (petition process); § 10-15 (required findings); § 10-16 (parking management plan requirements).
[10] Balt. City Code, Art. 31 § 10-17(b)(2) (direct notice requirements to a host of potential stakeholders).

Guilford Area testified. The gist of their case regarding the need for a more restrictive parking zone for the original Guilford Area is represented by the deposition testimony of Thomas Hobbs, the President of the Guilford Homeowners Association, who stated:

> . . . the area is very impacted by events at Hopkins, particularly if there are sporting events on Homewood Field. The student[s] parked there and just abandoned their cars . . .
>
> The street is—[East] Bishop's [Road] is extremely narrow. There's parking only on one side. And so, all the residents do not have driveways they actually have to park over the sidewalk.
>
> And when there was parking, particularly by Hopkins events, many times those attending the events would park over the driveway. And by the time—yes, the police were called. And since I live in that block, I experienced it.
>
> By the time the police would respond, the car had been moved, but for three hours you may not be able to get out of your driveway.
>
> And, then, added to that, is the fact that recently in the last five to ten years, many more Hopkins student[s] are living north of the University Parkway in rather large numbers in the apartment buildings and the Northway [apartment building at 3700 N. Charles St.] was being converted to student housing, with clearly inadequate parking. There were 300 and some units and ninety parking spots.
>
> So the residents on both sides wanted to do something. But certainly the residents in Guilford felt they had to take some action or have the city take some action that would more restrict the parking, and that's the origin of Area 47 [a.k.a. the Guilford RPP area].

The Guilford Area residents expressed also concern that "the conversion of the Northway [an existing building] [to] student housing . . . [with] no new parking being provided, [other than] that which is in front of the building which is minimal," would exacerbate further an

already intolerable situation. A majority of the City Council voted to adopt bill 14-0349.[11]

The amendments to the Guilford Area RPP 47 to add the four lots with North Charles Street addresses—two later in 2014 and two more in 2016—were professed to be oversights in not being included in the initial bill because of their North Charles Street addresses. These lots abut the original Guilford Area, with two straddling the St. Martins Road intersection with North Charles Street, one at the East Bishop's Road intersection with North Charles Street, and the final lot (3703 North Charles Street) between 3705 and 3701 North Charles Street. At the public testimonial hearings on the bills proposing to add the four North Charles Street homes only proponents testified, echoing the testimony from the hearing on the original Guilford Area bill. No City agency or department opposed either of these bills.[12]

After learning after-the-fact of the enactment of these bills, Keelty endeavored to persuade the City Council to undo the new Guilford Area parking restrictions or allow residents on the west side of North Charles Street, i.e., the St. James condominium, to partake of the benefits of the zone. She failed, but then took her case elsewhere.

Keelty[13] filed the present action in the Circuit Court for Baltimore City.[14] She

[11] No City agency or department, including the Parking Authority, opposed the bill.

[12] As a result of the enaction of the ordinances, curbside parking was limited to the residents of the Guilford Area RPP 47 (and their guests), including parking on the east side of North Charles Street along its border with the dwellings at 3701, 3703, 3705 and 3801 North Charles Street.

[13] At all relevant times, Keelty was a resident of the St. James condominium and President of its board of unit owners. The St. James is directly opposite the Guilford Area, across North Charles Street at 3704 North Charles Street.

[14] Keelty requested class certification of her suit. The class consisted of the 100-plus residents of the seventy-seven residential units in the St. James condominium. No action

sought a declaratory judgment, arguing principally that "[t]he restriction of parking in the 'Guilford' area was enacted without notice to [the St. James' residents], without any justification recognized with the legislation that enables the creation of restricted parking areas, and without any study of the impact of the restriction on residents of the restricted street [North Charles Street]."

After discovery occurred, the parties filed cross-motions for summary judgment, with exhibits. The circuit court conducted a hearing on the motions on 11 January 2019, at the end of which the judge announced that he was persuaded "that the restrictions enacted by these three ordinances are within the City's municipal powers and are not an exercise of those powers for a primarily private purpose and are not inherently unreasonable." He held also that "[the ordinances] don't violate the City code provision because those provisions govern different avenues for enacting restricted parking programs." A written order reflecting the court's disposition of the cross-motions (and a declaratory judgment consistent with that disposition) was entered on 16 January 2019. This timely appeal followed.

STANDARD OF REVIEW

We review a trial court's grant of summary judgment using a generally non-deferential standard of review. *Livesay v. Baltimore*, 384 Md. 1, 9 (2004). Summary judgment is appropriate when there is no genuine dispute as to any material fact and the

was taken regarding this request in light of the circuit court's grant of summary judgment in favor of the City.

moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). This Court considers the factual record (including reasonable inferences deducible from it) in the light most favorable to the non-moving party. *Myers v. Kayhoe*, 391 Md. 188, 203 (2006).

"The Declaratory Judgments Act appears to entrust the decision whether to grant or deny declaratory relief to the trial court's discretion." *Hanover Investments, Inc. v. Volkman*, 455 Md. 1, 16 (2017) (citing Md. Code § 3-409).

When this Court reviews a trial court order that "involves an interpretation and application of Maryland and statutory case law, [we] must determine whether the lower court's conclusions are legally correct under a [non-deferential] standard of review." *Walter v. Gunter*, 367 Md. 386, 392 (2002). "In order to determine whether a given statute or ordinance satisfies the due process requirement . . . we ask rhetorically whether the legislative enactment, as an exercise of the legislature's police power, bears a real and substantial relation to the public health, morals, safety, and welfare of the citizens of the State or municipality." *Tyler v. City of College Park*, 415 Md. 475, 500 (2010). "In applying this test, courts perform a very limited function, resisting interference unless it is shown that the legislature exercised its police power arbitrarily, oppressively, or unreasonably." *Id.*

DISCUSSION

I. The Administrative Petition Process.

We start by framing the two processes by which restricted parking zones may be established in Baltimore City. First is the administrative petition process recognized in Balt. City Code, Art. 31 §§ 10-13 through 10-17. In its current version, the legislative

"findings and declarations" in § 10-2 state, as to the purpose of the process, that:

> (a) In general. The Mayor and City Council finds and declares that serious adverse conditions in certain residential areas of the City result from motor vehicle congestion, particularly long-term parking of motor vehicles on the streets of those areas by nonresidents.
> (b) Program intent. The permit Parking Program established by this subtitle is intended:
> (1) To reduce hazardous traffic conditions resulting from the use of streets within these areas by nonresidents;
> (2) To protect these areas from polluted air and thereby assist in attaining national ambient air quality standards as required by the Federal Clean Air Act;
> (3) To protect these areas from excessive noise, trash, and refuse caused by the entry of nonresident vehicles;
> (4) To protect the residents of these areas from unreasonable burdens in gaining access to their residences;
> (5) To preserve the residential character of those areas;
> (6) To preserve the value of the property in those areas;
> (7) To preserve the safety of children and other pedestrians; and
> (8) For the peace, good order, comfort, convenience, and welfare of the inhabitants of the City.

This process is initiated by a community association, neighborhood group, or group of residents submitting to the City Parking Authority a written request that it or they be included in a new or existing RPP. § 10-13(a)(1). The size of any study area must be at least ten adjacent blocks or 100 curb parking spaces (§ 10-13(b)(1)), except that a smaller area may be considered if it is surrounded completely by non-residential uses or is impacted by an existing RPP (§ 10-13(b)(2)).[15]

After a qualifying petition is received, the Executive Director of the City Parking

[15] Although it seems clear that the Guilford Area would not have qualified under § 10-13(b)(1), it is unclear whether it would have qualified under the smaller area exception as a carve-out from the larger, but less restrictive, parking area it shared previously with the Tuscany-Canterbury communities.

Authority is obliged to conduct a parking study of the requested area, including consideration of any impacts on the areas surrounding the target area. § 10-14. Additional criteria for what the parking study shall consider are spelled-out in § 10-15.

If the criteria to be considered in the parking study are satisfied, the Executive Director, using the parking study as a template, designs a Parking Management Plan for the area. § 10-16. In addition to a permitting scheme, the Executive Director must evaluate non-permit alternatives. § 10-16(c).

Once a Parking Management Plan is completed, it is circulated (at a minimum) for agency comment to the City Department of Planning for evaluation of, among other things, land use compliance and economic impacts. § 10-17(a). Thereafter, a public meeting is held. § 10-17(b)(1). Notice of the meeting must be given, at least 21 days in advance, by posting on the Parking Authority's website and by mail to: (1) all properties in the proposed area (2) all properties within two blocks of the boundaries of the proposed area; (3) the community associations for the areas in or within two blocks of the proposed area; (4) the Mayor; (5) the members of the City Council; and, (6) the City agencies affected by the plan. § 10-17(b)(2).

The Executive Director has the final administrative responsibility to adopt (or not adopt) a final plan. § 10-17(b)(3). He or she may seek additional neighborhood comment on the proposal before taking final action. *Id.*

II. The Legislative Process.

Under the powers granted to the City in Article 2 § 34(a) of the City Charter, entitled

"streets, bridges and tunnels," it may "construct, open, extend, widen, straighten or close streets . . . and other public ways of every kind within the bounds of the City . . . ." Also, under sub-section (d) of § 34, the City is empowered

> to regulate the use of streets and public ways by persons . . .; to prohibit the use of such streets and public ways by any or all motor vehicles under such circumstances or upon such conditions as it may, from time to time, by ordinance, deem necessary or expedient in the interests of the public.

Finally, in § 47 of the City Charter, the Mayor and City Council may:

> pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City . . . .

As noted earlier in this opinion (*supra* note 4, at 1), the City enacted previously (outside of the administrative petition process) legislation creating restricted parking areas or zones. The record does not explain (nor do the parties in their briefs) what, if any, circumstances exist to differentiate when one or the other process may be invoked to establish an RPP. One may appreciate inherently that a group not meeting the standards of Article 31 § 10-13 (b)(1) or (2) is left to pursue its/their objective only through the legislative process. One may surmise as well that an appropriate petitioning group, whose petition is denied ultimately by the Executive Director of the City Parking Authority based on his/her assessment of the merits of the parking study, assessment of the Parking Management Plan, and the public meeting content, might still have recourse thereafter to the legislative process, as a kind of "appeal." The prospects of the latter would seem to have longer odds for success because of the adverse administrative record, but the nature

of the beast is such that those odds could be overcome if sufficient political persuasion were brought to bear at the City Council. In any event, there does not seem to be any directory guidance to any group seeking the establishment of an RPP which process it must or may engage.[16]

III. The Outcome Here.

In claiming that the ordinances are arbitrary and unreasonable and should be overturned, Keelty leans on, among other things, *McBriety v. Baltimore*, which states the test that "whenever the [City] Council in the exercise of its discretion may deem it necessary or desirable [to enact legislation, it may do so] so long as such legislation remains within the realm of reasonableness." 219 Md. 223, 234 (1959). She continues that, because less restrictive means were available to achieve the goal of the ordinances here (a claim disputed by the City) the ordinances were "arbitrary and unreasonable."[17] The City relies

[16] Indeed, Keelty appears to concede that Article 31 of the City Code does not mandate that its administrative process is the exclusive one by which an RPP may be created within the City:

> Appellant conceded below that the City's power to regulate street parking within its borders is not completely circumscribed by Subtitle 10 of Article 31 of the City Code. Neither does Appellant argue that the City Council lacks the ability to restrict parking by non-residents in specified neighborhoods for reasons that address the public interest. Appellant asserts what should be a non-controversial proposition, *i.e.*, that the City Council's power to create full-time, exclusive parking rights is not unlimited.

[17] The placing of limits on the curb parking on a public street seems to us to be distinguishable in quality, if not kind, from cases involving efforts to abandon or close public streets to through travel by the public. *See South Easton Neighborhood Ass'n v. Town of Easton*, 387 Md. 468 (2005).

on *McBriety* as well. We have come to understand well why the City directs our attention to *McBriety*.

McBriety goes on to say that: (a) "[t]here is also a presumption that a municipal ordinance is reasonable and for the public good, and the burden of proving the contrary is on those who attack it," *id.* at 231; (b) "'reasonable doubts as to the validity of an ordinance should be resolved in its favor,'" *id.* (quoting *Tar Products Corp. v. Tax Comm'n*, 176 Md. 290, 297 (1939)); and (c) "a finding [by the Council that the ordinance was required to protect the public health, safety, morals and general welfare] is entitled to great weight and courts will not ordinarily interfere to enjoin enforcement . . . unless it is shown that the ordinance is arbitrary or unreasonable." *Id.* at 232.[18]

The standard to be applied in our review of these ordinances is rational basis review. "The rational basis test is highly deferential; it presumes a statute is constitutional and should be struck down only if the reviewing court concludes that the Legislature enacted the statute irrationally or interferes with a fundamental right." *Baddock v. Baltimore*, 239 Md. App. 467, 477 (2018). When applying rational basis review, courts "perform a very limited function, resisting interference unless it is shown that the legislature exercise its police power arbitrarily, oppressively, or unreasonably." *Tyler v. City of College Park*, 415 Md. 475, 500 (2010).

Here, the burden fell on Keelty to show that there was no rational link between the government's stated purpose (providing exclusive parking access to the residents and their

[18] *McBriety* observes also that the necessity of an ordinance is of no concern to the courts. *Id.* at 233. We determine solely whether an enactment exceeded constitutional limits. *Id.*

guests of the properties itemized in the ordinances) and the passage of the ordinances. We must assume that the City Council found credible the Guilford Area residents' complaints that they were bearing an unreasonable burden in gaining access to and from their residences at such times as non-residents of the Guilford Area took to parking in their admittedly small community on more than a few occasions. The urging to limit parking to residents and their guests was argued to be a measure to preserve the quality of life in the community. These contentions fit seemingly certain of the intents for adopting RPP zones. *See generally* Balt. City Code, Art. 31, § 10-2 (b)(1), (4) and (5). Although a rationale for including 3701 and 3703 North Charles Street (whose driveway entrances are on the east side of North Charles Street) in the Guilford Area RPP 47 may seem more attenuated than the other properties, it is not for us to place necessity under our judicial jeweler's loop. Further, no City agency or department commenting on the proposed ordinances questioned the reasonableness of the bills. Thus, in spite of Keelty's criticisms (which, although not unreasonable in themselves, failed to persuade the City Council to reverse course), the record here carries enough weight to convince us that the City Council did not act unreasonably (as we understand that common law leitmotif) in enacting these ordinances.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.