

THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:)
)
Safeway, Inc.)
t/a Safeway)
)
New Application for Retailer's)
Class B License)
)
at premises)
1100 4th Street, S.W.)
Washington, D.C. 20001)
)

License No. 82176
Order No. 2010-007

Safeway, Inc., t/a Safeway, Applicant

Andy Litsky, Chairperson, Advisory Neighborhood Commission (ANC) 6D, Protestants

BEFORE: Charles Brodsky, Acting Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST

The official records of the Alcoholic Control Board (Board) reflect that Safeway, Inc., t/a Safeway, Applicant for a new Retailer's Class B license located at 1100 4th Street, S.W., Washington D.C. and ANC 6D have entered into a Voluntary Agreement (Agreement) dated December 14, 2009, setting forth the terms and conditions that govern the operation of the Applicant's establishment. This Agreement constitutes a withdrawal of the Protest of this Application.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant, Chairperson Litsky, Commissioner Ron McBee, and Coralie Farlee (Chair of the ABC Committee) are signatories to the Agreement.

Safeway, Inc.
t/a Safeway
License No. 82176
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Accordingly, it is this 13th day of January 2010, **ORDERED** that:

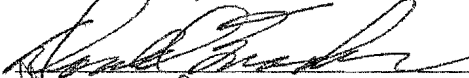
1. The Application filed by Safeway, Inc., t/a Safeway for a new Retailer's Class B license located at 1100 4th Street, S.W., Washington, D.C., is **GRANTED**,
2. The Protest in this matter is hereby **WITHDRAWN**,
3. This above-referenced Voluntary Agreement submitted by the Applicant and Protestants to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Applicant and ANC 6D.

District of Columbia
Alcoholic Beverage Control Board

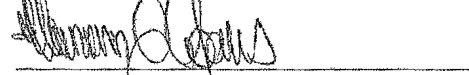
Mital M. Gandhi, Member



Nick Alberti, Member

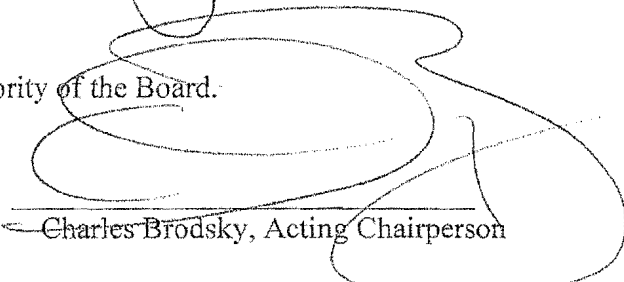


Donald Brooks, Member



Herman Jones, Member

I dissent from the position taken by the majority of the Board.



Charles Brodsky, Acting Chairperson

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 1250 U Street, N.W., 3rd Floor, Washington, D.C. 20009.

★ ★ ★ **Advisory Neighborhood
Commission 6D**

PO Box 71156 • Washington, DC 20024-9998
ANC Office: 202 554-1795 ■ FAX: 202 554-1774
office@anc6d.org

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT ("Agreement") is made on this 14th day of December 2009 by and between Safeway, 1100 4th Street, S. W. ("Applicant"), and Advisory Neighborhood Commission 6D ("Protestant"), (collectively, the "Parties").

WITNESSETH

WHEREAS, Applicant has applied for a Retailer's Class B License for a full service grocery store business establishment ("Establishment") that sells food and alcoholic beverages for consumption off the premises. These premises are located at 1100 4th Street, S. W., Washington, D.C. ("Premises");

WHEREAS, Protestant is ANC6D which filed a timely protest (the "Protest") against the issuance of the Applicant's license application pursuant to D.C. Official Code § 601(4);

WHEREAS, the Parties have agreed to enter into this Agreement and request that the Alcoholic Beverage Control Board ("ABC Board") approve the Applicant's license application conditioned upon the Applicant's compliance with the terms of this written Agreement; and

WHEREAS, the Parties are desirous of entering into a Voluntary Agreement pursuant to D.C. Official Code § 25-446 for the operation and maintenance of alcoholic beverage sales in such a manner as to minimize the effect on the peace, order and quiet of the neighborhood and to eliminate the need for a Protest Hearing regarding the license application.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the Parties agree as follows:

1. ***Recitals Incorporated.*** The recitals set forth above are incorporated herein by reference.
2. ***Nature of the Business.***
 - a. The Applicant will manage and operate a full service grocery store with an emphasis on food in which sale of alcoholic beverages constitutes no more than 15 (fifteen) percent of the total volume of the gross receipts on an annual basis. The beer and wine department will be in an area of the Establishment which will occupy approximately

produce a valid identification document issued by an agency of local, state, or federal government. Such document must contain the name, date of birth, signature, and photograph of the bearer. Cashiers may request the customer to produce a second form of identification. Applicant shall post signs at each register advising patrons that two (2) forms of identification may be required for the purchase of alcoholic beverages. If a cashier is offered an identification document that he/she believes to be fake, fraudulent, or a misrepresentation of the holder's true identity, cashier shall call the ABC manager on duty for a determination of its validity, and, if appropriate, contact applicable law enforcement personnel. Applicant is encouraged to evaluate the utilization of an ID card reader at the check-out location to ferret out false, forged, and fraudulent identification and take reasonable steps, as required by law, to prevent sales of beer or wine to minors.

b. In the self check-out area, Applicant shall ensure that all attempts to purchase beer or wine are supervised and checked by an ABC manager, cashier, or clerk, as well as by electronic monitoring of the purchase.

c. The Applicant shall program its checkout scanners to prompt its sales clerks to refuse a sale when a purchase of an alcoholic beverage is attempted outside the authorized hours of sale.

d. The Applicant agrees to have personnel who may be required to be in charge of the store at any given time participate in an ABC Board-approved course in alcoholic beverage sales within thirty (30) days of assuming the position. The on-duty store manager has ultimate responsibility for implementation of this Voluntary Agreement and ABRA laws and requirements. The Applicant shall not sell alcoholic beverage products at any time when a licensed ABC Manager is not on duty.

e. The Applicant agrees to establish and maintain an alcohol awareness training program (or to arrange for its employees to attend such a program administered by others) for all appropriate staff, including Store managers, other supervisory personnel, and cashiers.

f. Applicant will not sell alcoholic beverages to any person who appears to be intoxicated.

5. *Floors Utilized and Occupancy.* The Applicant will operate its establishment on the first floor of the building.
6. *Parking Arrangements.* It is a concern of the Protestant that the Applicant's operation of the Establishment does not create or exacerbate parking problems within the ANC boundaries. An underground parking garage is available for customers' use.
7. *Noise and Privacy.* The Applicant will abide by the DC Noise Control Act of 1977 and any subsequent amendments.

2500 square feet of the total store square feet of 54,769, or 4.5 percent of the total floor area of the Establishment.

b. If the Establishment desires to have wine or beer tasting events, the Establishment will notify the ANC at least 7 (seven) days in advance of the proposed event.

c. The Applicant shall not sell single containers of beer or single serving containers of wine of 70 ounces or less. The Applicant shall not sell the following malt beverages such as "Country Club," Colt 45," and "Schlitz Malt Liquor." In addition to domestic products, Applicant agrees to sell premium and imported beers and wines.

d. In the event that the Protestant finds objectionable certain beer and wine products that the Applicant sells, the Applicant will make itself available to meet with the Protestant to discuss its concerns and the possibility of withdrawing such items.

e. The Applicant will place warning signs indicating that "alcohol can cause birth defects" and make available alcohol awareness and anti-drug literature in the store.

f. The Applicant will not have signs visible from the outside of the premises indicating that beer/wine is available for sale.

~~g. Any change from this model shall be considered by the Parties to be a substantial change in operation of great concern to residents and require prior approval by the ABC Board.~~

3. ***Hours of Operation.***

The Applicant's current hours of operation are:

Sunday 5:00 a.m. to 12:00 midnight (m)

Monday through Saturday 5:00 a.m. to 12:00 m

Applicant may increase or decrease hours of store operations at its discretion.

The Applicant's hours for selling alcohol shall be as follows:

Sunday 9:00 a.m. to 10:00 p.m., and

Monday through Saturday 9:00 a.m. to 12 midnight or as otherwise ordered by the ABC Board.

4. ***Control of Sales.***

a. Applicant will not sell alcoholic beverages to minors. Applicant shall program scanners to prompt cashiers to check the identification of all persons seeking to purchase alcoholic beverages who appear[s] to be 30 years of age or younger. Such persons must

8. ***Public Space and Trash.*** Applicant shall keep the sidewalk (up to and including the curb), tree box(es), curb, and alley clean and free of litter, bottles, and other debris in compliance with D.C. Code and Municipal Regulations. Applicant shall police these areas sufficiently to assure that refuse and other materials are promptly removed. The Applicant agrees to obtain a dumpster to be placed in the rear of the building. Applicant shall take reasonable steps to ensure that the area immediately around the dumpster is kept clean at all times and the dumpster is placed such that it does not encroach on the abutting property and so that no garbage is placed on the abutting property. Further, Applicant agrees that it shall take reasonable measures to ensure that other establishments at the site of the former Waterside Mall are not negatively affected by litter from the Establishment.
9. ***Rats and Vermin Control.*** The Applicant shall provide rat and vermin control at the Establishment. Applicant shall provide proof of its rat and vermin control contract upon the request of the Protestant. Applicant shall take steps to ensure that its premises are cleaned on a daily basis.
10. ***Security Cooperation in Stemming Sale of Alcoholic Beverages, Availability of Illegal Drugs and Public Drinking.***
 - a. Protestant is concerned that the type of business and large number and variety of patrons will pose security and crime issues. Applicant will take reasonable steps to minimize such problems, including, without limitation, designating a sufficient number of employees, special police officers, or employees of a security contractor to enhance security and to appropriately control patrons, whether inside or in the immediate outside area; maintaining contact and cooperating with MPD and other enforcement officials when known or suspected illegal drug activities occur.
 - b. The areas of display of beer and wine will be monitored by human and/or electronic surveillance at all times for control and security.
 - c. Applicant shall to the full extent permissible by law discourage loitering in and around the Premises and shall post signs to that effect. This shall include inside and outside cameras which record and store activity for a 30-day period. Applicant will become familiar with the Metropolitan Police Department's "barring notice" process used for shoplifters, disorderly people and/or intoxicated persons who need to be barred from the premises for the next twelve months. Applicant will work with its landlord and with the Commander of First District, MPD or a designee to ensure that loiterers are barred from the area surrounding the premises. This will include providing an appropriate number of security officers, at all times when the Establishment is open to the public, who shall be responsible for ensuring that any individuals who are loitering are asked to move along. Applicant agrees to post or provide the security firm specific instructions regarding how to handle incidents such as disorderly conduct, loitering, etc. Applicant will abide by current statutes for merchants which outline specific actions for retailers.

d. Applicant will cooperate with MPD in the investigation of criminal offenses within and immediately around the Establishment. The Applicant shall secure all crime scenes to the best of its ability and shall endeavor not to contaminate, destroy, alter or clean any crime scene until authorized to do so by the lead MPD official on the scene of the offense. Within 30 days after the license is granted by ABC Board the Applicant shall review security measures and security plan with the Commander of the First District or a designee and will work to the best of its ability to comply with the recommendations.

e. Applicant will work with landlord, Commander First District MPD, ANC6D, and community groups to promote and ensure public safety and security in the area of the Establishment

11. ***License Ownership and Compliance with ABRA Regulations.*** Applicant will abide by all applicable Alcoholic Beverage Regulations Administration (ABRA) regulations regarding the ownership of the license and all other provisions applicable to liquor licensees, and agrees that Protestant shall have standing to ask the ABC Board to enforce the terms of this Agreement. Applicant will be the sole owner of the ABC license.

12. ***Participation in the Community.***

~~a. Applicant agrees to seek to maintain open communication with the Protestant, and the community for which the ANC acts. To this end, Applicant shall appoint a community representative who will, at least quarterly, attend ABC Committee meetings, and ANC6D public meetings which currently occur on the second Monday of each month at 7:00 p.m. at St. Augustine's Episcopal Church, 6th & M Streets, SW, Washington, D.C. 20024 [there is no meeting in August, and the October meeting is on the third Monday]. Applicant, upon notice from the ANC shall send a representative of the Establishment to a meeting(s) to confer and deal in good faith with issues raised under this Agreement.~~

b. Applicant will cooperate with ANC6D in its efforts to alleviate alcohol abuse problems, and loitering by participating in above and other community meetings as appropriate. The Applicant shall cooperate, as much as feasible, with ANC6D to improve the overall environment in and immediately around the premises to make a more pleasant, safe area for residents, customers and other businesses.

c. As employment opportunities arise, the Applicant will make job announcements in the ANC 6D neighborhood and will work with non-profit group(s) to sponsor job-readiness workshops. Applicant will endeavor to provide support to improve the quality of life for residents of the neighborhood, including support to civic and cultural organizations in the ANC6D area of the SE/SW community.

13. ***Notice and Opportunity to Cure.*** In the event that either of the parties is in breach of this Agreement, it shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to the Protestant seeking enforcement of the Agreement. Unless the breach is of an emergency nature or is a repetition of a prior breach, reasonable notice and

opportunity shall provide for a cure within 30 days of the date of such notice. If Applicant or the licensee fails to cure within the 30-day period (or, with respect to a breach which reasonably requires more than 30-days to cure, fails to commence cure of such breach and diligently pursues such cure) failure shall constitute a cause for seeking a Show Cause Order from the ABC Board pursuant to D.C. Official Code § 25-447. Unless otherwise noted above, any notices required to be made under this Agreement shall be in writing and mailed via certified mail, return receipt requested, postage prepaid, or hand-delivered, to the other party to this Agreement at the following addresses. Notice shall be deemed given as of the time of receipt or refusal of receipt:

If to Applicant: Safeway, Inc.
4551 Forbes Boulevard
Lanham, MD 20706
ATTN: Regional Vice President
(301) 918-6870
Fax (301) 918-8941

If to Protestants: Advisory Neighborhood Commission 6D
P. O. Box 71156
Washington, DC 20024
Attn: Chair
~~(202) 554-1795~~
Fax (202) 554-1774

Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the ABC Board or any other enforcement action.

14. ***Withdrawal of Protest.*** Upon execution of this Agreement by the Parties and its acceptance by the ABC Board, Protestants shall withdraw the Protest.

ABRA

<p>PROTESTANT Chair ABC Committee, ANC6D <u>Coralie Farlee</u> 12/14/09 Coralie Farlee Date</p> <p>ANC6D03 <u>Ron McBee</u> 12/14/09 Commissioner Ron McBee Date</p> <p>ANC6D <u>Andy Litsky</u> 12/14/09 Andy Litsky, Chair Date ANC6D</p>	<p>APPLICANT: Safeway, Inc. 4551 Forbes Road Lanham, MD 20706 301-918-6870</p> <p><u>Steve Neibergall</u> 12-9-09 By: Steve Neibergall Date President, Eastern Division</p>

#19, 12/9/09