

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of)
)
)

Safeway, Inc.)
t/a Safeway)
Application for a new Retailer's)
License Class "B" – at premises)
2845 Alabama Avenue, S.E.)
Washington, D.C. 20020-3000)

Applicant)
)
)
_____)

Case No.: 50166-02/045P

Order No.: 2003-36

BEFORE:

Roderic L. Woodson, Esquire, Chairperson
Vera M. Abbott, Member
Ellen Opper-Weiner, Esquire, Member
Audrey E. Thompson, Member
Judy A. Moy, Member
Charles A. Burger, Member
Laurie Collins, Member

ALSO PRESENT:

Fred P. Moosally, III, General Counsel
Alcoholic Beverage Regulation Administration

Jerry A. Moore III, Esquire, on behalf of the Applicant

Kathy Chamberlain, on behalf of the Protestant

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

The application, filed by Safeway, Inc., t/a Safeway ("the Applicant"), for a new Retailer's License Class "B" at premises 2845 Alabama Avenue, S.E., Washington, D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on February 27, 2002. It was determined that a timely protest was filed pursuant to D.C. Official Code § 25-601 (2001), by the Hillcrest Community Civic Association.

The protest issues are whether the establishment will: (1) adversely affect the peace, order, and quiet of the neighborhood and (2) contribute to an overconcentration of ABC licensed establishments in the neighborhood.

This case came before the Board for a public protest hearing on November 20, 2002. The Board having considered the evidence, the testimony of the witnesses, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant applied on January 19, 2001 for a new Class "B" Alcoholic Beverage Control ("ABC") Retailer's License for its establishment located at 2845 Alabama Avenue, S.E., pursuant to D.C. Official Code § 25-303(c)(4) (2001). (Alcoholic Beverage Regulation Administration ["ABRA"] Application File No. 50166.) The establishment is located in an area zoned C-3-A, where "grocery store" use and off-premise alcoholic beverage retail store use are permitted as a matter of right. (ABRA Application File No. 50166.) The Applicant's establishment is a full service grocery store that retails a full range of grocery items including food, prescription medicine, and general household items. (ABRA Application File No. 50166.) There are no other ABC Retailer's License Class "B" establishments located within 400 feet of Applicant's establishment. (ABRA Application File No. 50166.) However, two Retailer's Class "A" ABC establishments are located in the vicinity of the Applicant's establishment. These establishments trade as "Alabama Express" and "Skyland Liquors." (Tr. 11/20/02 at 66-67, 78, 183.) The Applicant is a lessee of Good Hope Marketplace, Limited Partnership, and is located in a shopping center named "Good Hope Marketplace." (Tr. 11/20/02 at 61-62; ABRA Application File No. 50166.) The Applicant is applying to sell beer and wine between the hours of 9:00 a.m. and 10 p.m. seven days a week. (ABRA Application File No. 50166.)

2. Carl William Schroeder is the Division President, Senior Vice President for Safeway Stores, Eastern Division, and has worked for the Applicant for twenty-six years. (Tr. 11/20/02 at 18, 31.) During his employment with the Applicant, Mr. Schroeder has served in District Manager positions in two states and retail operations that covered two states. (Tr. 11/20/02 at 19.) Mr. Schroeder stated that the Applicant operates in the concept of a conventional grocery store, but under the objective of one-stop shopping. (Tr. 11/20/02 at 19.) He noted that the Applicant offers approximately 35,000 items on average in a Safeway store. (Tr. 11/20/02 at 20.) As to the Applicant's alcoholic beverage sales in its other locations, Mr. Schroeder testified that the Applicant offered alcoholic beverage products in the other states where he operated during his tenure with Safeway. (Tr. 11/20/02 at 20-21.) Mr. Schroeder also stated that the Applicant is primarily a grocery store and that it does not permit beer and wine sales to adversely affect the Applicant's core grocery business. (Tr. 11/20/02 at 21.) He also testified that the Applicant's establishment is not a destination for purchasing alcoholic beverages and that alcoholic beverage products are sold as a part of the Applicant's one-stop shopping objective. (Tr. 11/20/02 at 22, 35.) Mr. Schroeder related that the purpose of providing alcoholic beverages to customers is to "enhance the shopping experience" and if the sale

of alcoholic beverages adversely affected its core business of selling groceries the Applicant would not sell these products. (Tr. 11/20/02 at 22.) Mr. Schroeder also stated that he anticipates that the sale of beer and wine would account for no more than ten percent of the Applicant's gross store sales. (Tr. 11/20/02 at 32-33.)

3. On the issue of the establishment's impact on peace, order, and quiet in the neighborhood, Mr. Schroeder asserted that the Applicant's sale of beer and wine in the establishment would not cause people to "hang out and drink alcohol" outside of the establishment. (Tr. 11/20/02 at 39.) Mr. Schroeder further testified that within twenty-six years of managing the Applicant's stores, many of which offer alcoholic beverages, he has not noticed increased crime, litter, or loitering correlated to the sale of alcoholic beverages in those stores. (Tr. 11/20/02 at 23.) Mr. Schroeder did observe that neighborhood conditions may cause the Applicant to be more aggressive with respect to keeping the establishment clean, but noted that the mere presence of alcoholic beverages in the store for purchase would not have such an impact. (Tr. 11/20/02 at 23.) He also asserted that he could not recall one incident where the Applicant was negatively impacted by the sale of alcoholic beverages. (Tr. 11/20/02 at 23.)

4. With regard to public safety issues as they relate to neighborhood peace, order, and quiet, Mr. Schroeder testified that the sale of beer and wine would not necessitate a need for additional security guards at the Applicant's establishment. (Tr. 11/20/02 at 26-27.) Mr. Schroeder stated that he believes that the security at the Applicant's establishment is currently doing a good job. (Tr. 11/20/02 at 27.) He also noted that the Applicant would provide the level of security necessary to make the Applicant's establishment "as safe as it can possibly be." (Tr. 11/20/02 at 56-57.) Mr. Schroeder also explained that in some cases, the Applicant would adjust the amount of security in an establishment or replace security that is not doing a good job. (Tr. 11/20/02 at 56.) However, he asserted that the sale of alcoholic beverages by the Applicant would not result in a need for increased security or higher grocery prices for customers. (Tr. 11/20/02 at 26-27, 29.) Mr. Schroeder also testified that having a security presence in the Applicant's establishments is common in "city stores." (Tr. 11/20/02 at 56-57.)

5. With respect to an overconcentration of similar establishments in the area, Mr. Schroeder testified that there are two liquor stores in the area of the establishment. (Tr. 11/20/02 at 42.) He stated that Skyland Liquors is not directly across the street from the establishment, but in the shopping center located across the street. (Tr. 11/20/02 at 41-42.)

6. Nathan Sims is currently a Lieutenant with the District of Columbia Metropolitan Police Department ("MPD"), Sixth District, and is assigned to and in charge of Patrol Service Area ("PSA") 610. (Tr. 11/20/02 at 60-61.) Lieutenant Sims stated that he has been assigned to PSA 610 for approximately nine months and is familiar with the operations of the Applicant's facility. (Tr. 11/20/02 at 61.) Lieutenant Sims noted that the Applicant's establishment is located within the boundaries of PSA 610. (Tr. 11/20/02 at 61.) PSA 610 operates out of the Sixth District Substation located at 2701 Pennsylvania Avenue, S.E., and is comprised of ten Officers and two Sergeants. (Tr.

11/20/02 at 84, 95.) Lieutenant Sims' tour of duty is from 10:00 p.m. until 6:00 a.m. (Tr. 11/20/02 at 82.)

7. Regarding the issue of peace, order, and quiet in the neighborhood, Lieutenant Sims testified that when he took over PSA 610 in January 2002, he conducted a crime analysis of PSA 610, including the Good Hope/Skyland Area where the establishment is located, and noted an increase in the number of robberies in that area. (Tr. 11/20/02 at 62-63.) Specifically, Lieutenant Sims noted that twelve robberies occurred in PSA 610 between December 2001 and January 2002, eleven of which occurred in the Good Hope/Skyland Area. (Tr. 11/20/02 at 62-63.) Regarding crime statistics for the period of January 2002 to September 2002, Lieutenant Sims testified that sixty percent of the service calls for PSA 610 are in the Good Hope/Skyland Area. (Tr. 11/20/02 at 63-64.) Lieutenant Sims also testified that these calls for service were in regard to panhandling, loitering, shoplifting, theft from automobiles, robberies in progress, accidental injuries, homicides, and disorderly conduct. (Tr. 11/20/02 at 64.) Lieutenant Sims testified that of the sixty percent of service calls regarding the Good Hope/Skyland Area, approximately twenty five percent of the calls were regarding shoplifting, theft, and disorderly conduct. (Tr. 11/20/02 at 75.) Regarding the Applicant's establishment, Lieutenant Sims testified that the Applicant's establishment may hold persons on its premises for shoplifting, theft, or disorderly conduct and then place a call to MPD to respond. (Tr. 11/20/02 at 64, 75.) Lieutenant Sims also testified that he receives approximately three to four service calls per month regarding the Applicant's establishment. (Tr. 11/20/02 at 75.) Lieutenant Sims testified that the biggest problems in the area involving criminal conduct are panhandling and disorderly conduct, specifically public urination and loitering. (Tr. 11/20/02 at 66.) Lieutenant Sims testified that these crimes occur mostly in the evening hours. (Tr. 11/20/02 at 99.) Lieutenant Sims stated that about 15 percent of the quality of life crimes in PSA 610 relate to alcoholic beverages. (Tr. 11/20/02 at 97.) Lieutenant Sims also stated that he has a good rapport with the Applicant and that the Applicant does call PSA 610 if there is a problem. (Tr. 11/20/02 at 93.)

8. Lieutenant Sims also testified about the violent crime in the area in which the Applicant's establishment is located. Specifically, Lieutenant Sims described incidences of violent crime in the area in the past year that included three homicides – one on the 2800 block of Alabama Avenue, S.E., one on the 2800 block of Denver Street, S.E., and one on the 2300 block of Altamont Place, S.E. (Tr. 11/20/02 at 65.) Lieutenant Sims also testified that the crime in PSA 610 is not peculiar to the area as distinguished from other PSAs in the area or adjacent PSAs. (Tr. 11/20/02 at 71.) Lieutenant Sims testified that he had two officers working overtime in the Skyland area because of the robberies in that area. (Tr. 11/20/02 at 68.) According to Lieutenant Sims, the MPD officers working overtime resulted in a "tremendous decrease" in the number of service calls to PSA 610 and the number of crimes occurring in that area. (Tr. 11/20/02 at 68.) However, Lieutenant Sims testified that in a recent community meeting he sent a warning out to residents regarding shopping in the 2800 block of Alabama Avenue, S.E., due to an increase in the number of crimes in that area, which included assaults with a deadly weapon (guns), theft from automobiles, and burglaries in progress. (Tr. 11/20/02 at 68-69.) However, Lieutenant Sims acknowledged that the Applicant's establishment is not

responsible for much of the reported crime and that his tour of duty begins at 10 p.m., which is the time that the Applicant's establishment is closing. (Tr. 11/20/02 at 73-75, 79-82.)

9. With respect to an overconcentration of ABC licensed establishments, Lieutenant Sims testified that some of the problems involving crime in the area were related to individuals "hanging out at the various liquor stores," including Skyland Liquors and Alabama Express, and soliciting money from people patronizing these and other stores in the area. (Tr. 11/20/02 at 66-67, 78.) Lieutenant Sims also stated that loitering occurs at a Amoco gas station located across the street from Safeway that contributes to the generation of crime in the area. (Tr. 11/20/02 at 77.) Additionally, Lieutenant Sims noted that there are problems with individuals in PSA 610 drinking alcoholic beverages and littering their alcoholic beverage containers in public. (Tr. 11/20/02 at 81.) Lieutenant Sims stated that he placed MPD officers on overtime in the 2800 block of Alabama Avenue, S.E., inside of the Good Hope Market Area because it is a "main thoroughfare for a lot of criminal activity." (Tr. 11/20/02 at 67-68.) Lieutenant Sims also stated that the public consumption of alcoholic beverages in the area, including individuals drinking in their cars in the Good Hope Market parking lot, as well as public drunkenness is a problem stemming from the establishments that sell alcoholic beverages. (Tr. 11/20/02 at 78-79, 92-93.) Lieutenant Sims testified that he believed that the dispensing of alcoholic beverages in these stores impacts crime in the area. (Tr. 11/20/02 at 78.) Lieutenant Sims testified that the Class "A" establishments in the area contributes to crime in the area in that the availability of alcoholic beverages causes persons to commit robberies and to panhandle in order to "get alcohol." (Tr. 11/20/02 at 78.) Lieutenant Sims testified that MPD has a problem with manpower and that the presence of an additional store in the area selling alcoholic beverages would deplete PSA 610's manpower even more. (Tr. 11/20/2002 at 68.) However, Lieutenant Sims acknowledged that there are "reserve corps" in the area, which are part-time reserve officers who put in voluntary time to patrol the area. (Tr. 11/20/02 at 72.) Lieutenant Sims stated that these "reserve corps" are in place to take police reports, but not to combat crime. (Tr. 11/20/02 at 71-72.) Additionally, Lieutenant Sims stated that the MPD Officers working overtime has decreased the number of calls for service and crimes occurring in the area. (Tr. 11/20/02 at 68.) Lieutenant Sims also noted that Safeway does possess adequate lighting in its parking lot and that he has observed security from Safeway out in front of the establishment. (Tr. 11/20/02 at 94.)

10. Edgar Tippett has been employed with the Applicant for twenty-three years and is currently a District Manager and manages seventeen of the Applicant's stores. (Tr. 11/20/02 at 104-105, 150, 168.) He served as store manager in seven of the Applicant's stores and four of those stores sold beer and wine. (Tr. 11/20/02 at 106, 150.) Mr. Tippett is familiar with the Applicant's application for an ABC license. (Tr. 11/20/02 at 105-106.) He stated that the Applicant seeks an ABC license because it recently completed in 2002, five hundred thousand dollars (\$500,000) worth of renovations at its establishment, which it needed to do to be eligible to apply for a new Class "B" Retailer's License. (Tr. 11/20/02 at 105-106, 170-171.) According to Mr. Tippett, the renovations included the installation of refrigerator cases, some flooring, reconstruction of the

storefront, and the addition of more glass in the establishment. (Tr. 11/20/02 at 170-171.) Furthermore, Mr. Tippett testified that he did not find, in the stores that he managed, the sale of beer and wine to negatively impact the community in which the stores were located. (Tr. 11/20/02 at 106.) He stated that beer and wine is not a "destination product" for the Applicant and that the Applicant only intends to sell "mid-level to upper-level" wines and domestic and imported beer. (Tr. 11/20/02 at 107-108.) Mr. Tippett noted that the establishment would not sell single containers of beer, bumpers, or fortified wines. (Tr. 11/20/02 at 108, 153-154.) He stated that the Applicant's intent is to provide convenience for the shopper to purchase their beer and wine needs at the establishment. (Tr. 11/20/02 at 108.) Mr. Tippett stated that the establishment will not be advertising alcoholic beverages on the outdoor poles in its parking lot. (Tr. 11/20/02 at 156-157.)

11. With regard to the issue of peace, order, and quiet in the community, Mr. Tippett testified to the Applicant's security procedures, specifically its monitoring of the parking lot in front of the establishment. Mr. Tippett testified that the Applicant usually has three security guards in the store at all times, one at the front door, one in the back of the store, and one that roves around the store. (Tr. 11/20/02 at 142, 166-167.) These security guards also come out on occasion to survey the parking area in front of the store. (Tr. 11/20/02 at 166.) He also stated that the Applicant has a security camera at the door that films both doors and part of the sidewalk. (Tr. 11/20/02 at 169-170.) Mr. Tippett stated that he visits the store anywhere between seven o'clock in the morning and ten o'clock at night and that he has never witnessed any problems in the parking lot. (Tr. 11/20/02 at 137.) Mr. Tippett stated that the Applicant's employees do not see a lot of drinking in the parking lot, but when it is observed it is immediately addressed. (Tr. 11/20/02 at 142.) He also testified that the Applicant requires its stores to have a specific amount of lighting in its parking lots to ensure safe egress from the store. (Tr. 11/20/02 at 136.) Mr. Tippett further testified that the Applicant's clerks on duty generally escort patrons to and from their cars, loading groceries. (Tr. 11/20/02 at 137.) Mr. Tippett asserted that Good Hope Marketplace also has mall security that monitors the parking lot and that he has personally observed a security car in the parking lot. (Tr. 11/20/02 at 137-139.) Mr. Tippett also was not aware of any incidences of violence at the Applicant's Alabama Avenue, S.E. grocery store and that the community has not complained about such incidences. (Tr. 11/20/02 at 149.)

12. With regard to criminal activity, Mr. Tippett testified about panhandling in or about the Applicant's establishment. He testified that the Applicant's employees generally ask panhandlers to "move on" and if they do not, then MPD is notified. (Tr. 11/20/02 at 139.) Mr. Tippett stated that the Applicant attempts to reduce calls to MPD by handling the problem itself "with the use of a sandwich," in that once the person is served food they move along. (Tr. 11/20/02 at 139-140.) He stated that the Applicant's employees attempt to deal with panhandling in a manner that is friendly and consistent and by telling panhandlers, "[w]e need you to move on." (Tr. 11/20/02 at 139-140.) Mr. Tippett stated that the Applicant's employees usually know the persons who are panhandling because they are from the neighborhood. (Tr. 11/20/02 at 140.) He also noted that the Applicant's employees seldom report that they observe issues going on in the parking lot related to crime, vagrancy, or panhandling. (Tr. 11/20/02 at 148.) Additionally, Mr.

Tippett was not aware of any incidents involving individuals drinking alcoholic beverages in the Applicant's parking lot. (Tr. 11/20/02 at 148-149.)

13. With respect to litter, Mr. Tippett testified that the Applicant has one hundred and eighty six (186) employees who play a role in assisting the store in ensuring that the Applicant's parking lots are clean and free of clutter. (Tr. 11/20/02 at 146-147.) Mr. Tippett testified that there are trash receptacles located outside of the establishment. (Tr. 11/20/02 at 162.)

14. Mr. Tippett also provided testimony regarding loitering activity around some of the Applicant's other establishments and noted that Safeway tries to address problems with loitering as they occur. (Tr. 11/20/02 at 110-111, 132.) He stated that at the Applicant's stores that he managed, loitering was sometimes a problem, but it was not necessarily related to the sale of alcoholic beverages. (Tr. 11/20/02 at 110.) Mr. Tippett testified that at the Applicant's Alabama Avenue, S.E. store, he was not aware of any problems with public drunkenness or persons consuming alcoholic beverages in the establishment's parking lot. (Tr. 11/20/02 at 169.) Mr. Tippett testified that the Applicant's Alabama Avenue, S.E. store would not target homeless persons or loiterers as patrons for the sale of alcoholic beverages. (Tr. 11/20/02 at 109.) With regard to the sale of alcoholic beverages, Mr. Tippett stated that the Applicant "absolutely would not sell" alcoholic beverages to an intoxicated person and that the Applicant's employees go through extensive training regarding persons that they may sell alcoholic beverages. (Tr. 11/20/02 at 127-128.)

15. Mr. Tippett also described the Applicant's procedures regarding the sale of alcoholic beverages in its stores that sell beer and wine. He testified regarding alcoholic beverage training, that each "checker" must undergo a two-hour training course and that the Applicant also provides a management-training program. (Tr. 11/20/02 at 150, 153.) Mr. Tippett also noted that a component of the training each checker must undergo is specific training as to the operation of the cash register. (Tr. 11/20/02 at 151.) The training involving the operation of the cash register details how one must physically hold the identification in his or her hand and enter the date of birth into the cash register. (Tr. 11/20/02 at 128, 151.) Mr. Tippett also testified that the Applicant has penalties against its employees for selling alcoholic beverages to underage persons. (Tr. 11/20/02 at 151-152.) Mr. Tippett stated that penalties include a five hundred-dollar (\$500) fine and a week suspension for the first instance and immediate dismissal for the second instance. (Tr. 11/20/02 at 151-152.) The age range of the Applicant's employees serving as cashiers is age eighteen to fifty-six and no one under the age of eighteen may operate a cash register. (Tr. 11/20/02 at 170.) Mr. Tippett testified that the Applicant's policy is to card anyone under the age of thirty-five years of age. (Tr. 11/20/02 at 172-173.)

16. Ernest Vincent is employed with the Applicant and formerly served as manager for the Applicant's store located at 2845 Alabama Avenue, S.E. (Tr. 11/20/02 at 104, 111.) He served the Applicant in this capacity for two years and is familiar with the store's operating procedures. (Tr. 11/20/02 at 112.) Mr. Vincent testified that he did not have any concerns that the issuance of an ABC license to the Applicant would cause an

increase in crime at the establishment or negatively impact upon the ambiance of the store or its attractiveness to customers. (Tr. 11/20/02 at 123-124.)

17. With respect to loitering, Mr. Vincent testified that loitering was not a problem at the Applicant's establishment while he served as manager. (Tr. 11/20/02 at 112.) Mr. Vincent testified that customers sometimes stand around outside of the establishment waiting for rides. (Tr. 11/20/02 at 112-113.) He stated that volunteers termed "gypsy drivers" gave people rides to the Applicant's establishment and that these persons otherwise would not be able to patronize the establishment. (Tr. 11/20/02 at 113.) Mr. Vincent testified that this happens throughout the city. (Tr. 11/20/02 at 113.) He also testified that the Applicant's establishment did not have a problem with "kids hanging around the store." (Tr. 11/20/02 at 113.) Mr. Vincent also testified that he was not aware of any problems with people standing around or sitting in cars drinking alcoholic beverages. (Tr. 11/20/02 at 114.)

18. With respect to litter, Mr. Vincent stated that the establishment did not have a problem with litter. (Tr. 11/20/02 at 113-114.) Additionally, he testified that he attended community meetings and that the community did not complain to him regarding litter, loitering, or crime at the establishment. (Tr. 11/20/02 at 114-115.) Mr. Vincent testified that trash receptacles are present at the establishment. (Tr. 11/20/02 at 162.)

19. Mr. Vincent provided testimony regarding crime in the community in which the Applicant's establishment is located. He testified that the only crime issues he is aware of in the Applicant's establishment are related to shoplifting. (Tr. 11/20/02 at 117.) Mr. Vincent also affirmed that crime issues were not related to robbery, homicide, loitering, public urination, or similar issues and that he had not observed this type of criminal activity in the establishment's parking lot. (Tr. 11/20/02 at 117.) He testified that he was aware of crime occurring in the neighborhood surrounding the establishment, but that these incidences were not connected to the Applicant's establishment. (Tr. 11/20/02 at 123.)

20. Sharon Brown is the property manager of Good Hope Marketplace and is employed by Anacostia Management Company, which is an affiliate of Good Hope Marketplace Limited Partnership. (Tr. 11/20/02 at 176-177.) Ms. Brown visits Good Hope Marketplace between one and six times per week and generally drives through the parking lot on a daily basis. (Tr. 11/20/02 at 182.)

21. Ms. Brown provided testimony regarding the security maintained by Good Hope Marketplace. She testified that there is a satellite police station located at the center of Good Hope Marketplace manned by reserve officers. (Tr. 11/20/02 at 177, 195.) Ms. Brown asserted that the reserve officers are on the premises during the hours of operation of the shopping center and that they have marked MPD automobiles located throughout the shopping center. (Tr. 11/20/02 at 177-178, 197.) Ms. Brown testified that the reserve officers generally have three MPD cars parked in the shopping center parking lot. (Tr. 11/20/02 at 197.) She affirmed that these MPD officers are off duty volunteers from the MPD Sixth and Seventh Districts and work from 6:00 a.m. until Midnight, and there

are two to three MPD officers there at any given time. (Tr. 11/20/02 at 181-182, 196-198.) Ms. Brown testified that the officer's responsibilities are to man the common areas of the shopping center, to take police reports, and to respond to any trouble. (Tr. 11/20/02 at 178, 199-200.) She stated that each store is in direct communication with the officers via "walkie-talkie" and if the officers cannot handle a given situation they will call MPD for backup. (Tr. 11/20/02 at 178, 200.) Ms. Brown also testified that there are no security cameras outside in the parking lot, but that individual stores maintain security cameras. (Tr. 11/20/02 at 191.)

22. With regard to litter, Ms. Brown testified that in her experience as manager of Good Hope Marketplace, Skyland Liquors, which is located across the street from Good Hope Marketplace, has a problem with litter and the wind blows trash from Skyland Liquors to the Good Hope Marketplace parking lot. (Tr. 11/20/02 at 183.) She explained that she rectifies the issue by having someone employed to clean the litter and that she has communicated with community groups about the issue. (Tr. 11/20/02 at 180, 183-184.) Ms. Brown testified that she employs a person for twelve hours a day whose sole responsibility is to "pick up trash out of the parking lot" and that he walks around with a trash bin and picks up trash. (Tr. 11/20/02 at 180, 183-184.)

23. With respect to crime in the area, Ms. Brown testified that she is not aware of specific incidences of criminal activity beyond shoplifting and that she is not aware of drinking problems in the parking lot. (Tr. 11/20/02 at 179.) She also testified that the felony mentioned by Lieutenant Sims was committed on the street in front of the shopping center on Alabama Avenue, S.E., and did not involve the Good Hope Marketplace parking lot. (Tr. 11/20/02 at 182-183, 189.) Ms. Brown further stated that she did not see a problem with loitering, crime, panhandling, or disorderly conduct in the parking lot. (Tr. 11/20/02 at 183, 189, 201.) She also stated that she keeps extensive records of criminal incidents that occur on the premises, and that the files are maintained at the MPD station. (Tr. 11/20/02 at 194.)

24. Steven Gray currently serves as the Retail Store Manager for the Applicant's Alabama Avenue, S.E. establishment. (Tr. 11/20/02 at 211.) He has been employed in this capacity for approximately three weeks. (Tr. 11/20/02 at 211-212.) Mr. Gray has managed three of the Applicant's retail stores and has been employed by the Applicant for twenty-two years. (Tr. 11/20/02 at 212.)

25. Advisory Neighborhood Commission ("ANC") 7B submitted a letter of protest on January 24, 2002, which opposed the issuance of a Retailer's License Class "B" to the Applicant based on issues of peace, order, and quiet and overconcentration. (ABRA Protest File No. 50166-02/045P.) However, ANC 7B withdrew their protest upon reaching a voluntary agreement dated May 16, 2002 with the Applicant. (Tr. 5/22/02 at 3.)

26. The Applicant agreed to the following terms as part of their May 16, 2002 voluntary/cooperative agreement with ANC 7B that was submitted to the Board for approval: (1) to take action reasonable and necessary to prohibit and prevent loitering and

panhandling within 100 feet of the premises by; (a) posting and maintaining "No Loitering, No Panhandling" signs on the premises within 30 days after an ABC license is issued and by also requesting that customers not contribute to panhandlers on the premises; (b) asking loiterers to "move on" whenever they are observed on the premises; and (c) calling MPD to enforce the Applicant's policy against loitering and panhandling; (2) to maintain human and/or electronic surveillance in its aisles in which beer and wine are displayed; (3) not to sell single containers of beer in any size; (4) to maintain the public sidewalk space adjacent to the premises in a clean and litter-free condition by: (a) picking up trash, including beverage bottles and cans, on a daily basis, or more often if needed; and (b) sweeping the outside of the establishment on a daily basis, or more often if needed; (5) within 30 days after an ABC license is issued, to initiate a cooperative effort with its Landlord, the ANC, Hillcrest Community Civic Association, MPD, and the tenants of Good Hope Marketplace to develop and implement a plan to improve and maintain security at Good Hope Marketplace; (6) to prohibit the consumption of alcoholic beverages on the premises; (7) to prohibit the sale of alcoholic beverages to minors; (8) to package alcoholic beverages in translucent bags and to not place items other than alcoholic beverages in these bags; (9) to program its check-out scanners to prompt its sales clerks to refuse a sale when a purchase of an alcoholic beverage is attempted outside of the hours allowed by law; (10) to participate in a Board approved course in alcoholic beverage sales management; and (11) to notify a new owner of the conditions placed on the license in the event of the sale of the grocery store. (ABRA Protest File No. 50166-02/045P.)

CONCLUSIONS OF LAW

27. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the satisfaction of the Board that its liquor license application for which approval is sought is appropriate for the neighborhood in which it is located. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the hearings, the Board concludes that the Applicant has demonstrated that granting the Applicant's request for a new Retailer's License Class B – subject to the conditions imposed by the Board as listed below – would be appropriate for the delineated area in which the establishment is located.

28. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (2001) and D.C. Official Code § 25-609 (2001), an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 263, 646 (D.C. 1982). In this instance, Advisory Neighborhood Commission ("ANC") 7B submitted a timely letter of protest on January 24, 2002, which opposed the issuance of a Retailer's License Class "B" to the Applicant based upon issues of peace, order, and quiet and overconcentration. However, ANC 7B withdrew its protest of the ABC license application upon reaching a voluntary agreement, dated May 16, 2002, with the Applicant. The Board's finds the terms of ANC 7B's voluntary agreement with the Applicant to be reasonable and appropriate. Specifically, the terms of the agreement take steps to address potential concerns at the establishment with regard to loitering, panhandling, drinking in public, sales to minors,

security, and litter. As such, the Board accords great weight to ANC 7B's decision to withdraw its protest in this matter based upon the terms of the voluntary agreement between ANC 7B and the Applicant. As a result, pursuant to D.C. Official Code § 25-104(e) (2001), the Board is including the terms set forth in the May 16, 2002 voluntary/cooperative agreement as conditions that are a part of the Applicant's license. As discussed below, the Board also finds that several other conditions are appropriate to address concerns raised during the protest hearing.

29. D.C. Official Code § 25-313(b)(2) (2001) requires the Board to determine the appropriateness of an establishment with regard to peace, order, and quiet. 23 DCMR § 400.3 (b) defines peace, order, and quiet to include such areas as litter, loitering, criminal activity, rowdiness, and noise. With respect to litter, the testimony of Ms. Brown revealed that some litter problems exist in the area and that some litter accumulates in the establishment's parking lot. However, the testimony of Ms. Brown, Mr. Tippett, and Mr. Vincent also revealed that the Applicant's establishment has not created significant litter problems in the community and that the Applicant and its property manager have taken proactive steps to lessen the accumulation of trash in its environment. Specifically, the testimony of Mr. Tippett and Mr. Vincent established that the Applicant maintains trash receptacles outside of its establishment and that its employees assist with the responsibility of maintaining a litter free environment. Furthermore, the testimony of Ms. Brown revealed that the Applicant's property manager employs a full time staff person to pick up trash in the parking lot in front of the Applicant's establishment. The Board finds that requiring the Applicant to maintain the public sidewalk adjacent to the premises in a clean, litter-free condition by picking up trash and sweeping, at a minimum, on a daily basis, as agreed to with ANC 7B, will further prevent litter accumulation. The Board also finds that granting the Applicant's license request with this condition will not result in increased litter in the community, which would negatively impact peace, order, and quiet in the neighborhood.

30. With regard to criminal activity, the testimony of Lieutenant Sims, Mr. Tippett, and Ms. Brown did reveal that some incidences of loitering, panhandling, and criminal activity – specifically, shoplifting, theft, and disorderly conduct – do occur in the area of the Applicant's establishment with shoplifting occurring on the Applicant's premises. However, the testimony also revealed that although criminal activity is a problem in the area, only a small portion of that activity is related to the Applicant's establishment. Furthermore, the testimony revealed that although incidences of violent crime occur in the area, none were related to the Applicant's establishment. Additionally, based upon the testimony of Mr. Schroeder, Lieutenant Sims, Mr. Tippett, Mr. Vincent, and Ms. Brown, the Board finds that the Applicant has taken proactive steps to thwart crime in the area and maintain a safe environment for its customers. Specifically, the Applicant has taken steps to prevent criminal activity in or around its establishment through the use of security guards inside and outside the front of the store. The testimony also established that the Applicant utilizes security cameras inside of the establishment. Additionally, the testimony revealed that the Applicant's landlord maintains a security presence outside of the Applicant's establishment and that MPD vehicles are located in the parking lot in front of the Applicant's establishment. Additionally, the testimony of Lieutenant Sims

revealed that the establishment cooperates with MPD and has called MPD when such incidences of crime have occurred in or around the Applicant's establishment. As a result, the Board finds that the Applicant's establishment does not adversely impact criminal activity in the area.

31. With regard to loitering and panhandling, the testimony of Lieutenant Sims revealed that some loitering and panhandling occurs around the area where the establishment is located. However, the testimony of Mr. Schroeder, Mr. Tippett, and Mr. Vincent also revealed that the Applicant has proactively taken steps to prevent or cure loitering and panhandling problems in or around the establishment. The testimony also demonstrated that the Applicant has standard procedures in place to deal with panhandling activity without draining MPD resources. Additionally, the testimony revealed that many individuals who appear to be loitering are actually waiting for automobile service. The Board finds that requiring the Applicant to post and maintain "No Loitering and No Panhandling" signs outside of the establishment, requesting that customers not contribute to panhandlers, and requiring the Applicant to notify MPD when loitering and/or panhandling activity occurs – as agreed upon by the Applicant in its May 16, 2002 cooperative/voluntary agreement – will further limit the incidences of such conduct in or around the Applicant's establishment. The Board also notes, based upon the testimony as a whole, that the establishment did not have a problem with patrons making excessive noise or engaging in rowdy behavior.

32. Based upon the testimony of Mr. Tippett, the Board also finds that the Applicant has training procedures for employees as well as cash register electronic programs aimed at preventing the sale of alcoholic beverages to minors. The Applicant also imposes strict penalties against its employees who sell alcoholic beverages to underage persons. Moreover, the testimony revealed that the Applicant's employees are trained to not sell alcoholic beverages to intoxicated persons.

33. In addition to the conditions agreed to by the Applicant in its May 16, 2002 agreement with ANC 7B, the Board finds, based upon the testimony of Lieutenant Sims, Mr. Schroeder, Mr. Vincent, and Mr. Tippett that: (1) prohibiting the Applicant from selling fortified wine products and single containers of wine less than 750 milliliters; (2) maintaining a logbook detailing the time and date the Applicant calls MPD; and (3) prohibiting the display of alcoholic beverage advertisements on the windows and doors of the Applicant's establishment will help to eliminate panhandling, loitering, drinking in public, and littering in or around the Applicant's establishment. The Board notes that it has the authority to place these conditions on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001). With these conditions and the conditions adopted from the May 16, 2002 agreement, the Board finds that granting this license will not have an adverse affect on peace, order, and quiet in the neighborhood.

34. With regard to an overconcentration of licensed ABC establishments in the neighborhood pursuant to D.C. Official Code § 25-314(a)(4) (2001) and Title 23 DCMR § 400.5(c) (1997), the Board finds that the Applicant has demonstrated that the issuance of a Class "B" Retailer's License to the Applicant would not create or contribute to an

overconcentration of licensed establishments by license classes in the area. Specifically, while the testimony revealed that two Class "A" establishments are located in the area, there are no other establishments in the area that currently hold a Retailer's License Class "B". Additionally, the testimony of Mr. Schroeder revealed that the granting of an ABC license to the establishment would provide a one-stop shopping convenience to patrons in the area. As a result, the Board concludes that the issuance of a Retailer's License Class "B" to the Applicant with the conditions placed by the Board will not create an overconcentration of ABC establishments of the same class.

35. Pursuant to D.C. Official Code § 25-313(b)(3) (2001), the Board finds based upon the record as a whole that there is sufficient parking for patrons of the establishment. Pursuant to D.C. Official Code § 25-313(b)(3) (2001), the Board finds no evidence from the record as a whole that the establishment will have an adverse affect on vehicular or pedestrian safety. The Board notes that the Protestant did not raise this as a protest issue.

36. Pursuant to D.C. Official Code § 25-313(b)(1) (2001), the Board finds no evidence from the record as a whole that the establishment will have an adverse affect on real property values. The Board notes that the Protestant did not raise this as a protest issue.

37. Pursuant to D.C. Official Code § 25-314(a)(1) through (2) (2001), the Board finds no evidence based upon the record as a whole that the Applicant's establishment is situated in proximity to schools, recreation centers, day care centers, public libraries, or other similar facilities so as to negatively affect the operation or clientele of those establishments. Furthermore, pursuant to D.C. Official Code § 25-314(a)(3) (2001), the Board finds no evidence based upon the record as a whole that school age children when using such facilities will be unduly attracted to the Applicant's establishment. The Board notes that the Protestant did not raise this as a Protest issue.

38. Pursuant to D.C. Official Code § 25-332(c), the Board finds that based upon the testimony of Mr. Tippett, the Applicant's establishment has undergone renovations in excess of \$500,000.00 during both the same calendar year and in the preceding twelve months in which its application was made. Additionally, the establishment primarily operates as a grocery store and the sale of alcoholic beverages is not expected to be more than 15% of the total volume of gross receipts on an annual basis. As a result, the Board finds that the Applicant does qualify to receive a new Class "B" Retailer's License under D.C. Official Code § 25-332(c)

THEREFORE, it is hereby **ORDERED** on this 16th day of April 2003, that the application for a new Retailer's License Class "B" filed by Safeway, Inc., t/a Safeway, 2845 Alabama Avenue, S.E., Washington, D.C. 20020, be and the same is hereby, **GRANTED**.

It is **FURTHER ORDERED** that the Applicant's request to sell beer and wine products daily, including Sundays, between the hours of 9:00 a.m. and 10:00 p.m., be and the same is hereby **GRANTED** and that the following conditions are hereby imposed on the Applicant and shall become the terms of the license:

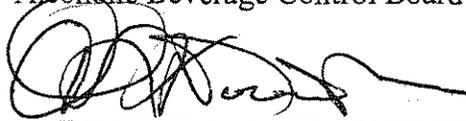
- (1) The Applicant shall take action reasonably necessary to prohibit and prevent loitering and panhandling within 100 feet of the premises by; (a) posting and maintaining "No Loitering, No Panhandling" signs in a conspicuous place on the premises within 30 days after the date of this order and by also requesting that customers not contribute to panhandlers on the premises; (b) asking loiterers to "move on" whenever they are observed on the premises; (c) calling MPD to enforce the Applicant's policy against loitering and panhandling. The Applicant shall maintain a logbook detailing the time and date of such calls made to MPD;
- (2) The Applicant shall maintain human and/or electronic surveillance in its aisles in which beer and wine are displayed;
- (3) The Applicant shall not sell single containers of beer in any size;
- (4) The Applicant shall maintain the public sidewalk space adjacent to the premises in a clean and litter-free condition by: (a) picking up trash, including beverage bottles and cans, on a daily basis, or more often if needed; (b) sweeping the outside of the establishment on a daily basis, or more often if needed;
- (5) The Applicant within 30 days after the date of this order, shall initiate a cooperative effort with its Landlord, the ANC, Hillcrest Community Civic Association, MPD, and the tenants of Good Hope Marketplace to develop and implement a plan to improve and maintain security at Good Hope Marketplace;
- (6) The Applicant shall prohibit the consumption of alcoholic beverages on the premises and in its parking lot;
- (7) The Applicant shall prohibit the sale of alcoholic beverages to minors;
- (8) The Applicant shall package alcoholic beverages in translucent bags and not place items other than alcoholic beverages in these bags;
- (9) The Applicant shall program its check-out scanners to prompt its sales clerks to refuse a sale when a purchase of an alcoholic beverage is attempted outside of the hours allowed by District of Columbia law;
- (10) The Applicant shall have all alcoholic beverage sales staff and ABC licensed managers participate in a Board approved course in alcoholic beverage sales management and submit certification of completion of the course within 90 days from the date of this order;

(11) The Applicant shall notify a new owner of the conditions placed on the license in the event of the sale of the grocery store;

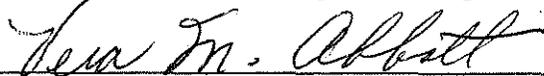
(12) The Applicant shall not sell fortified wine products or any single serving containers of wine under 750 milliliters, unless said wine containers are sold in packages of four or more bottles in the same package; and

(13) The Applicant shall not post advertisements regarding alcoholic beverage products on any windows or doors of its establishment.

District of Columbia
Alcoholic Beverage Control Board



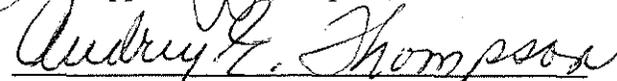
Roderic L. Woodson, Esquire, Chairperson



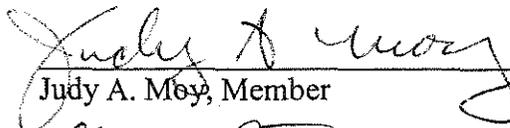
Vera M. Abbott, Member



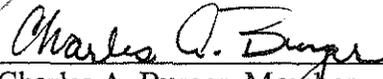
Ellen Opper-Weiner, Esquire, Member



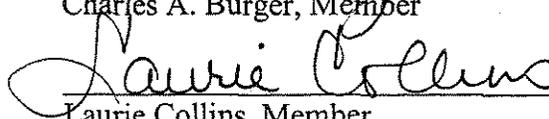
Audrey E. Thompson, Member



Judy A. Moy, Member



Charles A. Burger, Member



Laurie Collins, Member

Pursuant to 23 DCMR § 1619.1 (June 1997), 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1619.1 (1997) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).