

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

_____ )	
In the Matter of: )	
)	
Safeway, Inc. )	
t/a Safeway )	
)	
Application for a New Retailer's )	Case No. 50243-03/066P
License Class B )	License No. 60714
at premises )	Order No. 2007-078
6500 Piney Branch Road, N.W. )	
Washington, D.C. )	
_____ )	

BEFORE:

Peter B. Feather, Acting Chairperson<sup>1</sup>  
Vera M. Abbott, Member  
Audrey E. Thompson, Member  
Judy A. Moy, Member  
Albert G. Lauber, Member  
Mital M. Gandhi, Member

ALSO PRESENT: Jennifer L. Johnson, Assistant Attorney General  
Alcoholic Beverage Regulation Administration

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

Sara Green, on behalf of the Protestants

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

The Application filed by Safeway, Inc., t/a Safeway (Applicant) for a new Retailer's Class "B" License at premises 6500 Piney Branch Road, N.W., initially came before the Alcoholic Beverage Control Board (Board) for a Roll Call hearing on July 23, 2003. It was determined that a timely protest, pursuant to D.C. Official Code § 25-601 (2001), was filed in opposition to the Application by Advisory Neighborhood Commission (ANC) 4B and Sara Green, on behalf of a group of five (5) or more residents (collectively, the Protestants). ANC 4B later withdrew its protest by letter dated April 26, 2007.

---

<sup>1</sup> Former Chairperson Charles A. Burger presided over the two protest hearings involving this license application but did not deliberate or vote on this matter as he is no longer a member of the ABC Board.

Pursuant to D.C. Official Code § 25-604 (2001), seven (7) District residents filed a timely request to initiate the referendum process. At the July 23, 2003 Roll Call hearing, the Board decided to hold the protest filed by the Protestants in abeyance pending resolution of the referendum petition process. On July 12, 2006, the Board issued a written Order dismissing the referendum petition filed in opposition to the Applicant's request for a new Retailer's Class "B" License due to the Council of the District of Columbia repealing the referendum process from Title 25 of the D.C. Official Code.

Pursuant to D.C. Official Code § 25-313(b), the primary filed protest issue is whether the issuance of the license would adversely affect the peace, order, and quiet of the neighborhood, including excessive loitering and litter. The Protestants also raised the issue of whether the issuance of the license would create or contribute to an over-concentration of licensed establishments.

The case came before the Board for public protest hearings on April 25, 2007 and May 2, 2007. At the conclusion of the May 2, 2007 protest hearing, the Board took its decision in this matter under advisement. The Board, having considered the motions, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

#### **FINDINGS OF FACT**

1. The Applicant's establishment is located in Ward 4 at 6500 Piney Branch Road, N.W. (Alcoholic Beverage Regulation Administration (ABRA) Application File No. 50243.) The establishment is located in a C-2-A zone which is designed to include office, retail and various residential uses to a maximum lot occupancy of 60% for residential use. (ABRA Investigative Report No. 8482.) The establishment is an existing full-service grocery store and has applied for a new Class "B" retailer's license for the sale of beer and wine in addition to its existing selection of goods and groceries. (ABRA Application File No. 50243; Tr. 4/25/07 at 24.) The Applicant has undergone renovations in excess of \$500,000 during the preceding twelve months that the application was filed. (ABRA Application File No. 50243.) The Applicant's proposed hours of operation are Sunday through Saturday, 6:00 a.m. to 12:00 a.m. (ABRA Application File No. 50243.) It has requested permission to sell alcoholic beverages on Sunday through Saturday between the hours of 9 a.m. and 10 p.m. (ABRA Application File No. 50243.) The Application was accepted by ABRA on May 12, 2003 and has been pending since that time. (ABRA Application File No. 50243.)

2. ANC 4B initially protested the license application but withdrew its protest after the April 25, 2007 protest hearing by letter dated April 26, 2007 that was received by ABRA on April 27, 2007. (ABRA Application File No. 50243.) The letter also contained a written vote by ANC 4B to appoint ANC Commissioner Frederick Grant to testify before the Board on behalf of ANC 4B at the April 25, 2007 protest hearing. (ABRA Application File No. 50243.) ANC Commissioner Frederick Grant, who represents the single member district where the Applicant's establishment is located, had also

previously been designated ANC 4B's representative by written correspondence dated August 15, 2006 from then ANC 4B Chairperson Cherita Whiting. (ABRA Application File No. 50243.)

3. ABRA Investigator Amanda Sheehan conducted visits to the Applicant's establishment on: Wednesday, February 21, 2007, from 6:45 p.m. to 7:20 p.m.; Saturday, February 24, 2007, from 11:19 p.m. to 11:34 p.m.; Tuesday, February 27, 2007, from 10:50 a.m. to 11:30 a.m.; Wednesday, February 28, 2007, from 2:20 p.m. to 3:00 p.m.; Thursday, March 1, 2007, from 11:00 a.m. to 11:30 a.m.; Friday, March 2, 2007 from 1:00 p.m. to 1:35 p.m.; Monday, March 5, 2007 from 12:40 p.m. to 1:05 p.m.; Tuesday, March 6 from 3:42 p.m. to 4:15 p.m. and from 6:45 p.m. to 7:15 p.m.; Wednesday, March 7, 2007 from 12:45 p.m. to 1:35 p.m. and from 11:30 p.m. to 12:15 a.m.; Thursday, March 8, 2007 from 3:15 p.m. to 3:40 p.m.; Friday, March 9, 2007 from 12:15 a.m. to 12:50 a.m., from 1:50 p.m. to 2:30 p.m. and from 11:00 p.m. to 11:40 p.m.; Saturday, March 10, 2007 from 10:00 p.m. to 10:30 p.m.; Monday, March 12, 2007, from 1:40 p.m. to 2:15 p.m.; Tuesday, March 13, 2007, from 11:25 a.m. to 12:00 p.m. and from 8:30 p.m. to 9:30 p.m.; Wednesday, March 14, 2007, from 2:55 p.m. to 3:30 p.m. and from 9:15 p.m. to 9:50 p.m.; Thursday, March 15, 2007, from 9:15 p.m. to 9:40 p.m.; Friday, March 16, 2007 from 6:15 p.m. to 7:00 p.m. and from 10:06 p.m. to 10:36 p.m.; Monday, March 19, 2007 from 1:15 p.m. to 1:45 p.m.; Tuesday, March 20, 2007 from 2:00 p.m. to 2:30 p.m. and from 8:00 p.m. to 8:30 p.m.; Wednesday, March 21, 2007 from 1:55 p.m. to 2:20 p.m.; Thursday, March 22, 2007 from 8:00 p.m. to 8:30 p.m.; Friday, March 23, 2007 from 12:00 p.m. to 1:00 p.m.; Saturday, March 24, 2007 from 9:30 p.m. to 9:40 p.m.; Monday, March 26, 2007, from 4:02 p.m. to 4:07 p.m.; Tuesday, March 27, 2007, from 11:25 p.m. to 11:45 p.m.; Wednesday, March 28, 2007, from 2:55 a.m. to 3:20 p.m. and from 10:00 p.m. to 10:20 p.m.; Thursday, March 29, 2007, from 10:50 a.m. to 11:50 a.m. and from 9:06 p.m. to 9:40 p.m.; Friday, March 30, 2007 from 12:00 p.m. to 12:35 p.m. and from 9:05 p.m. to 10:05 p.m.; Monday, April 2, 2007 from 11:30 a.m. to 11:50 a.m.; Tuesday, April 3, 2007 from 11:15 p.m. to 11:45 p.m.; Wednesday, April 4, 2007 from 11:33 a.m. to 12:00 p.m. and from 11:20 p.m. to 12:00 a.m.; Thursday, April 5, 2007 from 1:15 p.m. to 1:40 p.m. and from 10:15 p.m. to 10:50 p.m.; Friday, April 6, 2007 from 11:00 a.m. to 11:30 a.m.; Monday, April 9, 2007 from 11:05 a.m. to 11:35 a.m.; Tuesday, April 10, 2007 from 11:45 a.m. to 12:15 p.m. and from 9:05 p.m. to 9:45 p.m.; Wednesday, April 11, 2007 from 10:30 a.m. to 11:00 a.m.; Thursday, April 12, 2007 from 12:50 p.m. to 2:00 p.m.; Friday, April 13, 2007 from 10:50 a.m. to 11:40 a.m.; Saturday, April 14, 2007 from 9:15 p.m. to 9:45 p.m.; Wednesday, April 18, 2007 from 3:00 p.m. to 4:00 p.m. and from 10:30 p.m. to 11:00 p.m.; Friday, April 20, 2007 from 10:00 p.m. to 10:30 p.m. and Saturday, April 21, 2007 from 1:25 a.m. to 1:45 a.m. (ABRA Investigative Report No. 8482.)

4. The Applicant's establishment is located within close proximity to another Alcoholic Beverage Control (ABC) licensed establishment. (Tr. 4/25/07 at 39.) Piasa Market holds a Class "B" retailer's license and is located at 1206 Underwood Street N.W., which is approximately 250 feet from the Applicant's establishment. (ABRA Investigative Report No. 8482; Tr. 4/25/07 at 39.) The Applicant's establishment is located in close proximity to Howard's Pre-School located in the New Bethel Church at 6440 Piney Branch Road,

N.W., which is directly across from the Applicant. (Tr. 4/25/07 at 39.) Our Children Daycare Center is located at 6640 Georgia Avenue, N.W., and is approximately 550 feet from the establishment. (ABRA Investigative Report No. 8482; Tr. 4/25/07 at 39.)

5. With regard to the issue of peace, order, and quiet, Investigator Sheehan and other ABRA Investigators monitored the establishment on 58 separate occasions from Wednesday, February 21, 2007 until Saturday, April 21, 2007. (Tr. 4/25/07 at 40.) During the majority of the time the Applicant was monitored, no problems with peace order and quiet were observed. (Tr. 4/25/07 at 40.) Specifically, Investigator Sheehan did not find litter, trash, or loitering to be an issue nor did she witness any public drinking. (Tr. 4/25/07 at 42 and 46-47; ABRA Investigative Report No. 8482.) The two incidents that were noted by ABRA Investigators during the monitoring period were minor in nature. These were: 1) a Safeway customer and a Starbucks customer standing near the entrance, talking and drinking coffee; and 2) three shopping carts being stacked up and placed in a Safeway parking place. (ABRA Investigative Report No. 8482; Tr. 4/25/07 at 40-41, 44.)

6. With regard to parking, the Applicant's establishment has a parking lot that has approximately 220 parking spaces. (Tr. 4/25/07 at 40.) Investigator Sheehan indicated that there is also some street parking available for the Applicant's patrons on several nearby streets and did not observe any significant problems with vehicular or pedestrian safety during her visits. (ABRA Investigative Report No 8482; Tr. 4/25/07 at 40.)

7. With regard to the issue of overconcentration, Richard Holzsager stated that there are 23 establishments with either a Class A or B license within a mile from the Applicant. (Tr. 4/25/07 at 59, 62-63.) He did acknowledge that only about 5 to 7 of these licensees are within a half mile of the establishment and only a couple of these are 2 to 3 blocks from the establishment as there is a large residential area located around the establishment. (Tr. 4/25/07 at 59, 77-79.) Mr. Holzsager did indicate that the only establishment close to being considered a big grocery store within this mile was "The Food Barn" (Tr. 4/25/07 at 77.)

8. Annel Miglani is the owner of Morris Miller Wines and Liquor located at 7804 Alaska Avenue N.W. (Tr. 4/25/07 at 92-93.) Mr. Miglani opposes the granting of a license to the Applicant and believes that there are currently enough liquor stores and competition in the community. (Tr. 4/25/07 at 97, 102.) He admitted that the issue of peace, order and quiet was not a concern when he received his Class "A" retailer's license for his liquor store. (Tr. 4/25/07 at 98-99.) Mr. Miglani also stated that loitering, crime and litter is not a problem at his store. (Tr. 4/25/07 at 99.)

9. Sarbjit Singh Kochhar is the owner of S&S Liquors at 6925 4<sup>th</sup> Street, N.W., and is the holder of a Class "A" retailer's license. (Tr. 4/25/07 at 110, 120.) He sponsored a petition in opposition to the granting of a license to the Applicant because adding another store to Georgia Avenue will increase loitering, littering and other problems. (Tr. 4/25/07 at 113.) Mr. Kochhar obtained approximately 60 signatures. (Tr. 4/25/07 at 114.) He stated that there are enough stores that sell alcohol in the neighborhood and that all the

businesses may be negatively impacted and lose business if the Applicant is given a license. (Tr. 4/25/07 at 115.) His establishment is approximately eight blocks from the Applicant's establishment. (Tr. 4/25/07 at 116-117.)

10. Gurmit Singh is the owner of Mayfair Liquors located at 7312 Georgia Ave., N.W. (Tr. 4/25/07 at 129.) His business is approximately half a mile from the Applicant and he opposes the Application due to the overconcentration of Class "A" and Class "B" retailer's licenses in the area. (Tr. 4/25/07 at 133-134.)

11. Faith Wheeler is an ANC Commissioner for ANC 4B02 which runs along Van Buren Street, N.W., from Georgia Avenue to Blair Road, N.W., and is adjacent to the Applicant's property. (Tr. 4/25/07 at 137.) She was also a part of the group that collected petitions in opposition to the license application. (Tr. 4/25/07 at 138.) The petition states that the Applicant's proposed establishment is not appropriate due to the negative effect it will have on peace, order, and quiet, including contributions to an overconcentration of licensed establishments. (Tr. 4/25/07 at 143.) Commissioner Wheeler was elected to the ANC in November 2002 and served as Vice-Chair at the time the ANC adopted a resolution protesting the issuance of a license to the Applicant. (Tr. 4/25/07 at 146, 165 and 170.) The ANC resolution was adopted June 30, 2003. (Tr. 4/25/07 at 147-148.) Commissioner Wheeler stated that she has occasionally experienced litter, shopping carts and abandoned vehicles on the Applicant's property. (Tr. 4/25/07 at 149-150.) She noted that the ANC is very intent on improving that neighborhood. (Tr. 4/25/07 at 152.) Commissioner Wheeler would like to have the Applicant address the issue of security in addition to having guards on duty at the store, especially where personal safety is concerned. (Tr. 4/25/07 at 153 and 155.) She also has a concern about the overconcentration of liquor stores in the neighborhood. (Tr. 4/25/07 at 156.) Commissioner Wheeler was surprised to learn that a Metropolitan Police Report for the period from April 16, 2005 to April 16, 2007 indicated a 26 % decrease in criminal activity in the vicinity of the Applicant's premises. (Tr. 4/25/07 at 157.) ANC 4B did attempt to meet with and negotiate a voluntary agreement with Safeway but they were not able to reach a settlement. (Tr. 4/25/07 at 175-178.) She indicated that if the Applicant were granted a license, she would like to see a number of conditions attached including increased security, more frequent trash pick-up covering more of the Applicant's property, cleaner bathrooms, an improved attitude of attentiveness toward the community, community meetings with the Applicant's general or regional manager, greater efforts toward theft prevention and prohibiting sales to minors, better exterior lighting, dedicated cashiers and housing the liquor inventory in a closed-off area of the store. (Tr. 4/25/07 at 176-182.)

12. Ophelia Cowen resides at 861 Van Buren Street, N.W. Her house sits directly behind the Applicant's property and she has lived there for 40 years. (Tr. 4/25/07 at 188.) She would like to see greater security on the Applicant's premises such as having a security guard patrolling outside the store and improved lighting as well. (Tr. 4/25/07 at 190-191, 205.) She has witnessed a vagrant on the Applicant's premises and is concerned about thieves. (Tr. 4/25/07 at 194-196.) Trash is also a concern for Ms.

Cowen and she would like to see the Applicant pick up litter on a daily basis. (Tr. 4/25/07 at 198-200.)

13. Ray Anthony Cowen resides at 861 Van Buren, N.W. (Tr. 4/25/07 at 209.) He recommended that the Applicant have more lights and increase the number of security guards. (Tr. 4/25/07 at 216.)

14. Clara Scott resides at 737 Whittier Street, N.W., which is two and one half blocks from the Applicant. (Tr. 4/25/07 at 221.) She helped to gather signatures for the petition effort. (Tr. 4/25/07 at 222.) Ms. Scott testified that she lives outside the 600' requirement and thus could not sign the petition herself. (Tr. 4/25/07 at 222.) She believed that there is no need for the Applicant to be granted a license because there are already plenty of liquor stores in the neighborhood, it only encourages people with drinking problems to drink more, and there is already too much litter in the area. (Tr. 4/25/07 at 224-225.)

15. Ruth Foster resides at 6601 Piney Branch Road, N.W. (Tr. 4/25/07 at 231.) She is concerned about the large concentration of establishments that already sell alcohol. (Tr. 4/25/07 at 232, 234.) Ms. Foster is also concerned about the trash, including Safeway bags that blow onto her property. (Tr. 4/25/07 at 233.) She would like to see an increase in the number of security personnel and have the Applicant patrol the property and install some type of surveillance. (Tr. 4/25/07 at 235.)

16. Blondine C. Hughes is Chairperson of ANC 4B. (Tr. 4/25/07 at 248.) She indicated that there are seven ANC 4B Commissioners, including herself, who support the Applicant receiving a license. (Tr. 4/25/07 at 248.) She is concerned that those witnesses who oppose the application did not raise their concerns with her. (Tr. 4/25/07 at 252-253.) Chairperson Hughes indicated that every time she has taken a concern to the Applicant or requested them to change carried items, the Applicant has addressed the concern or made the requested change. (Tr. 4/25/07 at 253, 256.)

17. Frederick D. Grant is a Commissioner for ANC 4B03 and is ANC 4B's designated representative regarding the license application. (Application File No. 50243; Tr. 4/25/07 at 260.) He stated that a number of issues of concern, including concerns regarding the cleanliness of the store, the quality of the bathrooms, trash, and lighting at the establishment were brought to the Applicant's attention and handled in a professional manner and that they have done a fantastic job. (Tr. 4/25/07 at 265-267, 271.) Commissioner Grant indicated that the Applicant agreed to put in place new trash receptacles and did so in a reasonable time. (Tr. 4/25/07 at 266.) He visits his constituents on a regular basis and indicated that roughly 90% of them support the approval of the application. (Tr. 4/25/07 at 267-268.) In these visits, he has not witnessed any increase in litter along the streets of Whittier, Van Buren, or Roxboro Place, N.W. (Tr. 4/25/07 at 276.) Mr. Grant indicated that he was pleased with the establishment's level of security. (Tr. 4/25/07 at 275.) He indicated that he was in favor of the Applicant getting a license. (Tr. 4/25/07 at 279.)

18. Craig Muckle is the Public Affairs Manager for the Applicant's eastern division. (Tr. 4/25/07 at 283.) He is familiar with the Applicant's stores that have alcoholic beverage licenses and those that do not. (Tr. 4/25/07 at 283.) Mr. Muckle argued that because their stores are destination businesses, customers drive specifically to Safeway for their purchases. He believed the addition of alcoholic beverages sales will not likely increase vehicular or pedestrian traffic. (Tr. 4/25/07 at 288.) Mr. Muckle stated that Safeway has been a responsible alcoholic beverage licensee for more than 25 years and holds several other liquor licenses in the District of Columbia. (Tr. 4/25/07 at 288-289.) He argued that the Applicant's licenses have been renewed regularly without incident and with the support of community organizations. (Tr. 4/25/07 at 289.) Mr. Muckle indicated that the Applicant does not permit loitering, littering, or the consumption of alcoholic beverages on its premises and employee security and maintenance personnel strictly enforce this policy. (Tr. 4/25/07 at 290.) Safeway does not sell single containers of beer. (Tr. 4/25/07 at 290.) It trains its employees to strictly adhere to its policies of confirming ages from identification cards for all customers who appear to be younger than 30 years of age. (Tr. 4/25/07 at 290-291.) Mr. Muckle did not believe that the granting of a Class "B" retailer's license would negatively impact the peace, order and quiet of the neighborhood, residential parking needs, or the cleanliness of the area. (Tr. 4/25/07 at 291-292.) The Applicant uses a variety of surveillance techniques throughout the store and has its own security loss prevention department. (Tr. 4/25/07 at 293.) Mr. Muckle described other store layouts whereby the wine and beer section is a controlled aisle concept with some refrigeration and some shelves for the room temperature products. He argued this is both convenient for the customer and it allows management to control the area better. (Tr. 4/25/07 at 326.) Ninety-nine percent of the product is kept in the controlled space in the aisle. (Tr. 4/25/07 at 327.)

19. Michael Banks is the store manager for the Applicant's 6500 Piney Branch Road, N.W., location. (Tr. 4/25/07 at 342.) He has spent over 22 years managing Safeway stores and has managed one Safeway that sold wine and beer. (Tr. 4/25/07 at 342.) The Applicant's store employs approximately 125 people, 70% of whom are District of Columbia residents or live in the neighborhood. (Tr. 4/25/07 at 343-344.) Safeway has invested \$6 Million in remodeling the store. (Tr. 4/25/07 at 348.) Customers have told Mr. Banks that they would like to see Safeway sell wine and beer. (Tr. 4/25/07 at 349.) In an effort to create a good working relationship, Mr. Banks attends community meetings and entertains suggestions and complaints made by members of the community. (Tr. 4/25/07 at 350.) If granted a license, Mr. Banks stated he would not allow customers to drink in the store or outside the store. (Tr. 4/25/07 at 355.) He employs a contractor who cleans the parking lot and perimeter of the store each day by 9:00 a.m. (Tr. 4/25/07 at 356.) There are two trash receptacles near the front door that are emptied twice daily and two receptacles near the shopping cart corral that are emptied once a day. (Tr. 4/25/07 at 356.) The parking lot contractor also serves as the landscaper and during the summer he mows, trims, mulches and plants flowers. (Tr. 4/25/07 at 356-357.) A courtesy clerk is responsible for cleaning the public restrooms every morning by 4:30 a.m. and then the bathrooms are monitored once an hour from 9:00 a.m. to 9:00 p.m. (Tr. 4/25/07 at 357.) With regard to security, the Applicant has recently installed a new digital recoding camera system, increasing their capacity from 32 cameras to 64. (Tr.

4/25/07 at 357-358.) The camera system can accommodate additional cameras if it is determined that the community needs to have more cameras installed and it can be accomplished fairly quickly. (Tr. 4/25/07 at 358, 374.) Shoplifting is the most frequent crime committed at the store and Mr. Banks stated that he involves MPD when shoplifting is discovered. (Tr. 4/25/07 at 360.) One security guard works from 5:00 a.m. to 12:00 midnight and employees are trained as a first line of defense to criminal activity. (Tr. 4/25/07 at 361.) The Applicant endeavors to promote a pro-family atmosphere and allows Girl Scouts to sell cookies out front and for other community organizations to hold fundraisers. (Tr. 4/25/07 at 367.)

20. Clara Epps is the store manager for the Safeway located at 514 Rhode Island Avenue, N.W. (Tr. 4/25/07 at 397.) Her store has been selling beer and wine for about three years. (Tr. 4/25/07 at 397.) All of Ms. Epps new hires undergo training regarding Safeway's policy, procedures, and repercussions for selling alcohol to minors. (Tr. 4/25/07 at 398.) Everyone is trained to request identification from alcohol customers regardless of age. (Tr. 4/25/07 at 398.) She stated that theft and shoplifting are the most common crimes she encounters and she doesn't hesitate to call MPD to address these matters. (Tr. 4/25/07 at 398.) She has never had to call MPD to address an alcohol related matter. (Tr. 4/25/07 at 398.) Ms. Epps does not permit customers to consume alcohol in or outside the store. (Tr. 4/25/07 at 399.) With regard to peace, order and quiet, operations have not changed since her store was granted a license. (Tr. 4/25/07 at 400.) Her store has a voluntary agreement with their ANC and she has not received any complaints from the ANC or the community about alcohol related matters. (Tr. 4/25/07 at 400.) Alcoholic beverages in the Safeway she manages are set up next to the security desk near the front door and are both sectioned and gated off from the rest of the store. (Tr. 4/25/07 at 402.) The cashier near that section is trained on what to look for and what to ask customers purchasing beer and wine. (Tr. 4/25/07 at 403.) Ms. Epps does not attend ANC meetings but she has an open door policy and makes every effort to address complaints or concerns immediately. She has fixed everything asked of her by the community. (Tr. 4/25/07 at 404.) Ms. Epps makes a point of patrolling the store's parking lot and asked her security officers to do the same at night. (Tr. 4/25/07 at 410.) She does not experience loitering or public drunkenness in or around her store. (Tr. 4/25/07 at 411.)

21. Sara Green represented the Protestants during the proceeding. (Tr. 5/2/07 at 4.) She states that her opposition to the Application is based on the overconcentration of liquor stores and the problem of loitering. (Tr. 5/2/07 at 7.) She also has concerns about the level of security and would like to see the Applicant address the issue of providing additional security especially for those individuals who live across the street. (Tr. 5/2/07 at 11.) Ms. Green asserted that a vagrant lived on the Safeway premises for a week and when it was brought to the store's attention, they did not respond in a timely and appropriate fashion. (Tr. 5/2/07 at 12.) She indicated that loitering has been allowed to continue for years at this Safeway. (Tr. 5/2/07 at 13.) With regard to the issue of overconcentration, Ms. Green stated that there are 23 Class A and Class B licensed establishments within a mile of the Safeway. (Tr. 5/2/07 at 14.)

## CONCLUSIONS OF LAW

22. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the Board's satisfaction that the establishment for which a liquor license 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 protest hearings, the Board concludes that the Applicant has demonstrated that the issuance of a new Retailer's Class "B" License, with the conditions imposed by the Board as listed below, would be appropriate for the area in which the establishment is located.

23. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) and D.C. Official Code § 25-609, 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 643 (D.C. 1982). Additionally, pursuant to D.C. Official Code § 1-309.10(d)(4), oral testimony from an ANC is also required to be given great weight when accompanied within seven days by written documentation that is approved by the respective Commission, which supports the testimony.

24. In this case, ANC Commissioner Frederick Grant was the authorized representative of ANC 4B. At the April 25, 2007 hearing, Commissioner Grant spoke in support of the Applicant's request for a new Class "B" retailer's license. On April 27, 2007, the Board subsequently received written correspondence from ANC 4B authorizing ANC Commissioner Grant to testify, on its behalf, before the ABC Board. As such, the Board is giving great weight to the testimony of Commissioner Grant, on behalf of ANC 4B, in support of the Applicant's license application. The Board notes that Commissioner Grant's testimony was also supported by ANC 4B Chairperson Hughes.

25. In this instance, the Board found it appropriate to grant a license to the Applicant with the conditions set forth below even without giving great weight to the recommendation of support from ANC 4B. Specifically, pursuant to D.C. Official Code § 25-313(b)(2) (2006 Supp.) and 23 DCMR § 400.1(a) (2004), the Board found based upon the testimony of Investigator Sheehan, ANC Commissioner Grant, and Mr. Banks that the issuance of a new Retailer's Class "B" license would not have an adverse effect on the peace, order, and quiet of the neighborhood. The Board notes that ABRA Investigators, including Investigator Amanda Sheehan, monitored the Applicant 58 times over a two month period but did not find any significant problems with litter, loitering, or other peace, order, and quiet issues.

26. The Board did hear some concerns from several protestants, including Ms. Cowen, Ms. Wheeler, and Ms. Foster regarding trash, including trash blowing into Ms. Foster's yard. The Board did not find these and other peace, order, and quiet issues raised by the Protestants to warrant not granting the Applicant a license. However, while the testimony of Mr. Banks and Mr. Grant indicated that the establishment has addressed and improved the neighborhood's litter concerns, the Board believes that requiring the Applicant to pick-up trash daily with particular attention to its pre-opening hours on its

premises, as well as its immediate environs, will assist with these efforts. The Board notes that Ms. Wheeler indicated that she was in favor of trash being picked-up more frequently. Additionally, the Board is requiring the Applicant to maintain two trash receptacles outside the front of the establishment with each being a minimum of thirty (30) gallons in size. This should help to reduce the amount of litter placed on the ground outside of the establishment. The Board is also requiring the Applicant to not post advertisements or flyers for alcoholic beverages in its parking lot or on public space. The Applicant is required however, pursuant to D.C. Official Code §§ 25-712 and 25-713, to post signs on the premises regarding the minimum age to purchase alcoholic beverages and the dangers of alcohol consumption during pregnancy.

27. The Board did hear from some Protestants concerned about criminal activity and theft in the area as well as making sure the establishment takes steps to prevent the sale of alcoholic beverages to minors. Based upon the testimony of Mr. Muckle, the Board found it would be beneficial in preventing criminal activity and the likelihood of selling alcoholic beverages to minors by requiring all of the Applicant's beer and wine products to be located only in a beer and wine aisle of the store. Additionally, the Board is requiring the Applicant to maintain two security guards at the licensed establishment from 6 p.m. to 10 p.m. on Sunday through Saturday. The testimony revealed that the Applicant currently has one security guard. However, the testimony of several protestants, including Ms. Wheeler and Ms. Foster revealed that the presence of additional security would be helpful to prevent criminal activity at the establishment. The Board felt it appropriate to require the second security guard only during the evenings when the establishment would be busier due to patrons either coming from work or preparing for dinner or other evening events.

28. The Board did have additional concerns as a full-service grocery store regarding making sure the establishment is diligent in not selling alcoholic beverages to minors. ANC Commissioner Wheeler indicated that she was concerned with the sale of alcoholic beverages to minors. As a result, the Board is requiring the establishment to provide training to all cashiers working registers where alcoholic beverages are sold on: (1) identifying valid identifications and (2) preventing the sale of alcoholic beverages to minors. Furthermore, the Board is requiring the Applicant to maintain an electronic surveillance system with at least 32 working cameras at the establishment. The Applicant indicated that such a system was put in place and the testimony of several Protestants, including Ms. Foster, indicated that they were in favor of the establishment installing and maintaining some type of surveillance. To assist in preventing any loitering or drinking alcoholic beverages in public in back of the establishment, the Board is requiring the Applicant to maintain two working cameras in the rear of the establishment. The Board has the authority to place these conditions on the Applicant's license under D.C. Official Code §25-104(e).

29. D.C. Official Code § 25-314(b)(4) requires the Board to consider whether the granting of this license would create or contribute to an overconcentration of licensed establishments. Several protestants raised this issue of concern with the Board. Specifically, the testimony of Ms. Green and Mr. Holzager indicated that there are 23

Class “A” and “B” licenses located within one mile of the Applicant’s establishment. This is clearly a significant number of establishments within one mile of Safeway’s location. However, the largest area the Board can and did consider in this instance is a “portion”, which is 1800 feet of an establishment. The testimony of Mr. Holzsager revealed that only 5 to 7 of these licensees are located within a half-mile of the establishment and only a couple of these are 2 to 3 blocks from the establishment as there is a large residential area located around the establishment. For example, the area where the Applicant is located contains a Class “B” retail licensee, Piasa Market, approximately 250 feet away from the Applicant. The Board heard testimony from three Class “A” license holders at the protest hearing on this issue. However, the Board did not find the testimony of the three Class “A” licensees to be credible as none of them were located less than half a mile from the Applicant and they acknowledged that they were actually concerned with having competition and losing business. The Board found the granting of the Applicant’s establishment to not create or contribute to overconcentration for three reasons. First, the Board found credible the testimony of Mr. Grant which revealed that a significant majority of the residents he represents were in favor of the establishment receiving a license. Second, there is a need in the Applicant’s neighborhood for larger full-service grocery stores. For example, the testimony of Mr. Holzsager revealed that the only establishment close to a big grocery store within a mile of the establishment was “The Food Barn”. Third, from a policy perspective, the provisions of Title 25 of the D.C. Official Code, including D.C. Official Code §§ 25-303(c), 25-314(b)(3), 25-331(d), 25-332(c) and 25-333(c) are designed to attract full-service grocery stores with liquor licenses to the District of Columbia, including when other Class “B” retailers such as Piasa Market are located only 250 feet from the Applicant’s establishment. For example, D.C. Official Code § 25-333(c) waives the general prohibition, which prohibits two Class “B” retailers from being located within 400 feet of each other. The Board did not find the location of Piasa Market and a couple other stores 2 to 3 blocks from the establishment to qualify as overconcentration in this instance.

30. Pursuant to D.C. Official Code § 25-313(b)(3), the Board found from the testimony of Investigator Sheehan and the record as a whole that granting the liquor license application will not have an adverse impact on residential parking needs and vehicular and pedestrian safety. Specifically, the Applicant’s establishment has a parking lot with a capacity of approximately 220 parking spaces. Investigator Sheehan also indicated that there is some street parking available for the Applicant’s patrons on several nearby streets and did not observe any significant problems with vehicular or pedestrian safety during her visits.

31. Pursuant to D.C. Official Code § 25-313(b)(1), the Board found based upon the record as a whole, that the Applicant’s establishment would not adversely impact real property values.

32. Pursuant to D.C. Official Code § 25-314(a), the Board must, in determining the appropriateness of an establishment for initial issuance of a license, consider the proximity of the establishment to schools, recreation centers, day care centers, public libraries or other similar facilities. In this case, Investigator Sheehan noted in her

Investigative Report that the Applicant's establishment was located in close proximity to Howard's Pre-School which is housed in the New Bethel Church on Piney Branch Road. The Applicant's establishment is also located within 550 feet of Our Children Daycare Center on Georgia Avenue. The Board did not find any evidence based upon the testimony of Amanda Sheehan and the record as a whole that granting a license to the Applicant would adversely impact the operation of these two facilities or unduly attract school-age children using these facilities to the Applicant's establishment.

33. In granting the Applicant's license, the Board notes that D.C. Official Code § 25-341(c) prohibits the Applicant from selling, giving offering, or exposing for sale or delivery an individual container of beer, malt liquor, or ale with a capacity of 70 ounces or less. D.C. Official Code § 25-341(b) also prohibits the licensee from dividing a manufacturer's package of more than one container of beer, malt liquor, or ale, to sell an individual container of the package if the capacity of the individual container is 70 ounces or less. The Board is placing these two conditions on the Applicant's license in the event that these two provisions, which expire on September 30, 2008, are not renewed by the Council.

34. D.C. Official Code § 25-340 prohibits the Board from granting new Class B Retailers' licenses in Ward 4. There is an exception under this provision for applications pending as of September 30, 2004. In this case, this Application has been pending since it was accepted by ABRA on May 12, 2003 and thus is not barred by the prohibition provision.

### **ORDER**

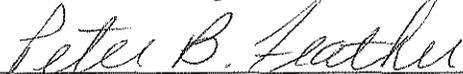
Therefore, it is hereby **ORDERED** on this 20th day of September 2007 that the Application for a new Class "B" Retailer's License filed by Safeway Inc., t/a Safeway, at 6500 Piney Branch Road, N.W., Washington, D.C., be and the same is hereby **GRANTED**.

It is **FURTHER ORDERED** that the following conditions are hereby imposed on the Applicant and shall become a term of the license:

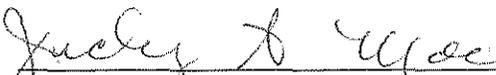
1. Pursuant to D.C. Official Code § 25-341(c), the Applicant shall not sell, give, offer, expose for sale, or deliver an individual container of beer, malt liquor, or ale with a capacity of 70 ounces or fewer. Pursuant to D.C. Official Code § 25-341(b), the Applicant shall not divide a manufacturer's package of more than one container of beer, malt liquor, or ale, to sell an individual container of the package if the capacity of the individual container is 70 ounces or fewer;

2. The establishment shall provide training to all of its cashiers working registers where alcoholic beverages are sold on (1) identifying valid identifications and (2) preventing the sale of alcoholic beverages to minors;
3. The Applicant shall not post any advertisements or flyers for alcoholic beverages in its parking lot or on public space;
4. The Applicant shall post signs on the premises regarding the minimum legal drinking age and the dangers of alcohol consumption during pregnancy;
5. All of the Applicant's beer and wine products shall be located only in a beer and wine aisle, with no other placements throughout the store;
6. The Applicant shall place and maintain two trash receptacles outside the front of the establishment that shall each be a minimum of thirty (30) gallons in size;
7. The Applicant shall pick-up trash daily with particular attention to its pre-opening hours on its premises as well as the immediate environs;
8. The establishment's hours of operation shall be 6:00 a.m. to 12:00 a.m., daily;
9. The Applicant shall maintain an electronic surveillance system with at least 32 working cameras at the establishment. The Applicant shall maintain at least two of these cameras on the rear of the establishment;
10. The Applicant shall maintain two security guards at the licensed establishment from 6 p.m. to 10 p.m. on Sunday through Saturday.

District of Columbia  
Alcoholic Beverage Control Board

  
Peter B. Feather, Acting Chairperson

  
Vera M. Abbott, Member

  
Judy A. Moy, Member

  
Audrey E. Thompson, Member

\_\_\_\_\_  
Albert G. Lauber, Member

  
Mital M. Gandhi, Member

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, 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 § 1719.1 (April 2004) 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).