

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

In the Matter of:

NAI Saturn Eastern, LLC
t/a Safeway

Application for a New
Retailer's Class B License

at premises
1701 Corcoran Street, NW
Washington, D.C. 20009

Case No.: 17-PRO-00041
License No.: ABRA-105295
Order No.: 2017-625

NAI Saturn Eastern, LLC, t/a Safeway (Applicant)

Nicole Mann, Chairperson, Advisory Neighborhood Commission (ANC) 2B (Protestant)

Robin S. Diener, President, Dupont Circle Citizens Association (DCCA)

Mitchell Aaronson, on behalf of A Group of Three or More Individuals (579 Individuals)
(Protestant)

Barbara Donaldson, on behalf of A Group of Three or More Individuals (58 Individuals)
(Protestant)

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Jake Perry, Member
Donald Isaac, Sr., Member

ORDER ON SETTLEMENT AGREEMENT AND WITHDRAWAL OF PROTESTS

The Application filed by NAI Saturn Eastern, LLC, t/a Safeway (Applicant), for a new Retailer's Class B License, having been protested, came before the Alcoholic Beverage Control

Board (Board) for a Roll Call Hearing on July 31, 2017, and a Protest Status Hearing on November 9, 2017, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant, ANC 2B, DCCA, a Group of 579 Individuals, and a Group of 58 Individuals entered into a Settlement Agreement (Agreement), dated September 26, 2017, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant; Chairperson Nicole Mann and Commissioner Stephanie Maltz, on behalf of ANC 2B; Robin S. Diener, on behalf of DCCA; Mitchell Aaronson, on behalf of the Group of 579 Individuals; and Barbara Donaldson, on behalf of the Group of 58 Individuals; are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protests filed by ANC 2B, the Group of 579 Individuals, and the Group of 58 Individuals.

Accordingly, it is this 13th day of December, 2017, **ORDERED** that:

1. The Application filed by NAI Saturn Eastern, LLC, t/a Safeway, for a new Retailer's Class B License, located at 1701 Corcoran Street, NW, Washington, D.C., is **GRANTED**;
2. The Protests of ANC 2B, the Group of 579 Individuals, and the Group of 58 Individuals in this matter are hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Subsection 4(c) (Management of Alcohol Sales) – This Subsection shall be modified to read as follows: “All sales of beer and wine shall be made from a beer and wine sales area of up to 281 square feet.”

Subsection 4(d) (Management of Alcohol Sales) – This Subsection shall be modified to read as follows: “Ensure beer and wine sales comprise no more than 15% of total volume of gross receipts on an annual basis.”

Subsection 4(f) (Management of Alcohol Sales) – First sentence, the term “will” shall be replaced with the language “agrees to.”

Subsection 4(k) (Management of Alcohol Sales) – The language “...which is officially issued by an agency of a local, state or federal government. That identification document must contain the name, date of birth, signature, and photograph of the bearer” shall be replaced with the language “...as defined by DC Official Code §25-101(53).”

Section 11 – This Section shall be modified to read as follows: “The Applicant agrees to make a 5 year plan for shared value [within the East DuPont Circle community] available at the establishment within six months from the date hereof.”

The parties have agreed to these modifications.

4. Copies of this Order shall be sent to the Applicant; ANC 2B; DCCA; Mitchell Aaronson, on behalf of the Group of 579 Individuals; and Barbara Donaldson, on behalf of the Group of 58 Individuals.

District of Columbia
Alcoholic Beverage Control Board

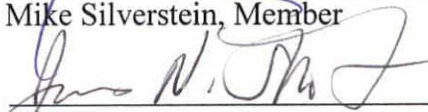
Donovan Anderson, Chairperson



Nick Alberti, Member

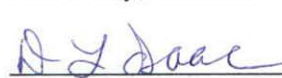


Mike Silverstein, Member



James Short, Member

Jake Perry, Member



Donald Isaac, Sr., Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) 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) (2004).

SETTLEMENT AGREEMENT

Pursuant to the provisions of D.C. Official Code §25-446, this Settlement Agreement ("Agreement") is made on this 20 day of Sept, 2017 by and between "NAI Saturn Eastern, LLC" t/a Safeway, ABRA License #105295 (the "Applicant"), Advisory Neighborhood Commission 2B (the "ANC 2B"), Dupont Circle Citizens Association (the "DCCA"), and the affected residents who are listed as parties of record (the "Protestants"), (collectively, the "Parties").

WITNESSETH

WHEREAS, Applicant's application for a Retailers' Class "B" license at its Safeway store location at 1701 Corcoran Street, N.W., Washington, D.C. (the "Establishment"), License #105295 is now pending before the District of Columbia Alcoholic Beverage Control Board (ABC); and

WHEREAS, Protestants are ANC 2B, DCCA, two groups of individuals which each filed a timely protest (the "Protest") to the Applicant's license application pursuant to D.C. Official Code § 25-601(1), § 25-601(3), and § 25-601(4); and

WHEREAS, the Parties are desirous of entering into a Settlement Agreement pursuant to D.C. Official Code § 25-446 for the operation and maintenance of the Establishment in such a manner as to minimize the effect on peace, order, and quiet of the neighborhood, proximity to Ross Elementary School, and on an overconcentration of licensed establishments in the mixed use zone; and, to eliminate the need for a Protest Hearing regarding the license application; and

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.

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.** The Applicant will manage and operate a Retailer's Class "B" Grocery Store with an emphasis on food (that is, a full-service grocery store selling at least 6 of the 7 following categories: fresh fruits and vegetables, fresh and uncooked meats, poultry and seafood, dairy products, canned foods, frozen foods, dry groceries and baked goods, and non-alcoholic beverages). Any change from this model shall be considered by all Parties to be a substantial change in operation of great concern to the Protestants and will require prior approval by the ABC Board.

3. **Hours of Operation and Sales.**

- The Applicant's general hours of operation are as follows: 5:00am – 12:00am on all days.

- The Applicant's hours for selling beer and wine shall be as follows: 9:00am – 9:00pm on all days.

4. Management of Alcohol Sales: The applicant agrees to:

- Maintain human and/or electronic surveillance in its aisles in which beer and wine are displayed.
- Secure areas where beer and wine are displayed during times when alcohol sales are not permitted so that customers cannot gain access to the area.
- Limit beer and wine displays to no more than 46 linear feet of shelf and refrigeration space in the sellable floor area.
- Ensure beer and wine sales comprise no more than 4% of total volume of gross receipts on an annual basis.
- Only display beer and wine in the areas designated in the attached floor plan. No stacked or marketing displays are to be used on the ends of aisles or in any other area of the store.
- The Applicant will work with Protestants to determine and designate a suitable area for queuing for the self-checkout registers that is not in the beer and wine aisle. Furthermore, Safeway will discourage in order to prevent customers from queuing in the beer and wine aisle.
- Refrain from posting advertisements for beer and wine on any windows or doors of the store, as well as on the exterior of the premises.
- Prohibit the consumption of alcoholic beverages on the premises.
- Prohibit sale of alcoholic beverages to minors.
- Prohibit direct sales or delivery of alcoholic beverages to any person who appears to be intoxicated.
- Demand certain identification from any person seeking to buy alcoholic beverages at its store who appears to be under 30 years of age. Certain identification includes requesting a valid identification document which is officially issued by an agency of a local, state or federal government. That identification document must contain the name, date of birth, signature and photograph of the bearer.
- Not engage in sales of any single serving containers of wine under 750 milliliters, unless said wine containers are sold in packages of four or more bottles, or single containers of beer or cases of more than 12 bottles or cans of beer. All of the items above shall be sold in the manufacturer's original packaging.
- Program its check-out scanners to alert cashier / self-checkout attendant when beer or wine is scanned so identification can be verified in person.
- Program its check-out scanners (both those at self-checkout and those handled by employees) 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 or by this Agreement.
- Not sell alcoholic beverages when a licensed ABC Manager is not on duty.
- Maintain a full-range of fresh, frozen and canned food items as well as household products.
- Offer special orders or other accommodations to customers for any discontinued food and household items.

- 5. Noise and Privacy.** Applicant will strictly comply with D.C. Official Code § 25-725 and to that end shall take all reasonable actions to ensure that, noise from the Establishment is not

audible within the adjacent and neighboring residential properties.

6. Public Space and Trash. The Applicant shall:

- a. Take reasonable measures to ensure that the immediate environs of the Establishment, including adjacent alleys, sidewalks, or other public property (up to and including the curbs on 17th Street and Corcoran Street) immediately adjacent to the premises, or other property used by the Applicant to conduct its business, are kept free of litter, cigarette butts, and other debris in compliance with D.C. Official Code and Municipal Regulations. Applicant shall police these areas with sufficient frequency to assure that refuse and other materials are promptly removed.
- b. Maintain the tree boxes on 17th Street and Corcoran Street within the boundaries of the property.
- c. Remove snow and ice from the public space adjacent to the store on 17th Street and Corcoran Street within the time limits set by the District of Columbia.
- d. Maintain dumpster and recycling bins and ensure that the areas around the dumpster and recycling bins are kept clean and free of debris at all times, are not overflowing, and are placed in such a manner that they do not encroach on the abutting property owners and so that no debris is placed on the abutting property.
- e. To the greatest extent possible, work with DC government agencies on initiatives for businesses to install trash compactors that reduce greenhouse gases, rodent infestation, and frequency of trash pick-ups.

7. Rats and Vermin Control. The Applicant shall provide rat and vermin control for its property. Applicant shall have the Establishment and the area around the front and back of the Premises cleaned at the close of business each night to ensure there is not garbage, recycling, cigarette butts, or odors present.

8. Safety and Security Cooperation. Applicant agrees that it shall take all necessary steps to minimize safety and security of residents, schoolchildren, customers, including:

- a. Taking action reasonable and necessary to prohibit and prevent loitering and panhandling within 50 feet of the premises by:
 - i. Posting and maintaining "No Loitering, No Panhandling" signs on the premises. These signs will be printed in English and Spanish and will be posted within 30 days after an alcoholic beverage license is issued.
 - ii. Requesting customers not to contribute to panhandlers on the premises.
 - iii. Asking loiterers to "move on" whenever they are observed on the premises or in the area that is immediately adjacent to the premises; and,
 - iv. Calling the Metropolitan Police Department to enforce the "no loitering, no panhandling" policy on the premises.
- b. When DC public schools are in session (including summer session), the applicant will not accept delivery of beer and wine during the hours between 8:00am to 9:00am and 3:00pm to 4:00pm, Monday to Friday.

9. License Ownership and Compliance with ABRA Regulations: Applicant promises to Protestants that it shall abide by all Alcoholic Beverage Regulations Administration (ABRA) regulations regarding the ownership of the license and all other provisions applicable to liquor licensees, and agrees that Protestants shall have standing to ask the ABC Board to enforce any violations of the agreement.

10. **Posting of License.** The Applicant agrees to keep a copy of this Agreement available at the store, and to familiarize the employees who will be handling and selling alcohol products with its provisions. A floor plan that illustrates the beer and wine sales area shall be attached to and incorporated in this Agreement.

11. The Applicant will distribute a 5 year plan for Shared Value for Dupont Circle within 6 months from the date hereof.

12. **Notices.** Any notice 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 parties 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: Shawn Dekker

If to Protestants: Advisory Neighborhood Commission 2B
9 Dupont Circle, NW
Washington, DC 20009

Dupont Circle Citizens Association
9 Dupont Circle, NW
Washington, DC 20009

Group of Individuals
1628 Riggs Place, NW
Washington, DC 20009
Attn: Barbara Donaldson

Group of Individuals
1618 17th Street, NW
Washington, DC 20009
Attn: Mitch Aaronson

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

IN WITNESS WHEREOF, the parties have affixed hereto their hands and seals.

PROTESTANTS:

Advisory Neighborhood Commission 2B

Protestant's Name

STEPHANIE M. H.
Printed Name of Commissioner

[Signature]
Signature of Commissioner

Nicole McSweeney

Printed Name of ANC 2B Chair

[Signature]
Signature of ANC 2B Chair

Dupont Circle Citizens Association

Protestant's Name

Printed Name of Representative

Signature of Representative

Group of Individuals

Protestant's Name

Printed Name of Designated Representative

Signature of Designated Representative

Group of Individuals

Protestant's Name

Printed Name of Designated Representative

Signature of Designated Representative

IN WITNESS WHEREOF, the parties have affixed hereto their hands and seals.

PROTESTANTS:

Advisory Neighborhood Commission 2B
Protestant's Name

Printed Name of Commissioner

Printed Name of ANC 2B Chair

Signature of Commissioner

Signature of ANC 2B Chair

DuPont Circle Citizens Association
Protestant's Name

Robin S. Diener

Printed Name of Representative

Robin S. Diener
Signature of Representative

Group of Individuals

Protestant's Name

Barbara Davidson

Printed Name of Designated Representative

Barbara Davidson
Signature of Designated Representative

Group of Individuals

Protestant's Name

Mitchell Anderson


Printed Name of Designated Representative

Mitchell Anderson
Signature of Designated Representative

APPLICANT:

Safeway
Establishment's Name

JOE FERRY VP OPS
Printed Name and Title of Designated Representative


Signature of Designated Representative