

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF: :

:

District of Columbia CVS :

Pharmacy, LLC :Fact

t/a CVS Pharmacy #1354 :Finding

2601 Connecticut Avenue, N.W. :Hearing

License #88912 :

Retailer B :

ANC 3C :

New Application :

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APRIL 18, 2012

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009, Chairperson Miller, presiding.

PRESENT

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HERMAN JONES, Member

CALVIN NOPHLIN, Member

JEANNETTE MOBLEY, Member

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P-R-O-C-E-E-D-I-N-G-S

9:46 a.m.

CHAIRPERSON MILLER: Okay. The next case on our calendar is a fact finding hearing for CVS Pharmacy #1354 located at 2601 Connecticut Avenue, N.W., License Number 88912 in ANC 3C.

Good morning. When you're ready, would you introduce yourselves for the record please?

MR. PASCAL: Paul L. Pascal of Pascal & Weiss for the Applicant CVS.

MS. HIRAO: Risa Hirao with Pascal & Weiss.

MR. WOODSON: Good morning, Madam Chair and the Board. Roderic Woodson, a party with Holland & Knight and counsel for CVS.

MR. STASO: Good morning. Scott Staso, District Manager, CVS Pharmacy.

MR. GOAD: Good morning. Vernon Goad, Field Marketing Manager for CVS Pharmacy.

1 CHAIRPERSON MILLER: Okay. Did  
2 you all sign in? Do we have your names right  
3 for the record?

4 Could you repeat your name?  
5 You're both managers? You're a manager for  
6 CVS? What is your name again?

7 MR. GOAD: Okay. My name is  
8 Vernon Goad.

9 CHAIRPERSON MILLER: Could you  
10 spell that?

11 MR. GOAD: Yes, V-E-R-N-O-N. Last  
12 name is Goad G-O-A-D.

13 CHAIRPERSON MILLER: Okay.

14 MR. STASO: Scott Staso S-T-A-S-O,  
15 District Manager.

16 CHAIRPERSON MILLER: So, you're a  
17 manager for this particular store and you're  
18 a manager for the area?

19 MR. STASO: The area.

20 MR. GOAD: My title's actually  
21 field marketing manager. I manage the  
22 marketing and vendor relations in the nine

1 states.

2 CHAIRPERSON MILLER: Oh. Okay.

3 MR. STASO: And I oversee the  
4 operations of 19 stores including the one  
5 we're talking about today.

6 CHAIRPERSON MILLER: Okay. In the  
7 District of Columbia?

8 MR. STASO: Yes.

9 CHAIRPERSON MILLER: Okay. We  
10 have three attorneys over here? Is there any  
11 particular reason we have three attorneys?

12 MR. PASCAL: Well, I'm the Senior  
13 Partner of the firm and Risa is my associate.

14 CHAIRPERSON MILLER: Okay.

15 MR. PASCAL: And she's also  
16 associate counsel for the District of Columbia  
17 Association of Beverage Alcohol Wholesalers.  
18 So, she's my principal assistant in  
19 researching.

20 And Mr. Woodson has been  
21 legislative counsel for a number of years at  
22 CVS. This is an important issue for them.

1 So, they chose to engage him also for this.

2 CHAIRPERSON MILLER: Okay. So,  
3 this is a fact finding hearing. It's not a  
4 contested case obviously. No one is  
5 testifying under oath.

6 The purpose is to determine as I  
7 understand it whether the pharmacy would  
8 qualify as a full-service grocery store under  
9 our statute 25-332. Which would allow the  
10 store to sell alcohol if it meets certain  
11 requirements under that provision relating to  
12 -- well, number one is the primary business  
13 and purpose is the sale of a full range of  
14 fresh, canned and frozen food items and the  
15 sale of alcoholic beverages is incidental to  
16 the primary purpose and two, the sale of  
17 alcoholic beverages constitutes no more than  
18 15 percent of the total volume of gross  
19 receipts.

20 Is that how you all understand the  
21 purpose of this hearing or before we get  
22 started.

1 MR. PASCAL: We believe that's the  
2 purpose.

3 CHAIRPERSON MILLER: Okay.

4 MR. PASCAL: It was never  
5 articulated other than it's a fact finding  
6 hearing. So, we made some assumptions.

7 CHAIRPERSON MILLER: Okay. So,  
8 you would agree with those assumptions?

9 MR. PASCAL: Yes.

10 CHAIRPERSON MILLER: Okay. So,  
11 we're ready for you to address those issues  
12 and then we'll ask you any questions that  
13 we --

14 MR. PASCAL: Okay. If I could  
15 present some material to the clerk.

16 Madam Chair and fellow Board  
17 Members, I'm Paul Pascal. As some of you  
18 know, I'm a native Washingtonian and a  
19 lifelong resident of the area. I grew in this  
20 city and watched a lot of trends and have been  
21 actively involved in the food industry for  
22 many years in this city.

1                   This city when I was growing up  
2                   had a store on every corner. My father-in-law  
3                   was a poultry distributor and we used to joke  
4                   that some of the trucks didn't get out of  
5                   first gear in Southeast because there were  
6                   stores two or three on a corner.

7                   You had some groups called DGS,  
8                   District Grocery Stores. You had other coop  
9                   stores. You had the emerging chain stores.  
10                  I remember when the first Giant opened up on  
11                  Kennedy Street that had parking on the roof.

12                  And then along came the April  
13                  riots in April of '68 and overnight virtually  
14                  half of those stores were burned out or  
15                  abandoned and for a number of years, this city  
16                  did not really have accessible food available  
17                  to many of the residents and a lot of people  
18                  had to go to Maryland.

19                  In my role as counsel for the  
20                  beer, wine and spirits distributors and also  
21                  representing food interests, myself and Andrew  
22                  Kline over a decade ago approached the City

1 Council to allow grocery stores leeway in  
2 obtaining the B licenses. Because as a  
3 practical matter, the grocery stores, the  
4 supermarkets and we'll talk about the trends  
5 thereafter would not have come back into the  
6 City unless they could have beer and wine and  
7 the trade off was that they would be allowed  
8 to come in if their sales did not exceed 15  
9 percent.

10 And if we were to take testimony  
11 from the CVS people, they do have one store in  
12 this City up in Upper Connecticut Avenue that  
13 has a beer and wine license and beer and wine  
14 sales are about 7 percent of sales.

15 On a national average, the Harris  
16 Teeter's of the world and the other chain,  
17 their sales come in around 10 to 12 percent.  
18 So, we're well comfortable under that.

19 But, the whole idea was -- and if  
20 you'll look at legislative history including  
21 some comments by Mr. Graham, is you wanted to  
22 replace the little corner store that was

1 primarily selling beer and wine with units  
2 that were selling a wide variety of products.

3 Now, if we start to go through  
4 this material that I've given you, the first  
5 area is supermarket trends and this comes from  
6 no less than the food market, the institute  
7 itself and you will see that the trends when  
8 you start looking at the page here, non-  
9 traditional groceries, we deliberately did not  
10 define grocery stores or supermarkets when the  
11 law was written because no one really could  
12 get a handle on the thing. Really there is no  
13 definition.

14 So, I guess in the last analysis,  
15 the definition will be left to the discretion  
16 of the Board in determining what supermarkets  
17 are. But, you know, if not, you know,  
18 wholesale.

19 For instance Costco, Costco sells  
20 a lot of food, but the Costco I go to up in  
21 Frederick, you can walk in. You can get  
22 television sets. You can get computers. You

1 can get cameras. You can get filters for your  
2 air conditioning units. So, there's a whole  
3 variety.

4 The super centers. You're going  
5 to be facing here in the District of Columbia  
6 pretty soon. You're going to have the  
7 Walmarts of the world. There's going to be  
8 five Walmarts that are being granted  
9 permission to come into town and they're going  
10 to be a seeking license.

11 You have a Costco that's opening  
12 up in New Fort Lincoln Town. So, we're now  
13 facing that.

14 You have dollar stores. You know,  
15 the people that in less economic neighborhoods  
16 where they want to buy a variety of food, but  
17 all less expensive. So, you have dollar  
18 stores coming in.

19 And we have drug stores. We have  
20 Walmart's -- I mean we have the Walgreens and  
21 the CVS of the world and candidly, we're here  
22 today because I was originally retained by CVS

1 a few years ago to do some corporate changes.  
2 They went from corporations to LLCs and then  
3 while driving home one day, I saw this  
4 Walgreens coming up there on Connecticut and  
5 Porter and then I see that they've applied for  
6 a license.

7 As a matter of fact, I went into  
8 the store after they opened and even sent an  
9 email to Fred Moosally that that is a full-  
10 service store because when you look at the  
11 different products -- and I can assure you the  
12 layout and the merchandise that CVS is  
13 offering is the same. So, you now have two  
14 Walgreens that have licenses and I believe  
15 this afternoon, you have a similar fact  
16 finding hearing for the third Walgreens.

17 You also have mass merchandisers.  
18 Again, back to the -- you have a Kmart. You  
19 have a Target in this city that has a beer and  
20 wine license.

21 So, you now have a wide variety.  
22 So, when you use the word supermarket, what

1 are we really talking about? We're really  
2 talking about people that merchandise a lot of  
3 products including food.

4 Now, the other interesting thing  
5 is when I started looking at this particular  
6 location of Connecticut and Calvert. This is  
7 really a food desert. When you think about it  
8 and there's a map in here, if you go west,  
9 you're going to have to go all the way over to  
10 Wisconsin for the Whole Foods and then from  
11 there, you got to go to Spring Valley for the  
12 next grocery store.

13 The Giant on Macomb and Wisconsin  
14 which is otherwise known as I guess Cleveland  
15 Park West is being torn down. That'll be  
16 replaced.

17 If you go north on Connecticut  
18 Avenue, there's one little grocery store up by  
19 Porter and, of course, you have the Walgreens.  
20 Then you have to go all the way up to Van Ness  
21 for the next grocery store. Otherwise, you  
22 have to cross Rock Creek Park, Calvert Bridge

1 and go well into Adams Morgan before you find  
2 the Safeway and the Harris Teeter and if you  
3 go south, you have to go all the way down to  
4 Foggy Bottom where you have a Trader Joe's.  
5 By the way, Trader Joe's doesn't sell surfs  
6 and suds nor does Whole Food sell soaps and  
7 suds and we'll get into product lines also.

8 CHAIRPERSON MILLER: Mr. Pascal,  
9 can I just interrupt for a second to welcome  
10 Mr. Herman Jones, our Board Member.

11 MEMBER JONES: Thank you, Madam  
12 Chair.

13 MR. PASCAL: I'll have to get one  
14 more copy for Mr. Jones.

15 So, you really have an addition  
16 here. A need for the type of food offerings  
17 that CVS has at Connecticut and Calvert  
18 because you really are in a food desert there  
19 in the sense that you have to go a long way to  
20 find any place that you'll have the food  
21 products that they have available.

22 You now also have crossover

1 shopping and what you're seeing is -- and  
2 you'll see some articles about Walgreens and  
3 CVS. What you're starting to see is, you  
4 know, you can go into a Giant Food and you can  
5 get pharmaceuticals. You can go into a CVS  
6 and get food. So, you know, it's a real  
7 mixture.

8           If you go through on the  
9 crossover, it says on a recent conference  
10 call, CVS said it was expanding the amount of  
11 grocery offerings in about half its stores and  
12 if you go further into some of the things that  
13 I've marked there, you'll note that CVS ramps  
14 up grocery sales. These are national trends.

15           Just look how the business is  
16 evolving. The drug store retailer is very  
17 close to the consumer and for them, it's just  
18 natural to add grocery.

19           As late as March 30th which is  
20 just two weeks ago, the Washington Post  
21 reported when it was dealing with Labor Union  
22 7 at Giant and Safeway, pharmacy chains, CVS

1 and Walgreens have also upped the ante by  
2 expanding their food offerings.

3 So, there's no question that what  
4 we have here is CVS is a supermarket. However  
5 you want to call it, they're selling.

6 Interestingly enough and I just  
7 received it today and I didn't have time to  
8 put it in your package, but the number two  
9 facility in the area in terms of gross sales  
10 exclusive of pharmaceuticals is CVS. Only  
11 behind Safeway. So, they're our largest --

12 CHAIRPERSON MILLER: Excuse me.  
13 Gross sales of what?

14 MR. PASCAL: Gross sales of what I  
15 call consumables.

16 CHAIRPERSON MILLER: Okay.

17 MR. PASCAL: This is food. This  
18 is -- and I'll go into some of the other  
19 products. I will. So, right now, CVS is only  
20 just behind Safeway and almost collectively  
21 more than most of the other operators in town.  
22 So, they're a viable force and you can pretty

1 well get anything you want when you go into a  
2 CVS or at a pharmacy chain.

3 Now, the other thing in the  
4 legislative history was one of the people that  
5 testified that they wanted to have one-stop  
6 shopping. That you go into a facility. The  
7 complaint was the little corner grocery store  
8 was 60/70/80 percent beer and wine and you  
9 couldn't get everything that you really  
10 needed.

11 So, what they were really looking  
12 when you look at the legislative history and  
13 that word primary is that it's a one-stop  
14 shop. You want to be able to go in and get  
15 all your needs.

16 For instance, you can go into a  
17 Giant and you can get cleaning goods, makeup,  
18 feminine needs, lotions, deodorants,  
19 toothpaste, toothbrushes, drugs both  
20 prescription and nonprescription, garden  
21 goods, food, canned baby food, frozen foods,  
22 dinners, fresh foods, baking supplies and

1 dairy foods and guess what? You can get all  
2 of that at a CVS also.

3 So, with that, I would propose and  
4 submit to you all that yes, it may be  
5 different. It may be different than what you  
6 thought of when you were a young kid growing  
7 up that a corner -- you know, in those days,  
8 it was Peoples Drugstore and I still, believe  
9 it or not, call them Peoples Drugstore half  
10 the time.

11 When I worked at Hahn's Shoe  
12 Stores many years ago, I went into the Peoples  
13 and I'd have lunch at the lunch counter down  
14 at 11th and G. So, but you're looking at a  
15 different animal today.

16 It's a different animal even when  
17 this legislation was passed 10/12 years ago  
18 when it was considered and that's why we  
19 didn't define supermarkets because no one  
20 knew.

21 You have organic sales. Is that a  
22 supermarket? But, yes, it sells food and it

1 sells vitamins and a lot of things.

2 So, with that, I will end my  
3 presentation and if you have any questions  
4 that you would want to ask to the expert here  
5 from CVS, they're certainly available or any  
6 questions you want to pose to me.

7 CHAIRPERSON MILLER: Thank you.  
8 I'm sure the Board will have questions.

9 I would just like to start off  
10 with one basic question and that is looking at  
11 our specific statute, can you tell us if the  
12 primary business and purpose of this CVS is to  
13 sale of a full range of fresh, canned and  
14 frozen food items?

15 MR. PASCAL: Yes.

16 CHAIRPERSON MILLER: That's the  
17 primary purpose -- business and purpose.  
18 Okay.

19 MR. PASCAL: Primary purpose is  
20 to --

21 CHAIRPERSON MILLER: How do we  
22 know that?

1 MR. PASCAL: -- be a full-service,  
2 one-stop store that sells exactly what  
3 supermarkets do.

4 CHAIRPERSON MILLER: But, the way  
5 that this provision reads the sale of -- the  
6 primary business and purpose is the sale of a  
7 full range of fresh, canned and frozen food  
8 items.

9 MR. PASCAL: And I'm submitting  
10 that the answer to that is yes.

11 CHAIRPERSON MILLER: And how do we  
12 know that?

13 MR. PASCAL: Walk into a store and  
14 look at it and the layout and the range of  
15 foods and offerings is no different than any  
16 of the supermarkets that you've already  
17 granted licenses to.

18 CHAIRPERSON MILLER: Do you have a  
19 percentage of sales for fresh, canned and  
20 frozen food items?

21 MR. PASCAL: There's no percentage  
22 to find in the law. The only percentage in

1 the law, Madam Chair, is the 15 percent  
2 alcohol. I think that's the only thing that  
3 the Board can look at.

4 CHAIRPERSON MILLER: How do you --  
5 do you have a definition for primary?

6 MR. PASCAL: Well, primary itself  
7 isn't defined in the law nor is supermarket  
8 defined in the law. So, what I'm saying is  
9 the primary purpose really was that you didn't  
10 have a store that primarily sold alcohol.  
11 That the sales of alcohol were incidental to  
12 all of the other sales.

13 CHAIRPERSON MILLER: Okay.  
14 Anybody else want to address that before I go  
15 to other Board Members? Okay. Mr. Jones, did  
16 you --

17 MEMBER JONES: Thank you, Madam  
18 Chair.

19 I'm really trying to get more  
20 clarification from you because you kind of --  
21 I don't feel like you're really answering the  
22 questions that are being posed. So, this is

1 a fact finding hearing. We're trying to get  
2 to the bottom of what we're understanding that  
3 you're presenting to us.

4 So, that being stated, I think one  
5 of the questions that was asked was what  
6 percentage of your products to be sold,  
7 however it is you want to define what  
8 percentages are, whether it's stock, whether  
9 it's sales, whatever that case may be, what  
10 percentage do you expect to be associated with  
11 the items that she read and defined as being  
12 associated with groceries or supermarkets?

13 MR. PASCAL: I believe that those  
14 percentages come in anywhere between 17 and 25  
15 percent.

16 MEMBER JONES: Percentages of  
17 what? The sales or the stock, inventory?

18 MR. PASCAL: Of the total gross  
19 sales excluding pharmaceuticals.

20 MEMBER JONES: Excluding  
21 pharmaceuticals. Okay. And you're getting  
22 that number from where?

1 MR. PASCAL: This is from their  
2 own corporate records.

3 MEMBER JONES: From their own  
4 corporate records and these corporate records  
5 will be reflective of what this particular  
6 store is designed to do?

7 MR. PASCAL: I understand that the  
8 urban stores such as this tend to have a  
9 higher percentage of foods sales. So, it's  
10 conceivable that the stores can even be  
11 greater than the 25 percent in this store.

12 This store is a block away from  
13 the Metro. There's a lot of foot traffic. As  
14 you know, the growth in this city in recent  
15 years has been the 25 to 35 year olds who come  
16 home and tend to want to get prepared food or  
17 quick-made food, other types of consumables.  
18 So, this store could conceivably be higher.

19 I think the -- from what they told  
20 me like the Dupont Circle store has even got  
21 a higher percentage.

22 MEMBER JONES: Okay. And so,

1 realistically speaking, even if it is 25  
2 percent or 35 percent --

3 MR. PASCAL: Um-hum.

4 MEMBER JONES: -- that to me  
5 doesn't -- that doesn't speak primary purpose.  
6 So, this is -- I'm trying to get a better  
7 clarification, understanding of how you could  
8 make that be your primary purpose or how you  
9 could associate that or affiliate that with  
10 that being your primary business purpose.

11 The only way I could get there is  
12 if that's the largest percentage of the items  
13 that you plan to sell. In other words, 35  
14 percent are these. Everything else that you  
15 plan to sell in terms of the category is  
16 something less than that 35 percent.

17 That's my interpretation of  
18 primary, but I'm open to other considerations.  
19 But, that's where I am right now.

20 MR. PASCAL: Okay. Well, and I  
21 appreciate your comments and the opportunity  
22 to have the dialogue.

1                   We can certainly ask them if any  
2                   category by itself in the store is greater  
3                   than that, but bear in mind, part of the  
4                   presentation I made is the one-stop shopping  
5                   and there's legislative history that they  
6                   wanted to have the one-stop shopping. So,  
7                   when you look at primary, it's part of an  
8                   overall picture of a one-stop shop and food is  
9                   now and I gave you information is that the  
10                  growth -- the fastest growth of products in  
11                  the store in all likelihood is that.

12                  Let me just ask the gentlemen. Is  
13                  there any one category such as notions or  
14                  feminine needs or anything that would exceed  
15                  that or is this like the fastest growing in  
16                  the -- if you were to break out all the  
17                  categories?

18                  MR. GOAD: By far, the consumable  
19                  quadrant is the highest growth.

20                  About four years ago, we made a  
21                  commitment as a company to redefine ourselves  
22                  and to make a larger commitment towards

1 consumables and so, we had two phases to the  
2 attack.

3           The first attack would be as a  
4 consumable reset. We went in and reset 3,000  
5 stores nationwide where we basically moved the  
6 groceries and anything consumable to a much  
7 better location. Normally, it was in the back  
8 of the store. We moved it to the front.  
9 Coolers we moved to the front and we expanded  
10 the mix of goods.

11           At that same time, we also  
12 launched what we call our urban initiative and  
13 D.C. was the first market in the country to go  
14 there. We started off with seven stores in  
15 the first quarter of 2010. We're currently  
16 at, in my entire area of responsibility, 80  
17 stores.

18           D.C. having most of them.  
19 Probably around 40 of the stores are located  
20 within the City limits.

21           In this expansion -- and often  
22 times, we replaced all the refrigeration, move

1 the refrigeration to the front of the  
2 building, put in self-checkout to speed up the  
3 speed of transactions so people would get --  
4 people are busy. They want to get in and out.

5 So, what we've done is we've added  
6 fresh sandwiches, salads, fruit. Things that  
7 -- and the way I've attacked it is I'm looking  
8 for a better for you. Anybody can put a  
9 carbonated soft drink in, but what I've  
10 expanded to is the Chobani yogurts and the  
11 Odwalla drinks and Simply beverages and I'm  
12 looking for a better for you to tie into my  
13 fresh foods.

14 Currently, stores are being served  
15 three days a week from a local sandwich/salad  
16 maker and the product all comes in. High  
17 quality and we continue to get great reviews  
18 from the consumers saying thank you.

19 Thank you for being there because  
20 a lot of times there isn't an alternative.  
21 There's no place else to go to grab a quick  
22 meal at lunch and often times, we're finding

1 that some of our stores are actually serving  
2 three meals a day depending on where the store  
3 is located.

4 You know, we've got stores that  
5 are strictly business. Some are strictly  
6 residential, but as we -- as our society and  
7 our community changes, we're finding multi-use  
8 buildings all through the City.

9 We're seeing retail. You're  
10 seeing residential and you're seeing  
11 commercial all kind of tied together and what  
12 we found is that we're actually filling in the  
13 needs for people's meals throughout the day  
14 whether it be for frozen food.

15 Some of our frozen food offerings  
16 are seven freezer doors. I've got dairy  
17 stores that have seven doors of dairy, fresh  
18 dairy and the ice cream is two and three doors  
19 and then the snacks have grown and line of  
20 cakes and breads. We've got Pepperidge Farm  
21 bread in several stores. We continue to  
22 evolve that entire process.

1                   Now, we're in talks with another  
2                   supplier looking at adding -- expanding our  
3                   fresh vegetables and fresh fruits to the  
4                   stores.

5                   So, we continue to evolve. We  
6                   continue to look to ways to serve the  
7                   community.

8                   Our goal is to become more of a  
9                   fill-in shop and we notice that just having  
10                  gallons of milk that serves a lot of  
11                  customers, but it doesn't really fill the true  
12                  need of what the consumer's really looking  
13                  for. Mom's looking for more than just a  
14                  gallon milk. She needs the yogurt. She needs  
15                  sour cream and cottage cheese. She needs  
16                  something for dinner.

17                  And what we've found is that the  
18                  consumers are voting yes with their dollars.  
19                  The sales are just through the roof. We're  
20                  seeing 20 percent increases year over year in  
21                  our dairy category. We're seeing -- in our  
22                  bread and frozen food and ice cream category,

1 we're seeing 15 percent growth year over year.  
2 So, we continue to see this.

3 And the sandwich and salad  
4 business is totally new and for the City of  
5 D.C. for us and 40 stores, we'll probably end  
6 up doing about \$1.4 million this year in  
7 sandwiches and salads. So, it's just so much  
8 more than what your traditional drug store  
9 would have been in the past.

10 And one of the things is that we  
11 -- I came from the grocery business. I worked  
12 for a chain in New York, up in the northeast,  
13 many years ago and, you know, you look at  
14 everything. You blend out. I mean groceries  
15 are probably less than 40 percent of their  
16 total business if you give me credit for my  
17 feminine products and give me credit for all  
18 the household paper they sell. Because when  
19 you blend it all out, you know, if we're  
20 talking about just the stuff that you put in  
21 your mouth, yes, I'm probably between 20 and  
22 25 percent, but if you go and let me expand to

1 everything that the grocery store is selling,  
2 my percentage all of a sudden will pop quite  
3 high.

4 We are the -- we were years ago  
5 the number one grocery in D.C. You know, they  
6 want a lot of grocery stores. There's been an  
7 influx of stores in the last like 5 to 10  
8 years and the grocery stores are really  
9 starting to fill in some of the needs for the  
10 community, but we feel that with our 54  
11 locations that we definitely have a place in  
12 the City and we've been here a long time.

13 I've been here for 20 years. I  
14 came down when we merged CVS and Peoples.

15 So, it's an important part of our  
16 business. We feel that we've got a role. We  
17 fill a need here. We feel that we're part of  
18 the community and this is just one more thing  
19 that we think the community is looking for.  
20 Is fair pricing and alcohol availability and  
21 just convenience.

22 MEMBER JONES: So, thank you for

1 that. Now, you placed some emphasis or I  
2 thought I heard you use the words growth area.

3 MR. GOAD: I'm sorry.

4 MEMBER JONES: I thought I heard  
5 you use the growth --

6 MR. GOAD: Yes.

7 MEMBER JONES: -- area.

8 MR. GOAD: Um-hum.

9 MEMBER JONES: Growth areas and  
10 that you're putting a lot of emphasis on this  
11 because it has -- you've seen significant  
12 growth in this area in terms of your business.  
13 Did I hear you correctly or did I misinterpret  
14 that?

15 MR. GOAD: Correct. Nope.  
16 Definitely double digit growth every year.

17 MEMBER JONES: Okay. Growth area,  
18 it being a point of emphasis doesn't mean that  
19 that's your primary business nature. Correct?  
20 Am I missing that?

21 MR. GOAD: Well, I'm --

22 MEMBER JONES: Just because

1 something is a growth area doesn't mean it's  
2 your primary business purpose. It may be a  
3 primary --

4 MR. GOAD: Um-hum.

5 MEMBER JONES: -- focus right now  
6 because you see growth there. Because the  
7 purpose of it being a business is to make  
8 money. So, you have staple baseline -- a  
9 stable baseline that you have. If you know,  
10 hey, everyone's going to come to CVS for these  
11 products. I'm not too concerned about that,  
12 but how do I grow? How do I increase my  
13 shareholder value? I find growth markets that  
14 I can try and capitalize on where I can take  
15 market share from others and bring it to here.  
16 Thus, increasing my shareholder value. That  
17 makes it a growth focus. So, I get that.  
18 But, that doesn't necessarily tell me that  
19 that's your primary business purpose for this  
20 particular establishment.

21 MR. GOAD: Okay.

22 MEMBER JONES: So, that's where

1 I'm kind of lost a little bit and maybe you  
2 could help close that.

3 MR. GOAD: Sure. I think I can.  
4 Because when you look -- if you took one of  
5 our circulars, okay, and if you really looked  
6 through it, what's in the front page every  
7 week? What's in the back page every week?  
8 The things you're going to find is it's all  
9 consumables. Every -- I mean I'm not saying  
10 every item is, but in the back page of the ad,  
11 typically, there's soda. There's beer.  
12 There's wine. On the front page, there's  
13 soda. There's a beer. There's -- if you open  
14 it up, there's anywhere from two to four pages  
15 of more consumables and it's -- if you think  
16 about how the business is evolving, grocery is  
17 a primary part of our business because we  
18 understand time-starved people and how the  
19 business is evolving.

20 And it is a primary focus. Not  
21 just a focus. You're right. It is a focus  
22 because we definitely put resources, energy

1       against it, but we understand that it is a  
2       primary part of our business and it's where we  
3       want to be.

4                     It's where we want -- where we're  
5       going. We continue to evolve and grow and  
6       expand areas.

7                     MR. PASCAL: Mr. Jones, not to  
8       interrupt, but as you'll see in some of the  
9       material that I supplied and talked about  
10      before you got here, is this is the primary  
11      area where the stores are going and it is a  
12      crossover now. The whole idea of what a  
13      supermarket is is very blurred now.

14                    You know, are you going to tell  
15      me, you know, when you walk into a Costco the  
16      first thing you see is a TV screen, a 55-inch  
17      TV screen. That's the first thing they want  
18      you to see, but still primary is their food.

19                    The same thing here. This is the  
20      growth area and it is their primary -- and  
21      bear in mind that they're going head-to-head  
22      with Walgreens who this Board has already

1 granted several licenses to and is seeking a  
2 third one and when you go into a Walgreens and  
3 you go into a CVS, you're going to see  
4 comparable food and you're going to see the  
5 same attitude.

6 I'm sure -- I can't speak for  
7 Walgreens, but I know that they're fierce  
8 competitors and I'm sure that they are pushing  
9 ahead also in this whole food area. This  
10 consumable area.

11 MEMBER JONES: I understand.

12 MR. PASCAL: Thank you very much.

13 MEMBER JONES: Thank you. Thank  
14 you, Madam Chair.

15 CHAIRPERSON MILLER: Yes, Mr.  
16 Alberti.

17 MEMBER ALBERTI: Hi. I'm sort of  
18 -- I share the concerns of Board Member Jones,  
19 but I'm looking at it from -- direction and  
20 I'm focusing on this 15 percent cap on the  
21 sale of alcohol and I'm looking at what is the  
22 base for that percentage.

1                   I mean I understand that, you know  
2                   -- I understand that even what traditionally  
3                   we think of ten years ago as a full-service  
4                   grocery sells things that are non-consumables.  
5                   I mean they sell paper products. They sell  
6                   laundry detergent and I think I would accept  
7                   that, you know, that would be part of the  
8                   basis for their total sales which you -- we  
9                   judge as 15 percent in alcohol sales.

10                   But, you know, and maybe I'm not  
11                   evolving here with the industry, but, you  
12                   know, I think of CVS as a pharmacy. So, part  
13                   of your sales is prescription drugs.

14                   So, I'm a little curious as if you  
15                   divide your -- if you were to sell alcohol and  
16                   were to project what your percentage would be  
17                   in three categories, I'd be interested in that  
18                   and one would be alcohol sales. One would be  
19                   prescription drugs and one would all other  
20                   items, food items, you know, hand cream, paper  
21                   towels, laundry detergent, all of those  
22                   things, stationery, all of those things.

1                   Can you do that for me? Sort of  
2                   just roughly what you project?

3                   MR. GOAD: I can fill part of that  
4                   in for the stores. Can I talk about -- I'll  
5                   talk about the store we had on Connecticut  
6                   Avenue today.

7                   It's a very small store. It's  
8                   about 5,000 square foot retail and it really  
9                   don't get -- the fact is the stores are small.  
10                  It could do a lot more volume if it had the  
11                  square footage. In that particular store,  
12                  alcohol is 7 percent of the front store  
13                  business.

14                  And if you look at our national  
15                  averages, probably pharmacy, prescription  
16                  business, is probably 70 percent of our total.  
17                  So, alcohol there is 7 percent of 30 percent  
18                  of the total. So, it's --

19                  MEMBER ALBERTI: Let me understand  
20                  that.

21                  MR. GOAD: Yes.

22                  MEMBER ALBERTI: So, I'm not sure

1 I -- yes, I'm not sure you -- I understood it.

2 MR. GOAD: Okay.

3 MEMBER ALBERTI: It's 7 percent of  
4 the 30 percent?

5 MR. GOAD: Correct. So, the  
6 entire --

7 MEMBER ALBERTI: So, it's less  
8 than 7 -- if I took everything that was sold  
9 in the store --

10 MR. GOAD: Right.

11 MEMBER ALBERTI: --  
12 pharmaceuticals --

13 MR. GOAD: So, it's probably  
14 closer to 3 --

15 MEMBER ALBERTI: -- alcohol and  
16 everything else --

17 MR. GOAD: -- say 3 percent. It  
18 would be closer to --

19 MEMBER ALBERTI: It's much lower  
20 than that?

21 MR. GOAD: Um-hum. Yes.

22 MEMBER ALBERTI: And is that what

1 you're looking for on this other store? Is  
2 that what you're projecting?

3 MR. GOAD: Yes, I'm projecting --

4 MEMBER ALBERTI: Something  
5 similar?

6 MR. GOAD: -- next year that we'd  
7 probably do about 3 percent our front store.  
8 Which would make it about 1« percent total and  
9 I would expect that over 4 years we'd probably  
10 get up to about 5/6 percent.

11 MEMBER ALBERTI: Okay.

12 MR. PASCAL: It is truly  
13 incidental. It's --

14 MEMBER ALBERTI: Well, and that --  
15 yes, I mean a key part --

16 MR. PASCAL: And that was  
17 legislative history.

18 MEMBER ALBERTI: Yes, a key part  
19 of this is that 15 percent and I want to --  
20 that was important I think in this  
21 legislation. I mean things evolve, but I  
22 don't think when the Council wrote this law

1 they could have envisioned where the  
2 industry's going. But, I think one thing that  
3 has stayed the same is trying to limit the  
4 emphasis on alcohol sold by these --

5 MR. PASCAL: Those are missed  
6 actions. As a matter of fact, I believe --  
7 for instance, they don't sell single sales of  
8 beer. Everything's a six pack.

9 MEMBER ALBERTI: Right.

10 MR. PASCAL: I mean it's truly  
11 incidental. It's not to be designed as an  
12 alcohol-related store. It's the new  
13 supermarket or the new grocery store phase  
14 that we're living with.

15 And like I say, when we were  
16 putting this law together, we really didn't  
17 define supermarket because it was a nebulous  
18 thing. The more important thing at that time  
19 was that you were going to try to get away  
20 from the stores that were selling 60/70/80  
21 percent of beer and wine and getting the one-  
22 stop shop, the full service of getting things

1 in there.

2 And if you go into a Target, they  
3 have pharmacies now. They have clothing. You  
4 can get jeans in a Target, you know, and yet,  
5 you know, can I say that their primary purpose  
6 is -- their primary purpose is to serve the  
7 customer and that includes having everything  
8 available.

9 I think that's the way to really  
10 look at the primary purpose. Is not -- sort  
11 of a negative. The primary purpose is not to  
12 sell beer and alcohol -- beer and alcohol, but  
13 to have full service available to everybody.

14 MEMBER ALBERTI: Thank you.

15 CHAIRPERSON MILLER: Other  
16 questions?

17 Mr. Pascal, you were instrumental  
18 in writing the statute?

19 MR. PASCAL: Yes.

20 CHAIRPERSON MILLER: Okay. So,  
21 when was it written?

22 MR. PASCAL: It think this is

1 2001. This statute evolved over a period of  
2 time because it first came out when it dealt  
3 with the Capitol and the moratorium on B  
4 licenses and then issues arose such as being  
5 close to a school. You had a proliferation of  
6 charter schools. So, you couldn't find  
7 commercial places. So, it was exempt for  
8 that.

9 The law evolved three or four  
10 times due to modify the exemptions, but the  
11 original thing went over a decade ago. So,  
12 Ms. Sharon Ambrose was the Councilmember.

13 As I told you, I also represent a  
14 lot of food distributors and we were concerned  
15 that we were not being able to distribute a  
16 lot of food industry. So, I had two hats I  
17 was wearing. One for the beer, wine and  
18 spirit wholesalers and one also for the food  
19 industry to get more food back in the City and  
20 also to serve the citizens of the City.

21 CHAIRPERSON MILLER: Okay. Let me  
22 ask you. Do you think that CVS' business is

1 a different type of business than Costco's?

2 MR. PASCAL: Well, Costco,  
3 actually, if you look at a Costco, their  
4 original concept of Costco was to serve small  
5 corner grocery stores. The Costco original  
6 concept was it was available to serve other  
7 retailers. It has evolved into where the  
8 actual consumers go in and buy now.

9 But, if you go into a Costco,  
10 you'll see a lot of little corner grocery  
11 store people going in and buying their stuff  
12 because the US Food Services of the world and  
13 the CISCOS don't want to serve the little  
14 small stores. So, Costco fills in that and  
15 then --

16 CHAIRPERSON MILLER: Okay. I  
17 guess what I'm saying is -- maybe I should  
18 just say what I'm looking at. I don't think  
19 everything is the same. I don't think the  
20 primary purpose of CVS is the same as the  
21 primary purpose of Safeway even though every  
22 -- all these different establishments are now

1 adding different products and it looks to me  
2 that you're reading the statute as maybe it  
3 should evolve, but I don't think it's there.  
4 Saying that if it serves a multitude of  
5 purposes, then okay, we can just go to the 15  
6 percent and in the way the statute reads right  
7 now, it's talking about food being the primary  
8 purpose. Which it is for the "supermarkets"  
9 like Safeway, Giant.

10 MR. PASCAL: Safeway's now have  
11 the pharmacies in there and --

12 CHAIRPERSON MILLER: They do, but  
13 it's --

14 MR. PASCAL: They're going. They  
15 have the garden goods and they're going after  
16 -- everybody is going after the same piece of  
17 pie and it's just a question of how you divide  
18 it up. But, still the primary purpose is a  
19 one-stop shop for the customers to come in  
20 there and food is now part of it.

21 I tried as late as this morning to  
22 try to get some percentages for instances of

1 what the food ratios are for Safeway, but I  
2 wouldn't be surprised if it isn't much greater  
3 than what the percentages are coming in here.  
4 When you start adding in all the -- I know,  
5 you know, my kids are grown. They've been out  
6 of the house. We eat out a lot and I know  
7 when my wife goes shopping, 70 or 80 percent  
8 of that shopping bill is the soaps and such  
9 she buys and very little on food.

10 CHAIRPERSON MILLER: Let me ask --

11 MR. PASCAL: So, are you going to  
12 say that when she goes into a Giant store, her  
13 primary purpose was to go in there and buy  
14 just food? No, it was to go in there and buy  
15 what the store has to offer and that's all  
16 part of it.

17 So, and I think what you've heard  
18 in today's testimony and what I've give to you  
19 in writing is the primary purpose for CVS is  
20 to go into the grocery business because that's  
21 where they see the dollars.

22 CHAIRPERSON MILLER: So, I just

1 want to be clear. What you're telling us  
2 today about CVS, are you saying it doesn't  
3 just apply to 2601 Connecticut Avenue? That  
4 it's for all CVS?

5 MR. PASCAL: We're here today with  
6 an application for 2601. So, I can't say. I  
7 will tell you that when I discussed the issue  
8 with CVS when I first opined that I thought  
9 since Walgreens got a license and some of the  
10 other, the Targets have the licenses, I know  
11 the Costco, that I opined to them that I  
12 thought they could get a license.

13 But, I did caution them also that  
14 they had to look at neighborhoods where the  
15 food sales would be serving the public. Look  
16 at deserts. Which they've done and that's why  
17 they selected this store as the store to be  
18 their first store.

19 And if you even look at the areas  
20 where the Walgreens have gone, they're heavily  
21 concentrated where people are living and there  
22 is not a lot else available.

1 CHAIRPERSON MILLER: Okay. Other  
2 questions?

3 MR. WOODSON: Madam Chair.

4 CHAIRPERSON MILLER: Yes.

5 MR. WOODSON: If I may offer a  
6 perspective.

7 CHAIRPERSON MILLER: Yes.

8 MR. WOODSON: I was involved in  
9 the consideration of the bill that Mrs.  
10 Ambrose developed at the beginning of the  
11 decade and at the time, the juxtaposition was  
12 the Safeway or the Giant versus the small  
13 corner B store.

14 What has happened in this interim  
15 period really casts, if anything, a reverse  
16 cloud on Giants and Safeways. Because the  
17 traditional supermarket model has evolved  
18 really to capture much more of the  
19 prescription drug model and depending on how  
20 you wish to -- if you wish to analyze the  
21 income characteristics of "supermarkets"  
22 today, I would venture to say that a much,

1 much larger percentage of their revenue comes  
2 from prescription drugs.

3           Indeed, most of the "traditional"  
4 drugstores view Giant and Safeway as the  
5 primary competitor. It's not the Walgreens.  
6 Not in this market.

7           And so, if you -- if the  
8 consistency of the argument is that there has  
9 been a rush to the center by everyone, the  
10 supermarkets while there may be floor space  
11 associated with varieties of products, when  
12 you look at the revenue stream that the floor  
13 space produces, there's a much greater revenue  
14 stream that comes from prescription drugs.  
15 It's even more significant emphasis that the  
16 revenue -- the differentiation between spirits  
17 and wine or spirits and beer. There's much  
18 more revenue associated with the sale of  
19 spirits than beer. There is much more revenue  
20 associated with the sale of prescription drugs  
21 than food.

22           Now, if I was hearing the Board's

1 thinking that well, if we have -- prescription  
2 drugs are this amount of money in a CVS and  
3 food is this amount of money. When you look  
4 at the gross revenue stream, then you cast a  
5 question on where the primary operation is.  
6 I submit to you that the same analysis when  
7 employed with a Giant or a Safeway will result  
8 in the same question.

9 So, that the -- at the time we  
10 were considering this legislation, the issue  
11 seemed more clear because it was an anecdotal  
12 review, but in reality, it's much less clear.

13 The interpretation of the statute  
14 that's being presented today is really one  
15 seeking to embrace the business that we have  
16 in this City now and statutory interpretation,  
17 your interpretation of the ABC statute really  
18 should take that into consideration.

19 It is not a static thing. That's  
20 why we're having backfires. Is to engage what  
21 is the current situation and how the law can  
22 fit and matches that.

1                   CHAIRPERSON MILLER: Is it also  
2 possible that there needs to be -- that there  
3 might need to be a legislative change as to  
4 number one? I mean you're asking us to  
5 interpret number one very broadly about  
6 primary purpose is the sale of a full range of  
7 fresh, canned and frozen food items. Doesn't  
8 say multitude of items, consumer items. Isn't  
9 that the case?

10                   MR. PASCAL: I'm not certain you  
11 could get your hands around that. Because  
12 when you go into these stores, it's such a  
13 wide variety.

14                   If you were really to really  
15 narrow that, probably the only thing may be an  
16 organic food store and certainly, that wasn't  
17 the purpose when this law was done. The  
18 purpose of the law was to engage and get food  
19 products to the market.

20                   So, and I think you're looking at  
21 what you've heard here today and what you see  
22 in the record and their primary goal is to

1       increase more and more groceries in the  
2       business. That's where they see the market is  
3       for the people walking in the door.

4               So, I don't know how you'd get  
5       your handle on. We deliberately didn't talk  
6       about percentages.

7               I mean the real goal then --  
8       whether it was articulated or not, the real  
9       goal was to get rid of the little mom and pop  
10      stores that were selling 70/80/90 percent beer  
11      and wine and get stores in there that were  
12      distributing food to the market and that's  
13      what you have here with the CVS of the world  
14      and the Walgreens of the world and the  
15      Walmarts and the Targets.

16              Yes, who would have ever thought  
17      years ago that a Walmart would be out there  
18      pushing food or a target. You know, just this  
19      is where the -- you know, where the consumable  
20      dollar is. That is the primary purpose to get  
21      that consumable dollar.

22                      CHAIRPERSON MILLER: Okay.

1 Anything else? Yes, Mr. Jones.

2 MEMBER JONES: Thank you, Madam  
3 Chair. Just for clarification purposes,  
4 something I meant to ask, but failed to  
5 previously.

6 What would you define as your  
7 categories? I mean we keep talking about  
8 categories, but I don't really know what you  
9 consider to be your categories of product  
10 sales. How do you break it down?

11 MR. GOAD: Now, were saying in the  
12 consumable quadrant?

13 MEMBER JONES: I am saying in  
14 terms of your gross sales for a particular  
15 store. How would you define your categories  
16 of sales from that particular store at a high  
17 level?

18 MR. GOAD: Well, there's 52  
19 categories.

20 MEMBER JONES: Fifty-two  
21 categories?

22 MR. GOAD: Yes, and --

1                   MEMBER JONES: Are those broken  
2 down or are they aggregated at a higher level?  
3 I mean we're talking 52 categories. That  
4 seems like a lot, but I'm ignorant. So, help  
5 me understand.

6                   MR. GOAD: Yes, there's -- I think  
7 there's four larger subsets, but there's  
8 actually 52 categories under those.

9                   MEMBER JONES: So, what are the  
10 four larger subsets?

11                  MR. GOAD: Consumables would be  
12 one. Health and beauty aids. General  
13 merchandise and I think the last one would be  
14 photo.

15                  MEMBER JONES: Consumables, health  
16 and beauty aids. What other two?

17                  MR. GOAD: General merchandise and  
18 then photo.

19                  MEMBER JONES: Photo?

20                  MR. GOAD: Photography.

21                  MEMBER JONES: Oh, photo. Okay.

22                  MEMBER ALBERTI: What about

1 pharmaceuticals?

2 MR. GOAD: That's not part of the  
3 front store. That's a total different part of  
4 the business.

5 MEMBER ALBERTI: Okay.

6 MEMBER JONES: So, where would  
7 grocery sales fall into one of these four  
8 categories?

9 MR. GOAD: Under the consumable.

10 MEMBER JONES: Under consumables?

11 MR. GOAD: Correct.

12 MEMBER JONES: Got it and when you  
13 were mentioning the percentages, when you said  
14 7 percent of 30 percent --

15 MR. GOAD: Um-hum.

16 MEMBER JONES: -- what was that 7  
17 percent and 30 percent of?

18 MR. GOAD: Okay. Yes, so, the  
19 four categories, under the big four sections,  
20 that is the 30 percent of the total store.

21 MEMBER JONES: Got it.

22 MR. GOAD: Okay. The 7 percent is

1 7 percent of the 30 which would be part of the  
2 consumable. Under consumable. So, the  
3 consumable portion of the 30 is around 20/25  
4 percent. Okay.

5 MEMBER JONES: Got it.

6 MR. GOAD: And then the subset of  
7 alcohol in that one store was 7 percent.

8 MEMBER JONES: Okay. So, just --  
9 maybe this is an obvious question, but what is  
10 the other 70 percent?

11 MR. GOAD: Pharmacy.

12 MEMBER JONES: That's all  
13 pharmacy?

14 MR. GOAD: It's drugs. Yes.

15 MEMBER JONES: Okay.

16 MR. GOAD: Um-hum.

17 MEMBER JONES: So, is it a fair  
18 statement -- maybe not a fair statement, but  
19 I'm going to make it anyway. So, it seems  
20 like your store could survive without the  
21 consumables.

22 MR. GOAD: No.

1                   MEMBER JONES: No, it wouldn't.  
2                   It would fail.

3                   MR. GOAD: Not at today's  
4 reimbursement rate. The thing is we've heard  
5 this big battle over PBMs, pharmacy benefit  
6 companies, reimbursement rates. As more and  
7 more companies and as the Government becomes  
8 a bigger payer in the health care arena with  
9 Medicare Part D, Medicaid, Social Security,  
10 more and more of the Government's picking up  
11 those tabs and what's happening is the  
12 reimbursement rates are slipping year to year  
13 to year.

14                  MEMBER JONES: Um-hum.

15                  MR. GOAD: And what ends up  
16 happening is you have to find other businesses  
17 to supplement what you're losing on the  
18 reimbursements for the drugs --

19                  MEMBER JONES: So, other revenue  
20 streams you're talking about?

21                  MR. GOAD: Right.

22                  MEMBER JONES: Okay.

1 MR. GOAD: So, you have to grow  
2 other parts of your business. Consumables  
3 being one of them.

4 MEMBER JONES: Okay.

5 MR. GOAD: So, if you're driving  
6 traffic, at the same time, you're trying to  
7 augment the profit losses that you see in your  
8 pharmacy business.

9 MEMBER JONES: So, when you say  
10 it's like -- I may have misheard you. Delayed  
11 payment by the Government?

12 MR. GOAD: No. No. No. They're  
13 actually lowering the reimbursement rates.

14 MEMBER JONES: Got it. Okay.

15 MR. GOAD: So, let's say -- it's  
16 like -- think if interest rates where they've  
17 gone. You used to be 5 percent on a CD.  
18 Today you're getting 1 percent. Same thing  
19 has happened in the pharmacy business.

20 MEMBER JONES: Got it. Okay.

21 MR. GOAD: The Government pays you  
22 less to fill a prescription.

1 MR. PASCAL: Incidentally, in this  
2 particular store, it's replacing a store  
3 across the street. The existing CVS is on the  
4 western side of the street up near the  
5 McDonald's. A very small operation. It does  
6 not have a pharmacy in there.

7 By getting this larger site at the  
8 corner being able to have this product mix  
9 we're talking about, they're now bringing the  
10 pharmacy back into the neighborhood. So, not  
11 only are you getting the benefit of the larger  
12 grocery selection and the complementary beer  
13 and wine that goes with it, but they're now  
14 bringing the pharmacy back to the  
15 neighborhood.

16 MEMBER JONES: Okay.

17 MR. STASO: The other thing I  
18 wanted to add is the -- two things. Is, you  
19 know, this store profile mimics almost  
20 identically the two Walgreens that are already  
21 selling beer and wine in their stores. So, I  
22 mean even maybe more so from a consumer

1       standpoint with this location.

2                   And I think we have to look at  
3       this location, a lot of our urban D.C.  
4       locations.  What does drive the actual  
5       customer to go into that store?

6                   I know we can get caught up in the  
7       percentages and all that.  But, when you  
8       really look at this store location, I'm going  
9       to almost go to the other end and say the  
10      primary purpose of a lot of visits to this  
11      store is going to be for consumables and now,  
12      in the end, they may purchase something else  
13      whether it be a health and beauty aid item for  
14      \$7.99/\$8.99/\$12.99, face cream for \$24.99.  
15      So, you get caught up in the percentages.

16                  You know, we don't have the  
17      butcher shop.  We don't have that in the back  
18      of the store to drive up that market basket,  
19      but the purpose of the shopper in these  
20      communities and see it in our Dupont Circle,  
21      a lot of our downtown, is they go in there for  
22      the sake of a consumable item and come out

1 with other merchandise.

2 And this store particularly if you  
3 know the location, Connecticut and Calvert,  
4 it's a very, very busy intersection becoming  
5 even busier. So, I'm going to venture to say  
6 that yes, they actually do go in there for a  
7 consumable purchase and come out with other  
8 products that might skew the percentage of  
9 consumable product in the basket.

10 MEMBER JONES: Thank you. Thank  
11 you, Madam Chair.

12 CHAIRPERSON MILLER: Thank you.  
13 Others?

14 I have one question and that is  
15 either for Mr. Woodson or Mr. Pascal. Is  
16 there any legislative history that you could  
17 direct us to or provide to us to support your  
18 interpretation of the provision that really  
19 refers to food, but that it could be  
20 interpreted more broadly?

21 MR. PASCAL: I gave you as part of  
22 a package there some --

1 CHAIRPERSON MILLER: It's in your  
2 package?

3 MR. PASCAL: -- snippets of  
4 legislative history.

5 CHAIRPERSON MILLER: Okay.

6 MR. PASCAL: Oh, I'm sorry. I  
7 didn't. I'm sorry. We didn't.

8 You have to go back to 2001 I  
9 think is the primary basis of legislative  
10 history.

11 CHAIRPERSON MILLER: Okay.  
12 Anything else? All right. Well, thank you  
13 very much. We're going to take this under  
14 advisement.

15 MR. PASCAL: Thank you very much.  
16 Thank you for the opportunity to be before  
17 you.

18 CHAIRPERSON MILLER: Okay. Thank  
19 you.

20 I just want to close the last one.  
21 You all don't have to wait. We're going to  
22 just -- pursuant to the Open Meetings Act,

1 we're just going to formally close that case  
2 to seek legal counsel later and deliberate on  
3 it later.

4 As Chairperson of the Alcoholic  
5 Beverage Control Board for the District of  
6 Columbia and in accordance with Section 405 of  
7 the Open Meetings Amendment Act of 2010, I  
8 move that the ABC Board hold a closed meeting  
9 for the purpose of seeking legal advice from  
10 our counsel and deliberating on Case Number --  
11 it doesn't really have a case. It's a fact  
12 finding case. CVS Pharmacy Number 1354 per  
13 405(b)(4) of the Open Meetings Amendment Act  
14 of 2010.

15 Is there a second?

16 MEMBER NOPHLIN: Second.

17 CHAIRPERSON MILLER: Then I'll  
18 take a roll call vote on the motion before us  
19 now that it's been seconded.

20 Mr. Nophlin?

21 MEMBER NOPHLIN: I agree.

22 CHAIRPERSON MILLER: Mr. Brooks?

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MEMBER BROOKS: I agree.

CHAIRPERSON MILLER: Mr. Alberti?

MEMBER ALBERTI: I agree.

CHAIRPERSON MILLER: Ms. Miller  
agrees.

CHAIRPERSON MILLER: Ms. Mobley?

MEMBER MOBLEY: I agree.

CHAIRPERSON MILLER: Mr. Jones?

MEMBER JONES: I agree.

CHAIRPERSON MILLER: The vote is  
6-0 to approve the motion.

I hereby give notice that the ABC  
Board will recess this proceeding to hold a  
closed meeting in the ABC Board Conference  
Room later in the day pursuant to the Open  
Meetings Amendment Act of 2010. Okay.

(Whereupon, at 10:39 a.m., the  
hearing was adjourned.)

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