

# Staff Summary Report



Hearing Officer Hearing Date: October 21, 2008

Agenda Item Number: 2

**SUBJECT:** This is a public hearing for a request by **FOOD CITY NO. 96 (PL070481)** located at 1338 East Apache Boulevard for one (1) use permit.

**DOCUMENT NAME:** 20081021dssd01

**PLANNED DEVELOPMENT (0406)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** Hold a public hearing for a request by **CENTRAL PLAZA - FOOD CITY NO. 96 (PL070481)** (M. Brennan Ray/Burch & Cracchiolo, applicant; Bashas Inc., property owner) located at 1338 East Apache Boulevard in the CSS, Commercial Shopping and Services District for:

**ZUP07174** Use permit to allow outdoor retailing (outdoor roasting/retail food productions).

**PREPARED BY:** Shawn Daffara, Planner II (480-858-2284)

**REVIEWED BY:** Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

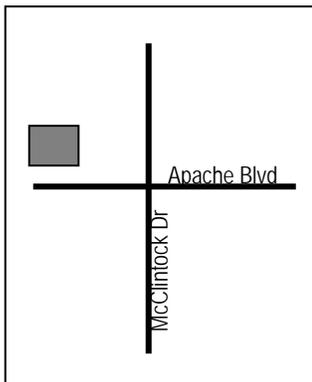
A handwritten signature in black ink, appearing to read 'SEA'.

**LEGAL REVIEW BY:** N/A

**FISCAL NOTE:** N/A

**RECOMMENDATION:** Staff – Approval subject to Conditions

**ADDITIONAL INFO:** Food City Grocery Stores is requesting a use permit to allow outdoor roasting of chilies and grilling chickens. The proposed display areas are located adjacent to the main entrance of the store. To date, staff has received one (1) letter of opposition and one (1) letter of support to this request. Staff recommends approval of the proposals as submitted, with conditions.



**PAGES:**

1. List of Attachments
2. Comments;
3. Reason for Approval; Conditions of Approval; History & Facts.
4. Description; Zoning & Development Code Reference

**ATTACHMENTS:**

1. Location Map(s)
2. Aerial Photo(s)
- 3-4. Letter of Intent
5. Site plan
6. Enlarged Site Plan
7. Landscape Plan
8. Elevation
- 9-11. Applicant's Photograph(s)
12. Staff Photograph(s)
13. Letter of Opposition
14. Letter of Support

## COMMENTS:

Food City Grocery Stores is requesting a use permit to allow outdoor roasting of chilies and grilling chicken. The site is located at 1338 East Apache Boulevard in the CSS, Convenience Shopping and Service District. The outdoor roasting and grilling area will be located to the east of the main entrance adjacent to the shopping cart coral. The Zoning and Development Code requires a six (6') foot clear, unobstructed path. The outdoor grilling and roasting area will consist of two (2) tables, temporary tent/awning, propane tank, charcoal grill and chili roaster. The chilies and chickens will be cooked outside, then bagged, weighed, and moved inside the grocery store where shoppers can purchase the items. There will be no sales conducted on the outside of the building.

The outdoor grilling operation will occur on a seasonal basis. Food City anticipates chili roasting will occur Friday and Monday from 2:00 PM to 7:00 PM, Saturday and Sunday from 10:00 AM to 4:00 PM. The chicken grilling will occur Friday through Monday from 11:30 AM to 7:00 PM. The setup and breakdown of all grilling equipment will occur one-half hour before and after cooking operations are conducted.

To date, staff has received one (1) letter of opposition and one (1) letter of support to this request.

## Use Permit

The Zoning and Development Code requires a use permit for outdoor roasting/cooking within the CSS, Convenience Shopping and Service District.

Evaluating the use permit, the proposal appears to pass the use permit test listed below:

- a. Any significant increase in vehicular or pedestrian traffic in adjacent areas;
  - There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.
- b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
  - This use, with conditions, should not create nuisances within the commercial zoned area.
- c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans, or General Plan;
  - The proposed development would not contribute to neighborhood deterioration or downgrade property values. The requested use permit will not be detrimental to the surrounding area.
- d. Compatibility with existing surrounding structures and uses;
  - The proposed use appears to be compatible with surrounding uses, and would not contribute to neighborhood deterioration or downgrade property values. The requested use permit will not be detrimental to the surrounding area.

## Conclusion

Staff recommends approval of the use permit, subject to the conditions.

**REASON(S) FOR APPROVAL:**

1. No apparent nuisance resulting from noise, smoke, odor, dust, vibration, or glare.
2. The use appears to be compatible with the site and adjacent property.
3. There appears to be a demonstrated need for this use at the proposed location

**SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.**

**CONDITION(S) OF APPROVAL:**

1. The outdoor roasting/cooking equipment shall not conflict with pedestrian or vehicular traffic. If any display items are moved into the sidewalk, the business may be cited and/or returned to the Hearing Officer for review, and potential revocation of the use permits. The Zoning and Development Code requires a six (6') foot clear, unobstructed path.
2. The use permit is valid for the plans as submitted to and approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the Development Services office, the use permit may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. Any outdoor signage associated with the display shall be reviewed by the Development Services Department - Planning Division and are limited to three (3) square feet.
5. The outdoor grilling area shall require development plan review, to include temporary awnings/tents and fences.
6. No sound amplification shall be used for the outdoor display.
7. The outdoor grilling area must be maintained in a clean and orderly manner (per City Code 21-3, B1), with boxes and pallets removed immediately after unloading/loading.
8. Area will be monitored by a qualified staff member at all times.
9. Post "No Dining" and "No Loitering" signs.
10. Add "No Parking" striping at the curb and on the pavement at the location of the operation.

**HISTORY & FACTS:**

September 2, 2008

DPR08193: Development Plan Review approval for a parking lot modification.

**DESCRIPTION:**

Owner – Bashas Inc.  
Applicant – M. Brennan Ray/Burch & Cracchiolo  
Existing Zoning – CSS, Commercial Shopping and Services District  
Site Area – 144,624 s.f. / 3.3 acres  
Building Area – 44,437 s.f.  
Outdoor Roasting/Cooking Area – 400 s.f.

**ZONING AND  
DEVELOPMENT**

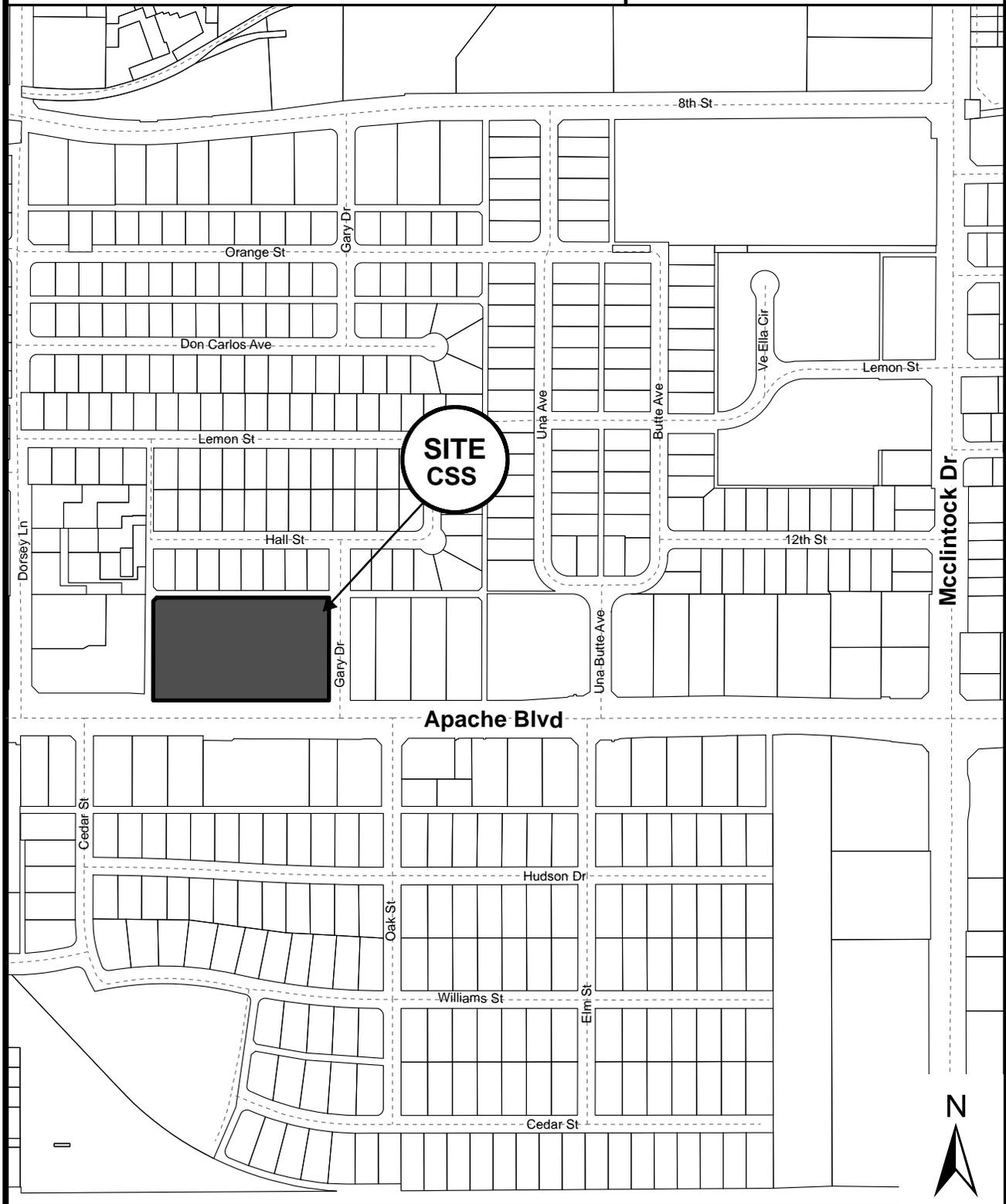
**CODE REFERENCE:**

Part 3, Section 3-418: Outdoor Display

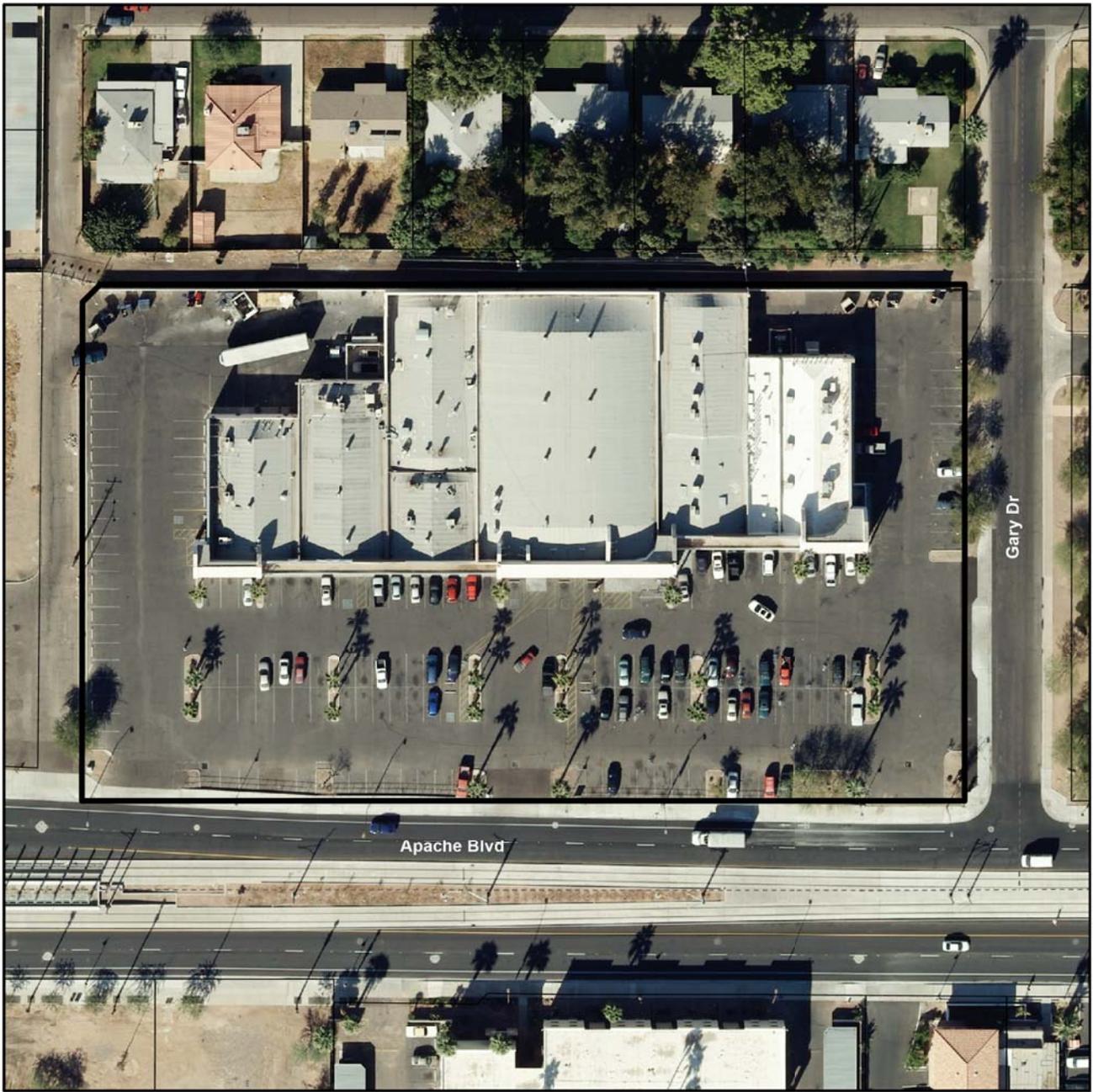
Part 6, Chapter 3, Section 6-308: Use Permit

**CENTRAL PLAZA - FOOD CITY  
NO. 96**

**PL070481**



**Location Map**



**CENTRAL PLAZA - FOOD CITY NO. 96 (PL070481)**

**BURCH & CRACCHIOLO, P.A.**  
ATTORNEYS AT LAW

**M. Brennan Ray**  
**(602) 234-8794**

MAILING ADDRESS  
P.O. BOX 16882  
PHOENIX, ARIZONA 85011

702 EAST OSBORN ROAD  
SUITE 200  
PHOENIX, ARIZONA 85014

(602) 274-7611  
FAX (602) 234-8341  
November 6, 2007

Steve Abrahamson  
City of Tempe  
Planning Division  
31 East 5th Street  
Tempe, Arizona 85281

RE: *Bashas'/Food City Store No. 96 Outdoor Grilling Operations in Tempe*

Dear Steve:

Bashas' Inc. operates a Food City store at 1338 E. Apache Boulevard ("Store No. 96" or the "Site"). Attached as Exhibit 1 is an aerial of Store No. 96. The Site is zoned C-2 and is located within an existing shopping center. Food City's throughout the Valley have a tradition of conducting outdoor grilling activities at their stores. Bashas' desires to conduct outdoor grilling activities at Store No. 96 and accordingly requests a Use Permit to conduct outdoor grilling at Store No. 96. Bashas' believes the outdoor operations are appropriate at this location, compatible with the surrounding uses, will be an aesthetically pleasing and enjoyable experience for customers, and safe for Tempe citizens.

The outdoor grilling activities will be conducted at the Site in the location identified in Site Plan attached as Exhibit 2. A detailed plan of the outdoor grilling area is attached as Exhibit 3. Also attached as Exhibit 4 are photographs of the proposed location. The outdoor grilling will consist primarily of grilling chickens and roasting chilies. The chickens and chilies will be grilled outside by typically two to three Food City employees with valid food safety permits. After the chicken and chilies have been grilled, they will be weighed and packaged outside. Once bagged, the chilies are taken inside the stores where customers can purchase them. The chickens will be purchased inside and then customers will go outside with the receipt and pick-up the chickens. No money will exchange hands outside the store to purchase the food.

The outdoor grilling operations will occur on a seasonal basis and weather permitting. It is anticipated that when conducted, the chili roasting will occur Friday and Monday between 2:00 p.m. and 7:00 p.m., and Saturday and Sunday from 10:00 a.m. to 4:00 p.m. The chicken grilling will normally occur Friday through Monday between 11:30 a.m. to 7:00 p.m. The setup and breakdown respectively will occur approximately one-half hour before and after the cooking operations are conducted.

The grill used to cook chickens is three feet deep by six feet wide by 40 inches high with an overall height of 90 inches at the top of the wagon wheel. Attached as Exhibit 5 is an example of the grill that will be used to cook the chickens. The chilies will be roasted in a chili roaster fueled by

**BURCH & CRACCHIOLO, P.A.**

Steve Abrahamson  
Re: Use Permit-Outdoor Grilling  
November 6, 2007

- 2 -

a 100 lb. propane tank. The overall dimensions for the chili roaster are approximately 52 inches tall by 36 inches wide by 50 inches long. Attached as Exhibit 6 is a copy of an example of the type of chili roaster to be used in roasting the chilies.

On the days the operations will occur, Food City employees will set up the fencing in the locations identified on the Site Plan, bring out the equipment, and secure it. The fencing used in the outdoor grilling operations will be a minimum of four feet high. The fencing material is made of a heavy plastic, weather resistant-type material. Attached as Exhibit 7 is a copy of the proposed fencing. The fencing is substantial enough that it will not break or get knocked over easily. Additionally, there will be no chain link fence, cattle-pen metal cages, plain wood boards, etc. The fencing used will be both attractive and safe to Food City patrons and passers-by. The grilling and roasting equipment will be immobile during operation and properly barricaded from pedestrian traffic by the fencing. Upon securing the equipment, the coals for the grill will be started and the propane tanks will be hooked up to the chili roaster. When the equipment is not in use it will be stored inside the building in one of the back storage rooms.

While the chicken grilling and chili roasting does emit some smoke and odor, the impact on neighboring properties in the area will be minimal. The smoke emitted from these operations is comparable to that of any backyard barbeque. An attendant Food City employee will be present to prevent the chilies/chickens from burning and thus emitting significant amounts of smoke. The amount of traffic (pedestrian and vehicular) generated by the proposed use in this location will have a minimal impact on the surrounding area considering the amount of traffic, noise, and other associated effects generated by the overall shopping center. The proposed use will not contribute in any measurable way to the deterioration of the area or contribute to the lowering of property values.

Bashas'/Food City's outdoor grilling operations are a comparatively small endeavor that they believe will be well received by the citizens of Tempe as it has been throughout the Valley. If you have any further questions regarding this matter, or would like any additional information, please do not hesitate to contact Ricki Horowitz at (602) 234-8728 or me at (602) 234-8794.

Otherwise, on behalf of Bashas' we request your approval of the Use Permit.

Very Truly Yours,

BURCH & CRACCHIOLO, P.A.



M. Brennan Ray

:mbr

Enclosures

cc: Edward N. Basha, III  
Tom Swanson  
Marian Owan

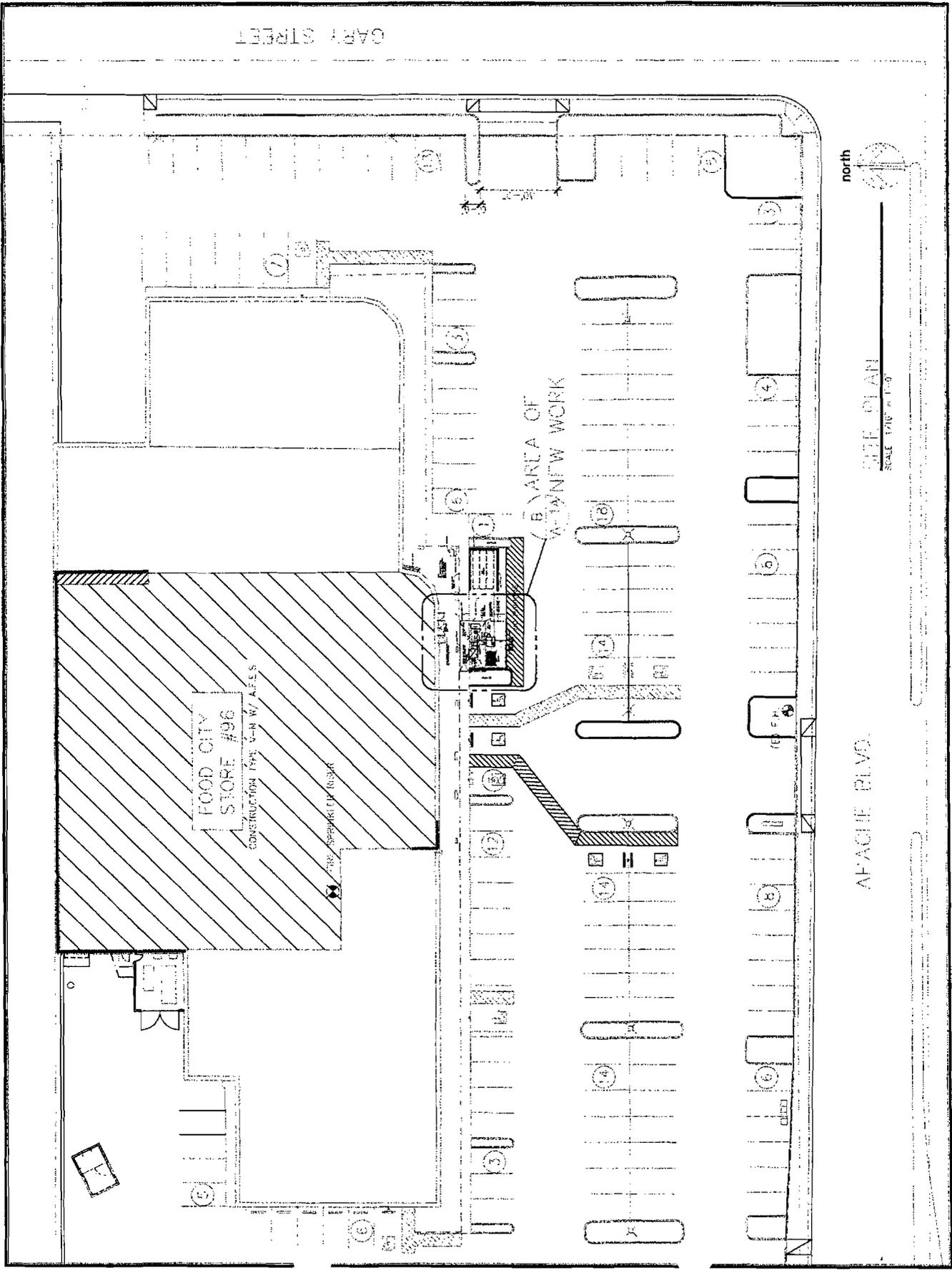
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DATE: 08-21-08  
SHEET NUMBER:

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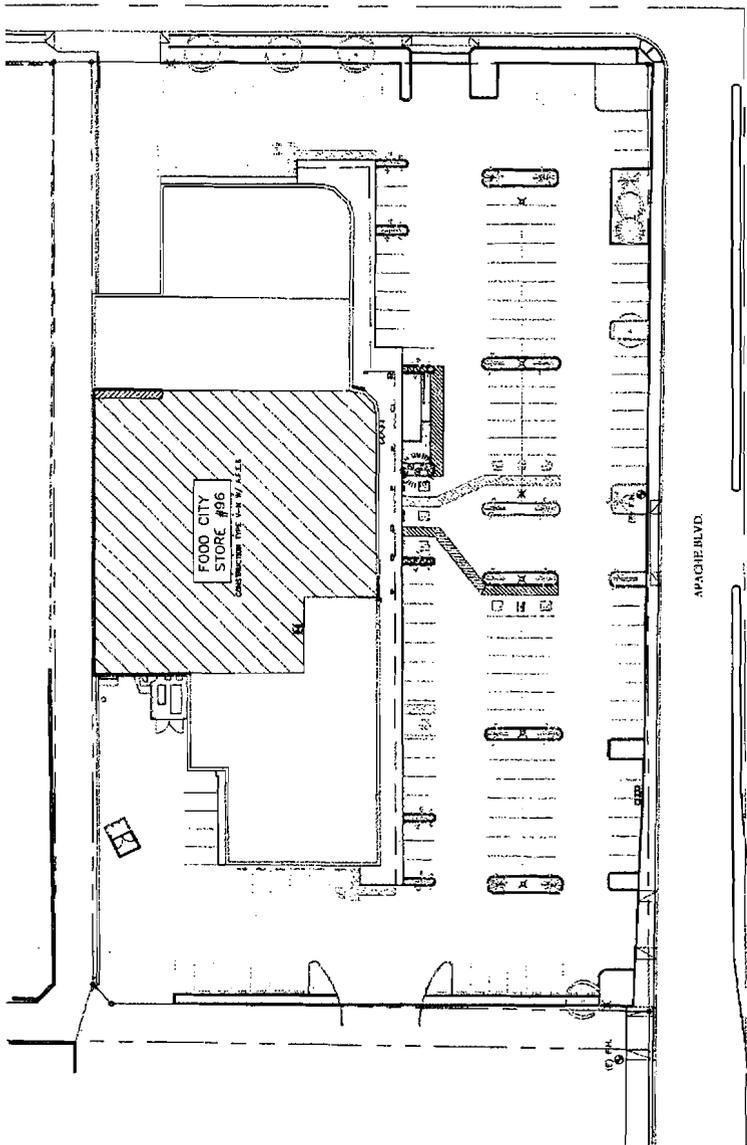
**FOOD CITY**  
GRILL SITE STORE #96  
1338 EAST APACHE BLVD.  
TEMPE, ARIZONA  
22402 SOUTH SASMA ROAD, CHANDLER, ARIZONA

**the BOSLEY Group, Inc.**  
architects  
20524 N. CAVE CREEK ROAD  
SUITE 143  
PHOENIX, AZ 85024  
(602) 793-6908 fax  
www.bosleygrp.com



north  
SITE PLAN  
SCALE 1/4" = 1'-0"





LANDSCAPE PLAN  
SCALE 1"=30'-0"

**EXISTING PLANT MATERIAL LEGEND**

SYMBOL	BOTANICAL/COMMON NAME	SIZE (HEIGHT/DIAMETER)	QUANTITY
(Symbol: Circle with 'A')	Plumtree	10' H x 12" D	1
(Symbol: Circle with 'B')	Plumtree	10' H x 12" D	1
(Symbol: Circle with 'C')	Plumtree	10' H x 12" D	1
(Symbol: Circle with 'D')	Plumtree	10' H x 12" D	1

**PLANT MATERIAL LEGEND**

SYMBOL	BOTANICAL/COMMON NAME	SIZE (HEIGHT/DIAMETER)	QUANTITY
(Symbol: Circle with '1')	Plumtree	10' H x 12" D	1
(Symbol: Circle with '2')	Plumtree	10' H x 12" D	1
(Symbol: Circle with '3')	Plumtree	10' H x 12" D	1
(Symbol: Circle with '4')	Plumtree	10' H x 12" D	1

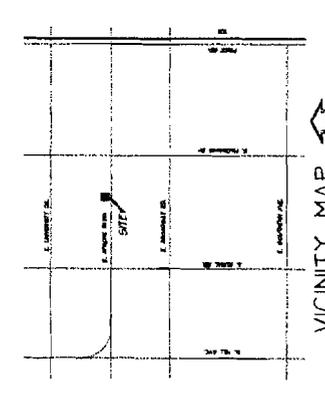
**NOTES:**

1. ALL PLANT MATERIAL TO BE SUPPLIED BY THE CONTRACTOR TO BE INSTALLED BY THE CONTRACTOR.

2. ALL PLANT MATERIAL TO BE INSTALLED BY THE CONTRACTOR TO BE INSTALLED BY THE CONTRACTOR.

3. ALL PLANT MATERIAL TO BE INSTALLED BY THE CONTRACTOR TO BE INSTALLED BY THE CONTRACTOR.

4. ALL PLANT MATERIAL TO BE INSTALLED BY THE CONTRACTOR TO BE INSTALLED BY THE CONTRACTOR.



00003  
 CIVIL ENGINEER  
 STATE LICENSE # 10000  
 THE BOSLEY GROUP, INC.  
 20624 N. CANYON CREEK ROAD  
 PHOENIX, AZ 85024  
 (602) 795-6908 FAX  
 WWW.BOSLEYGRUP.COM



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REVISIONS:  
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JOB NUMBER:  
 DATE: 09/17/08  
 SHEET NUMBER:  
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**FOOD CITY, NO 96**

**1338 E APACHE BLVD**

**PL070481**

**FRONT OF BUSINESS: VIEW TO NORTH**

Re: Food City Store #96  
1338 E. Apache Blvd  
Tempe, AZ 85281  
Case # 070481

RECEIVED

DEC 20 2007  
07 DEC 21 AM 11:58

TEMPE DEVELOPMENT  
SERVICES DEPARTMENT

City of Tempe  
Development Services Dept.  
31 E. 5th St.  
Tempe, AZ 85281

ATT: Shawn Daffara

Dear Shawn Daffara:

We are very concerned about Food City's request for a permit to grill chickens and chilis in the parking lot right by the store's front entrance. The heat and smoke from both grills pose a health hazard to the public with respiratory and other health problems. In fact, one of their own employees almost fainted from all the heat! We do not believe that the community is clamoring for a repeat performance.

Furthermore, their deli dept. prepares Rotisserie chickens every day - so why is grilling even necessary?

You see, they already did this approximately 2 summers ago in 100 degrees plus temperature WITHOUT A PERMIT clearly in violation of the law!

AND, to add insult to injury, the people grilling were putting the cash they received from customers, into their apron pockets without giving them receipts for proof of purchase. Where did the money go??!

Another safety issue is the parking lot: it is congested with cars, p/u trucks, vans, etc. entering and exiting from all different directions putting customers at an additional risk.

In light of all this, we urge the Tempe Development Svcs Dept. to please deny Food City any and all permits for this activity - Not only for the safety of the general public and customers, but for their own employees as well.

Thank you.

Yours sincerely,  
Tempe, AZ

*Pat Ray*

## **Daffara, Shawn**

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**From:** Philip Amorosi [philamo@cox.net]  
**Sent:** Monday, October 13, 2008 10:07 PM  
**To:** Daffara, Shawn  
**Subject:** comment for case number PL070481

Hi Shawn,

I want you to know that I can't wait to smell the roasted chili peppers in front of Food City No. 96 at 1338 E. Apache Blvd. Count me in favor of the roasting/food permit.

thanks,  
Phil Amorosi  
1432 E. Cedar St.  
Tempe, AZ 85281