TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT

DATE: JUNE 21, 2004 CMR: 288:04

SUBJECT: 321 CALIFORNIA AVENUE [04-UP-02]: APPLICATION BY TONY MONTOOTH FOR A REVISED CONDITIONAL USE PERMIT (CUP) TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES (BEER, WINE, ALCOHOL) AT ANTONIO'S NUT HOUSE. THIS REQUEST FOR AN AMENDED USE PERMIT HAS BEEN FILED IN CONJUNCTION WITH THE EXISTING APPEAL REQUEST [03-AP-08] BY TONY MONTOOTH OF THE DIRECTOR OF PLANNING AND COMMUNITY ENVIRONMENT'S APPROVAL OF AN AMENDED CONDITIONAL USE PERMIT IN JULY 2003 TO ALLOW ALCOHOLIC BEVERAGE SERVICE AS A CONDITIONAL USE. STAFF REQUESTS THAT THE COUNCIL CONSIDER RECOMMENDING STAFF TO PREPARE A RECOMMENDATION THAT WOULD PROHIBIT PARKING IN LOT C-7 DURING LATE NIGHT HOURS. ZONE DISTRICT: COMMUNITY COMMERCIAL COMBINING ZONE DISTRICT (CC(2)RP). ENVIRONMENTAL ASSESSMENT: EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

RECOMMENDATION
Staff and the Planning and Transportation Commission recommend that the City Council approve the application [04-UP-02] to amend the existing use permit [73-UP-26], subject to the conditions of approval contained in the Record of Land Use Action (Attachment A), to supercede the Director of Planning and Community Environment’s July 2003 decision, contingent upon the appeal request [03-AP-08] being withdrawn by Mr. Montooth.

Staff also recommends that the City Council direct staff to prepare a recommendation that would prohibit public parking in lot C-7 (the public lot at the corner of Birch Street and Sherman Avenue), between the hours of 11:00 P.M. and 4:00 A.M.
BACKGROUND
Tony Montooth is the owner/operator of Antonio’s Nut House, located at 321 California Avenue. Mr. Montooth has operated his business at this location for 30 years. A conditional use permit was issued to Mr. Montooth in 1973 to allow the sale of alcoholic beverages in conjunction with a bona fide eating establishment. The restaurant associated with this use permit is Taqueria Azteca. The use permit was modified in 1977 and again in 1980 to allow a card room use, which ceased operations in 1993 when card rooms were deemed a prohibited use in Palo Alto.

The Police Department and the Department of Planning and Community Environment have received complaints from members of the community regarding noise and other disturbances in the vicinity of the business district along California Avenue. The businesses at 260 California Avenue (The Edge Nightclub) and 321 California Avenue (Antonio’s Nut House) are typically the focus of the complaints. Both businesses are expected to operate in accordance with the State of California Department of Alcoholic Beverage Control. Closing times for these businesses can vary, but the typical closing time is 2:00 A.M., seven days per week. After the close of business, patrons from both establishments return to the public parking lots to retrieve vehicles and leave the area.

Conditional use permits may be periodically reviewed if, in the judgment of the Zoning Administrator, substantial evidence indicates that the use conducted pursuant to a conditional use permit is being conducted in a manner detrimental to the public health, safety and welfare. The Zoning Administrator may set a date for a public hearing with the intent to review the use and determine if the permit should be modified (Palo Alto Municipal Code, Section 18.90.080).

The use permit for Antonio’s Nut House has essentially remained in its original form since the mid-seventies. The Antonio’s Nut House conditional use permit was heard at the same June 2003 Director’s hearing as The Edge nightclub, so that the City could take public testimony on both use permits. It was the City’s intent to establish consistent conditions of approval for each use in hopes of reducing complaints in the area. Public hearings were held on June 5 and June 19, 2003. On July 9, 2003 the Director of Planning and Community Environment conditionally approved a revised use permit (Attachment H). Mr. Montooth submitted an appeal to the conditions of approval on July 18, 2003 (Attachment I). The appeal was based upon disagreement with the restrictions of the use permit contained in the conditions of approval.

The Planning and Transportation Commission first heard the appeal on October 8, 2003. Staff recommended that the appeal be denied, therefore upholding the Director’s July 2003 revised use permit. A detailed discussion of the revised use permit and conditions of approval is contained in the October 8, 2003 Planning and Transportation Commission staff report (Attachment F). The appellant presented the Commission with an alternative list of conditions that, in his view, would more closely reflect the operational conditions.
The Commission continued the item and directed staff to review a list of items along with the applicant’s proposed conditions (Attachment D contains the January 14, 2004 staff report with a list of those items to be reviewed).

The Commission next heard the item on January 14, 2004. Staff recommended that the Commission find that the alcohol service use was being conducted in a manner that is detrimental to public health and safety and deny the appeal request, therefore upholding the Director’s July 2003 revised use permit. Staff provided the requested analysis to the Commission. A detailed discussion of the information requested by the Commission is contained in the staff report (Attachment D). At the January 14 meeting, Mr. Montooth requested that the Commission continue the appeal request. Mr. Montooth wanted an opportunity to proactively adjust the business operations of his establishment rather than have the City find that he was operating in a detrimental manner. The Commission agreed that this was a reasonable request, and continued the appeal to a date uncertain, with the expectation that the Mr. Montooth would submit a new application in early March 2004 to amend the existing use permit to allow alcoholic beverage service at Antonio’s Nut House.

Mr. Montooth submitted an application for a revised conditional use permit for the sales and service of alcoholic beverages on February 12, 2004. The Commission reviewed the request for the amended use permit on March 10, 2004. Staff recommended that the Commission make one of the two following recommendations to the City Council:

A. Recommend approval of the amended use permit, subject to the conditions of approval as contained in the Record of Land Use Action and uphold the appeal, thereby reversing the Director of Planning and Community Environment’s July 2003 decision and contingent upon the appeal request being withdrawn by Mr. Montooth, or

B. Find that the current alcohol service use is being conducted in a manner that is detrimental to public health and safety, as described in the Draft Record of Land Use Action and deny the appeal and uphold the Director of Planning and Community Environment’s original approval, based upon the findings and conditions of approval contained in the Record of Land Use Action.

Staff modified the recommended conditions of approval originally presented to the Commission on October 8, 2003 and January 14, 2004. Staff recommended that the hours of operation remain at the existing operating hours of 9:00 A.M. to 2:00 A.M., seven days per week. The previous recommendation was to reduce operating hours to 9:00 A.M. to 12:00 A.M. Sunday through Thursday and 9:00 A.M. to 2:00 A.M on Friday and Saturday. Staff recommended the longer operating hours based upon the following conditions:
• The City shall hold a Director’s Hearing within six months of the approval date of the amended use permit to assess the success of the use permit to reduce incidences of nuisances in the California Avenue district.

• The owner/operator of Antonio’s Nut House shall provide a telephone number for the managers of the restaurant/bar that would be available to members of the public, who may call to report incidences of noise or other nuisances in the vicinity of Antonio’s Nut House, so that problems can be solved quickly by Antonio’s staff.

• The owner/operator of Antonio’s Nut House shall attend homeowner meetings at the request of the Birch Street Condominium Homeowners Association, not more than twice annually, to review the operations of the restaurant and address concerns related to the alcoholic service use, with the intent of resolving concerns.

• The owner/operator of Antonio’s Nut House shall provide a door person, rather than a licensed security guard, on Thursday, Friday and Saturday nights from 10:00 P.M. until closing to remind patrons to be considerate of the nearby residential area and to direct patrons to parking lots other than Lot C-7.

The Commission voted to recommend approval of the amended use permit, subject to the revised conditions of approval and to uphold the appeal, thereby reversing the Director of Planning and Community Environment’s July 2003 decision and contingent upon the appeal request being withdrawn by Mr. Montooth. The Commission modified the following recommended conditions (shown in italics), including:

• The Director of Planning and Community Environment shall meet with the applicant within four months (originally six) to review compliance with the conditional use permit conditions. Subsequent review by the Director would occur every six months for an 18-month period. If three officially documented infractions within the review period occur, a revocation hearing may be scheduled.

• The doorperson shall be provided seven days per week and shall remain on-duty until all patrons have left the premises. The doorperson shall be stationed on the California Avenue side of the building. A security system will be installed to the satisfaction of the Planning Division to monitor activity at the Birch Street side of the premises and installed in such a way that the California Avenue door person could monitor activity from inside the premises.

• The Birch Street door and the door facing the alley adjacent to Lot C-7 shall be used for emergency egress only after 10:00 P.M., seven days per week.
• A full service menu shall be provided until 9:00 P.M. and a reduced service menu shall be provided after 9:00 P.M. until closing, Monday through Saturday. The applicant shall provide a limited service menu for the operating hours on Sundays that may or may not be associated with the restaurant. The owner/operator shall provide a copy of this menu to the Planning Division.

• The business shall remove all litter associated with its operation in the vicinity of the premises. Litter removal shall commence no earlier than 8:00 A.M. and shall end by 10:00 P.M. The dumpsters for trash and recyclable materials shall be of a lockable variety approved by PASCO and shall remain locked to prevent unauthorized collection. The owner/operator shall institute a recycling program to divert recyclable materials from its normal garbage waste.

The complete list of recommended conditions reviewed by the Commission are included in the draft Record of Land Use Action (Attachment A).

After extensive deliberations, the Commission voted to recommend approval of the revised use permit and uphold the appeal, thereby reversing the Director of Planning and Community Environment’s July 2003 decision (3-1-1-1 Holman, Packer, Griffin for; Burt opposed, Cassell absent, Bialson not participating). Verbatim minutes from the March 10, 2004 Commission meeting are contained in Attachment C.

**DISCUSSION**

Staff supports the Commission’s recommendation to amend the existing conditional use permit and uphold the appeal of the Director’s July 2003 decision. The existing use permit, which has remained essentially unchanged for thirty years, does not acknowledge the problems that can occur between commercial and residential land uses. The California Avenue area is an active, community oriented commercial area that is attractive to Palo Alto residents and people from all over the San Francisco Bay Area. The area is a diverse mix of commercial, multi-family and single family uses. However, with the diversity of uses comes a certain level of conflict between stakeholders with competing priorities. The needs of all the users of the California Avenue district should be respected and appropriate regulation should be established to encourage better relationships between all users of the area.

The goal throughout this process has been to identify appropriate conditions that would be attached to the conditional use permit so that the needs of the residential community and the needs Mr. Montooth as the owner of Antonio’s Nut House are balanced.

At the March 10, 2004 Commission meeting, staff recommended allowing Mr. Montooth to continue operating under his existing business hours of 9:00 A.M. to 2:00 A.M. seven days per week. This recommendation was made based upon the condition that the Director of Planning and Community Environment review the use permit on a regular
basis. The Commission has recommended to Council that the first review take place within four months of permit issuance. Reviews would then take place every six months for the next 18 months to ensure compliance with the use permit. If the Director finds that the conditions of the use permit have not been followed or that there are repeated violations of the Palo Alto Noise Ordinance, a revocation hearing may be scheduled.

This condition is a performance standard that is intended to clearly communicate to the Nut House owner/operator, the residential community, and City staff the basis for allowing this facility to continue alcoholic beverage service. If this performance standard has not been met, the Director has the option to schedule a public hearing with the intent of placing further restrictions on the owner/operator (such as reduced hours of operation) or entirely revoking the conditional use permit.

The performance standard, in addition to the other conditions of approval, represents a significant amendment to the existing use permit. For the first time, Mr. Montooth and/or his successors would be required to operate the establishment following specific rules that are known to all stakeholders in the community. The conditions of approval clearly state the consequences of violations of the use permit. Mr. Montooth should understand that serving of alcoholic beverages would be prohibited if the use permit were to be revoked, which would seriously impact his ability to continue the existing business.

The Planning Division’s Code Enforcement section would enforce the conditions of approval on a regular basis, and would respond to complaints regarding the normal business operations of the establishment. The City could issue administrative compliance orders and administrative or criminal citations for violations of the conditions of the use permit. These violations would be compiled and reviewed by the Director of Planning and Community Environment prior to the proposed conditional use permit review meetings, to be scheduled during the twenty-two months of the date of issuance of the amended use permit and then at any future permit revocation hearing.

Staff also recommends that the City Council direct staff to return a recommendation to the City Council that would prohibit public parking in lot C-7 (the public lot at the corner of Birch Street and Sherman Avenue), between the hours of 11:00 P.M. and 4:00 A.M. Lot C-7 is a public parking lot located in the California Avenue Parking Assessment district. Property owners within the district pay in-lieu fees on a yearly basis for parking that is not provide on each site within the district. Closure of Lot C-7 during the late night and early evening hours has been identified by both Mr. Montooth and the residential community as a possible solution to alleviate public nuisances that have the most impact on residents of the Birch Street condominiums. Signs would be installed informing users of the lot that no parking would be allowed during the stated hours. The Police Department would be able to cite vehicle owners that park in the lot during those stated hours.
The expected result would be that late night patrons in the California Avenue district would park in areas that have minimal impact on residential areas. In addition, there would be less noise from car and motorcycle engines and less people loitering in the parking lot directly adjacent to the condominiums.

**RESOURCE IMPACT**
The request for an amended conditional use permit is not expected to create any additional resource impacts for the City. The development, implementation and enforcement of a new parking ordinance for Lot C-7 would be expected to result in additional costs for signage and Police Department enforcement. A full resource impact analysis will be provided in the report submitted to Council for adoption of the ordinance.

**POLICY IMPLICATIONS**
The following conditional use permit findings would be applicable to the project:

*The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience, in that:*

The sale of liquor, beer and wine, as conditioned, will be associated with an existing eating and drinking establishment; the implementation of the education, parking, and security plans will help to reduce the incidences of noise, loitering and other nuisances in the California Avenue area. The conditions require an assessment of the effectiveness of this permit in reducing impacts to residential areas. If there has not been improvement within six months of the approval of this permit, the conditions may be modified or the permit revoked.

*The proposed use will be located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the purposes of this title in that:*

This use, as conditioned, is consistent with the underlying commercial zoning in that an eating and drinking use is a permitted use in the CC(2)(R)(P) zone district. Furthermore, the use is compatible with the Comprehensive Plan, Regional/Community Commercial land use designation and the surrounding land uses.

**TIMELINE**

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<td>June 5, 2003</td>
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<td>2nd Director’s Hearing</td>
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<td>Director’s Decision Amending Use Permit 73-UP-13</td>
<td>July 9, 2003</td>
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<td>Appeal request of the Director’s Decision</td>
<td>July 18, 2003</td>
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<td>1st Planning &amp; Transportation Commission Meeting</td>
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<td>2nd Planning &amp; Transportation Commission Meeting</td>
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<td>Application Submittal for an Amended Use Permit</td>
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3rd Planning & Transportation Commission Meeting, March 10, 2004

recommending approval of the amended use permit application

Council Hearing June 21, 2004

ENVIRONMENTAL REVIEW
This project is exempt from the provisions of the California Environmental Quality Act per Section 15301.

PREPARED BY: _________________________________
STEVEN TURNER
PLANNER

DEPARTMENT HEAD: _________________________________
STEVE EMSLIE
Director of Planning and Community Environment

CITY MANAGER APPROVAL: _________________________________
EMILY HARRISON
Assistant City Manager

ATTACHMENTS
Attachment A: Draft Record of Land Use Action to Approve 04-UP-02.
Attachment B: Planning and Transportation Commission Staff Report, March 10, 2004 (without attachments).
Attachment C: Verbatim Minutes, Planning and Transportation Commission Meeting, March 10, 2004.
Attachment D: Planning and Transportation Commission Staff Report, January 14, 2004 (without attachments).
Attachment F: Planning and Transportation Commission Staff Report, October 8, 2003 (without attachments).
Attachment H: Director of Planning and Community Environment’s July 2003 decision
Attachment I: Appeal request by Tony Montooth of the July 2003 decision
Attachment J: Director’s Administrative Record (Council only).