

APPLICATION NUMBER

**5292**

A REQUEST FOR

**USE VARIANCE TO ALLOW AN UPHOLSTERY SHOP IN  
A 680 SQUARE FOOT, DETACHED, STRUCTURE IN AN  
R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT; THE  
ZONING ORDINANCE REQUIRES A MINIMUM OF A B-3,  
COMMUNITY BUSINESS DISTRICT FOR AN  
UPHOLSTERY SHOP**

LOCATED AT

**1363 BROWN STREET**

(South side of Brown Street, 100'± East of Espejo Street)

APPLICANT/OWNER

**JERRY PAUL FOY**

**BOARD OF ZONING ADJUSTMENT**

FEBRUARY 2005

The applicant is requesting a Use Variance to allow an upholstery repair shop in a 680 square foot, detached, structure in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of a B-3, Community Business district for an upholstery shop.

The applicant states that he purchased the property in February 1999, and lives in the residential dwelling. From the time of purchase the applicant continued to rent the 680 square foot structure in the rear to a Mr. Lee, who operated Lee Dental Laboratory from 1956 until March 2001. The applicant states in March 2001, he began an upholstery repair shop from the same 680 square foot structure in the rear of the residence. The applicant states the operation consists of a non-commercial sewing machine, tack hammer, pliers, scissors, and stapler.

The applicant states no employees or staff assist in this business, the operation is during daylight hours, does not generate excessive noise, odors, or air pollution, and has no special parking requirements. The applicant goes on to say that the business does not contribute any excessive traffic to the neighborhood, does not have a sign of any kind, and products are not sold from the premises. The applicant also states that the site appears to be a residence and does not create any negative impact to the surrounding neighborhood.

The applicant was issued a Zoning Clearance to allow an upholstery shop as a home occupation with the conditions that it is for office use only, with no customers to and from the site. Home occupations are allowed in residential districts subject to certain conditions such as: the business must be conducted entirely within the dwelling, not in the yard or a detached building; and the business may only utilize a maximum of 25-percent of the gross floor area in the dwelling. In December 2004, an Urban Development inspector issued a Notice of Violation to the applicant, that stated an upholstery shop was not allowed since the conditions of the Zoning Clearance stated that the business was allowed for office use only.

The staff received a non-conforming affidavit from an adjacent neighbor documenting that a dental lab occupied the accessory structure at 1363 Brown Street from 1956 until 2000. This information was further investigated by researching the Polk directory which substantiated the non-conforming affidavit. However, an upholstery shop is allowed in a B-3, Community Business district, whereas a dental lab is allowed in a B-1, Buffer Business district; therefore, the change in use would make this nonconforming affidavit null and void since the upholstery shop is a more intense use.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special

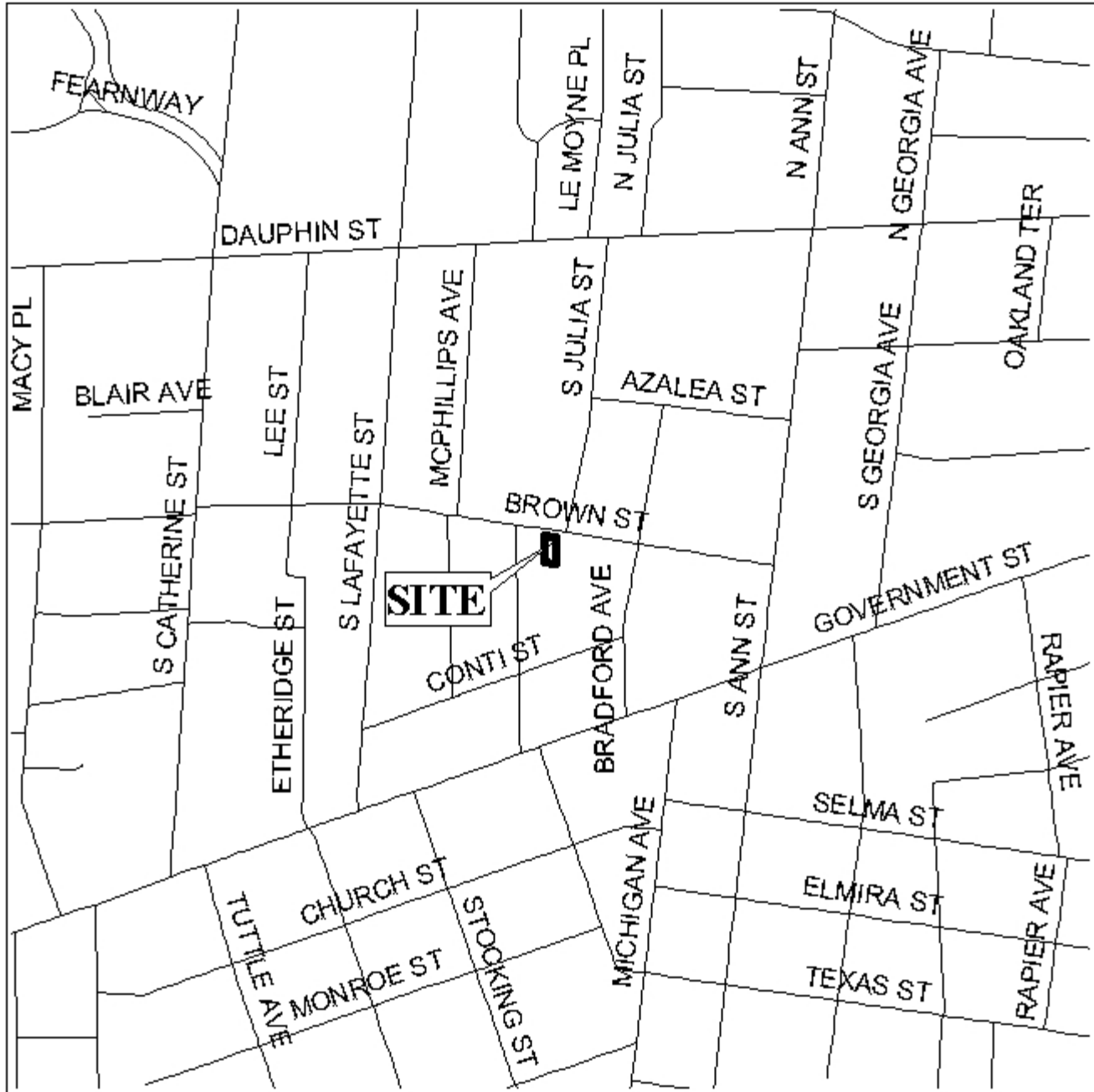
conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

The applicant failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to use this site as an upholstery shop.

**RECOMMENDATION 5292****Date: February 14, 2005**

Based upon the preceding, this application is recommended for denial.

## LOCATOR MAP



APPLICATION NUMBER 5292 DATE February 14, 2005

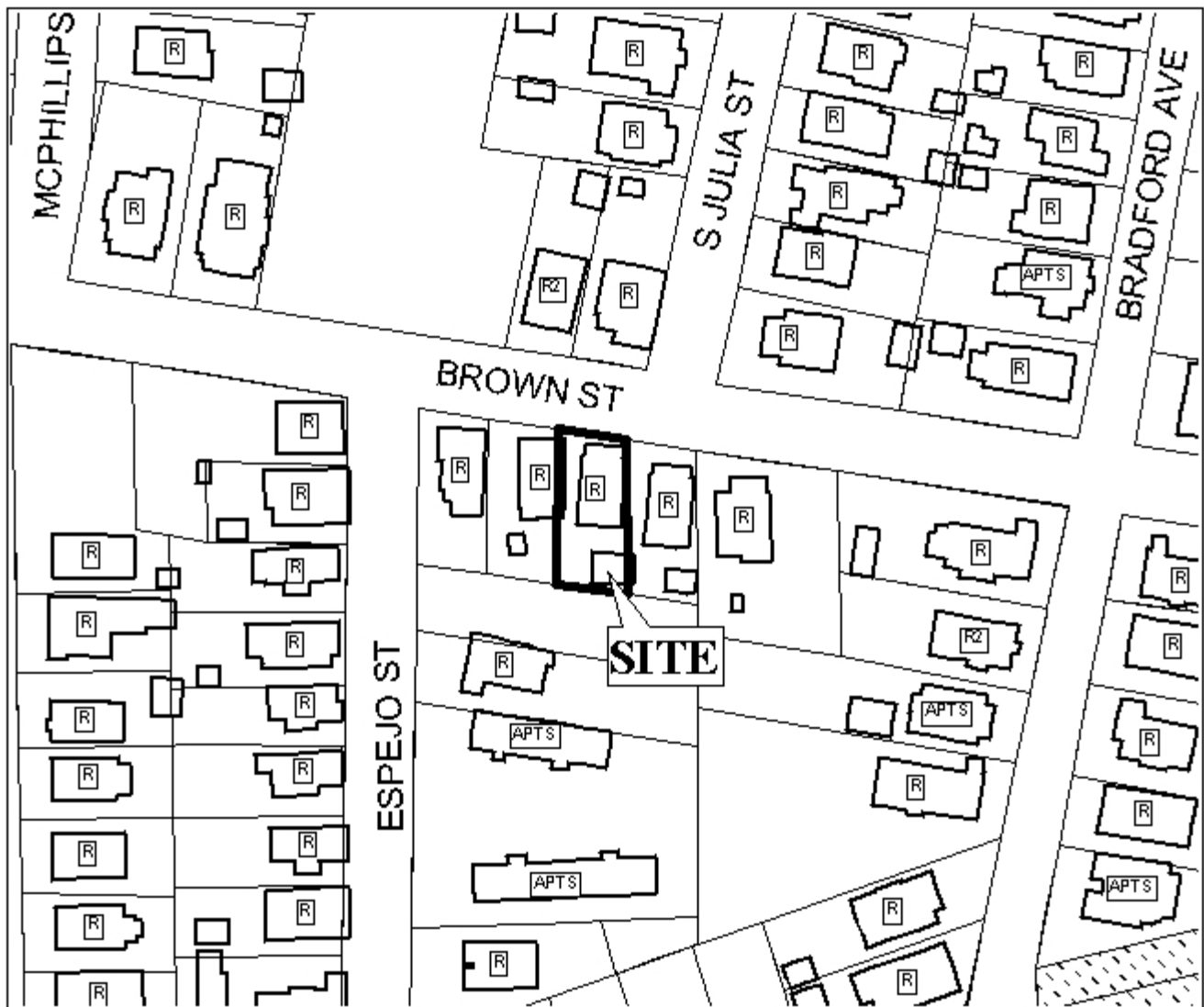
APPLICANT Jerry Paul Foy

REQUEST Use Variance



NTS

# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single and multi-family residential dwellings.

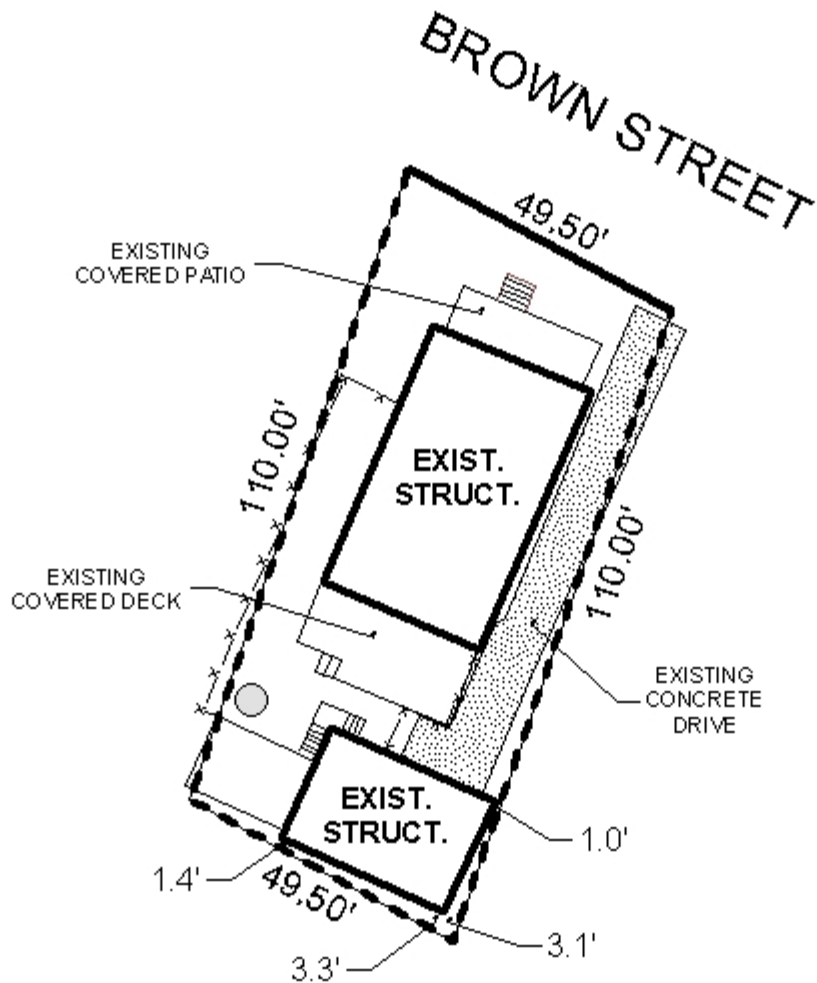
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LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2
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## SITE PLAN



The site is located on the South side of Brown Street, 100' East of Espejo Street. the plan illustrates the existing structures and drive,

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