

APPLICATION NUMBER

**5522**

A REQUEST FOR

**SIDE YARD SETBACK VARIANCE TO ALLOW THE  
INSTALLATION OF TWO HVAC UNITS AND AN  
EMERGENCY GENERATOR WITHIN 3.5' OF A SIDE  
PROPERTY LINE IN AN R-1, SINGLE-FAMILY  
RESIDENTIAL DISTRICT; THE ZONING ORDINANCE  
REQUIRES A MINIMUM 8' SIDE YARD SETBACK IN AN  
R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT**

LOCATED AT

**118 JORDAN LANE**

(West side of Jordan Lane, 120'± North of Rochester Road)

APPLICANT

**BEN CUMMINGS**

OWNER

**MICHAEL C. KLEINMANN**

**BOARD OF ZONING ADJUSTMENT**

FEBRUARY 2009

The applicant is requesting a side yard setback variance along the south property line to allow the installation of two approximately three-foot tall HVAC units and one approximately four-foot tall emergency generator within 3.5 feet of the property line.

The applicant is proposing an extensive renovation and addition to the existing structure on the property, and the HVAC and generator units are part of this renovation. Per the ordinance, any structure 3 feet in height or higher must meet setbacks. The Zoning Ordinance allows "...projections of...architectural features and necessary mechanical features" to project up to 2 feet into a required yard. In this case, the HVAC units and generator are each at least 3 feet in height and extend into the required yard more than 2 feet.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present 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.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant states that due to the way the new addition is attached to the existing structure, the addition cannot be moved any further back onto the property. The applicant further states the location is "the most logical spot due to visibility and noise control."

The site plan illustrates sufficient area on the property in other locations that would meet setbacks. Also, considering the noise level of an HVAC unit and a generator, it would seem that placing such types of structures so close to a property line would possibly negatively impact neighboring property owners. In this case, the applicant has failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship. The applicant simply wishes to place HVAC and generator structures in the required side yard.

**RECOMMENDATION 5522****Date: February 2, 2009**

Based on the preceding, the application is recommended for denial.

# LOCATOR MAP



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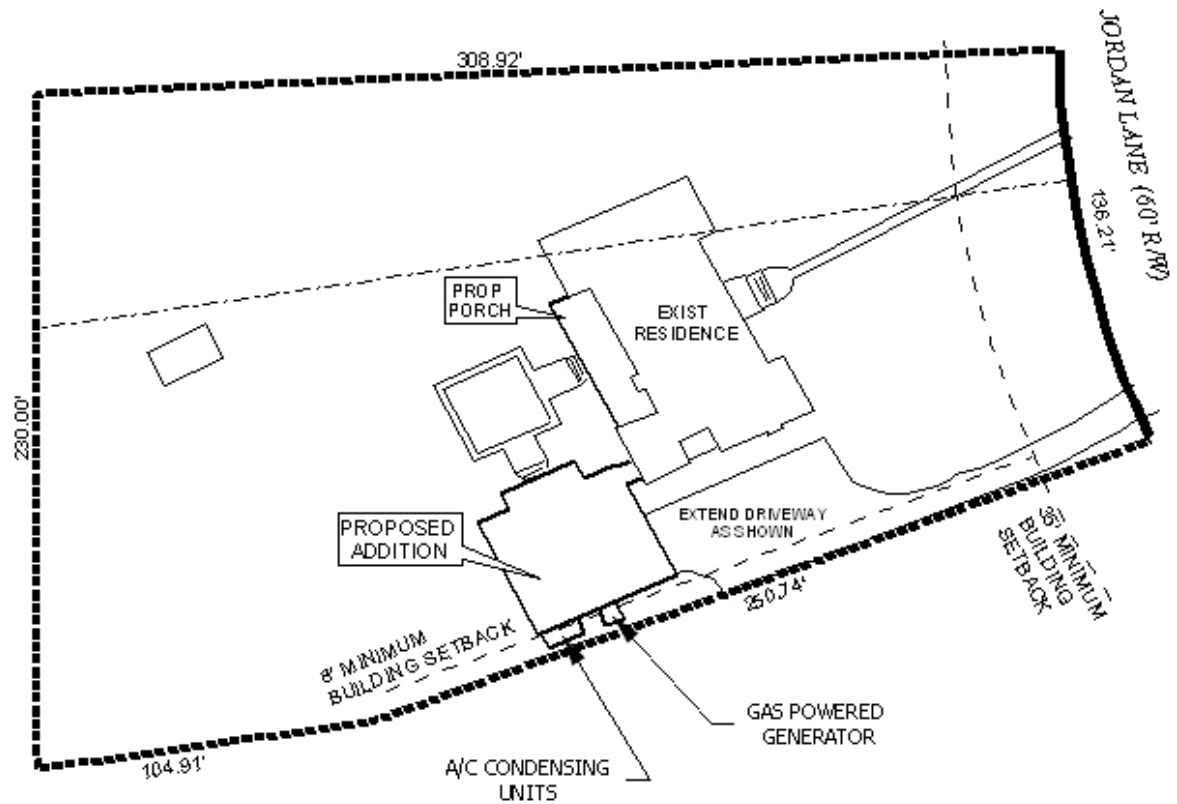
APPLICANT Ben Cummings

REQUEST Side Yard Setback Variance



NTS

# SITE PLAN



Illustrated in the site plan are the proposed A/C condensing units, the gas powered generator, addition and setbacks.

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N  
NTS

# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units.

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LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2	NTS
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