

**Findings and Decision  
All Star Group LLC  
Subdivision Application #2018-DRB-01-SD on Remand from Vermont Superior Court  
Environmental Division**

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**In re: All Star Group, LLC, Jay Jipner  
Permit Application No. 2018DRB-01-SD**

**INTRODUCTION AND PROCEDURAL HISTORY:**

1. This proceeding involves a remand of permit application #2018-DRB-01-SD submitted by All Star Group LLC, Jay Jipner for approval of a 2-lot subdivision pursuant to the New Haven Subdivision Regulations.
2. A sketch plan was brought before the board on March 19, 2018 under application 2018-DRB-01-SD. It was erroneously warned as a public hearing. A public hearing was subsequently warned for April 16, 2018. The hearing was continued to May 21, 2018, July 16, 2018, and September 17, 2018.
3. The DRB reviewed the application under the Town of New Haven Subdivision regulations as adopted July, 2006.
4. Present at the sketch plan and hearings were the following members of the development review board:
  - Kathy Barrett (3/19, 4/16, 7/16, 9/17)
  - Tim Bouton (3/19, 4/16, 5/21, 7/16, 9/17)
  - Carol Charbonneau (3/19, 4/16, 5/21, 7/16)
  - Tom Fyles (3/19, 4/16, 5/21, 9/17)
  - Donald Johnston (3/19, 4/16, 5/21, 9/17)
  - Charles Roy (4/16)
  - Susan Smiley (3/19, 5/21, 7/16)
5. The names of other persons present and available to provide testimony:
  - Karen Gallott – Minute Taker (3/19, 4/16, 5/21, 7/16, 9/17)
  - Katie Raycroft-Meyer – then-current Zoning Administrator (5/21, 7/16, 9/17)
  - David Wetmore – former Zoning Administrator (9/17)
  - Jay Jipner (3/19, 9/17)
  - Barry Michael Paul (3/19)
  - Ted Foster (3/19)
  - Debra Foster (3/19)
  - Andrew Martin (Town of Waltham) (3/19)
  - Tim Glassberg (3/19, 9/17)
  - Jeffrey Glassberg (3/19, 9/17)
  - Amanda Bodell (3/19, 4/16, 9/17)
  - Anthony Stout (9/17)
  - Jim Dumont (9/17)
  - Jim Foley (9/17)

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- Jeremy Revell (9/17)
  - Bev Landon (9/17)
  - Maggie Eaton (9/17)
6. During the course of the original hearing the following exhibits were submitted to the DRB:
    - Exhibit 1 – Application #2018DRB-01-SD for subdivision of Parcel #0383-100, Map #7 and with frontage on Hallock Road, list of abutters and fee.
    - Exhibit 2 – Proposed 2-lot subdivision submitted by Barry Michael Paul dated 8/30/2018.
    - Exhibit 3 – Septic Design by Lincoln Applied Geology.
    - Exhibit 4 – A series of maps provided by the Glassberg’s re Hallock Road.
    - Exhibit 5 - Public notice compliance
    - Exhibit 6 – Emails from Jim Dumont to the DRB dated 3/16/18, 4/6/18, 9/13/18 and 9/17/18
    - Exhibit 7 – Emails from Jim Dumont to the Planning Commission dated 10/5/18 and 10/10/18
    - Exhibit 8 – Memo from the DRB to the Planning Commission dated 10/1/18
  7. There was no testimony taken on April 16, 2018, May 21, 2018 or July 16, 2018.
  8. The DRB denied application #2018-DRB-01-SD October 22, 2018.
  9. Applicants timely appealed the DRB denial to the Environmental Division of the Vermont Superior Court on November 20, 2018. The Court assigned Docket Number 124-11-18-Vtec to the case.
  10. The Town of New Haven received a Cross Appeal Notice from the Vermont Superior Court December 10, 2018.
  11. Applicants filed for a Motion for Summary Judgment February 15, 2019 and again March 13, 2019.
  12. Attorney John Mazzuchi informed the Town of Waltham Selectboard on August 23, 2019 that the Town had not received proper notification of the original hearing.
  13. The Town of Waltham Selectboard responded to the Vermont Superior Court on September 17, 2019, in a letter which stated “The Town of Waltham would have no reason to appeal the New Haven DRB’s decision” but added “If we had received proper notice, we would have discussed the application and provided feedback...”
  14. Judge Thomas Durkin remanded the case back to the New Haven DRB November 22, 2019 for failure to give proper notice to the Town of Waltham.
  15. The Town of New Haven properly warned a new hearing in the *Addison County Independent* on November 28, 2019.

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16. The Town of Waltham was properly notified of the remand hearing and, on December 10, 2019, submitted a letter to New Haven opposing the proposed subdivision.

17. The New Haven DRB held a hearing on remand December 16, 2019.

18. Present at the hearing on remand were the following members of the development review board:

- Kathy Barrett
- Carol Charbonneau
- Donald Johnston
- Susan Smiley
- Victor Laberge, Alternate

Absent members were Paul Audy, Tom Fyles, and Charles Roy.

19. The names of other persons present and available to provide testimony:

- Karen Gallott – Minute Taker
- Aaron Brown – Zoning Administrator
- Amanda Bodell
- James Dumont, Esq.
- James Foley, Esq.
- Jeffrey Glassberg
- Chris Huston
- Lesley Huston
- Jay Jipner
- John Mazzuchi, Esq.
- Barry Michael Paul
- Jeremy Revell
- Tony Stout

These exhibits are available at the New Haven Town Office and by request from the New Haven Zoning Administrator.

**FINDINGS OF FACT:**

Based on the application, testimony, exhibits, and other evidence the DRB makes the following findings:

1. The applicant owns Parcel #383-100 depicted on Tax Map #7 consisting of 9.186 acres. The parcel is in the RA-2 District at 1451 Hallock Road.
2. The applicant seeks approval to subdivide the lot into two lots, one is 3.482 acres and the other lot is 5.684 acres.

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3. The new lot (#2) would include the barn and the original lot (#1) would include the existing home. Lot #2 would have its own septic and water source.
4. Subdivision approval is requested for the project pursuant to review under the Town of New Haven Subdivision Regulations as a minor subdivision, section 260, section 320 and Article 4.
5. The Zoning By-laws appear to be in conflict and the DRB asked the Planning Commission for clarification in 2018. According to the Official Zoning Map, the RA-2 District extends 200' from the centerline of the road. However, the verbiage says the Districts are one lot deep from the centerline of the road. The Planning Commission determined that the Official Zoning Map rules and therefore septic would have to occur within the first 200' of the RA-2 district.
6. The applicant has proposed no changes to the proposed lot configurations since the 2018 denial.

CONCLUSIONS OF LAW:

1. Lot #2 as proposed does not conform to the Zoning By-Laws standards for district and lot depths.

DECISION AND CONDITIONS

Based upon the application record, testimony, above findings, and conclusions, the DRB determines that subdivision application # 2018DRB-01-SD does not comply with the requirements for subdivision of land pursuant to Article IV and hereby **DENIES ON REMAND** the subdivision application submitted by All Star Group LLC for the following reason:

- Newly formed Lot #2 as shown on the plat does not conform to the requirements of the RA-2 District because the septic is outside the RA-2 District by being more than 200' from the centerline of the road.

Dated at New Haven, Vermont, this 3<sup>rd</sup> day of February 2020.

Kathy Barrett, Chair Kathleen Barrett

Carol Charbonneau \_\_\_\_\_

Don Johnston Don Johnston

Victor Laberge Victor Laberge

Susan Smiley Susan Smiley

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**NOTICE:** This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the development review board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.