ESSEX PLANNING COMMISSION

February 13, 2020

74 Essex Way – FINAL PLAN AMENDMENT

Prepared by Darren Schibler, Town Planner

Applicant

Lang Family, LLC
c/o Jonathan Lang
51 Upper Main Street
Essex, VT 05452

Proposal

The applicant has proposed development of one or more residences on Open Space Parcel D-2 of the Lang Farm subdivision, addressed as 74 Essex Way (Tax Map 93, Parcel 1, Lot 2). In order to allow such development, the Planning Commission must first approve a final subdivision amendment to the original subdivision pursuant to Section 2.12 of the Zoning Regulations. The applicant seeks a determination from the Planning Commission as to whether the proposal is indeed consistent with the original intent of the subdivision.

Findings

I. Previous Approvals

On February 28, 1985, the Planning Commission granted final subdivision approval (see attachment 1) for an 11-lot subdivision of the Lang Farm which consisted of a mix of land uses including retail/commercial, residential, and recreation/open space. The land was initially divided into 9 lots (lettered A through I), but two of those parcels were further subdivided by number (A-1 and D-1) at the time of final approval to create 11 lots. Parcel D of this subdivision included all the land east of what is now Essex Way south of VT-289 and north of the Woodlands subdivision (which encompasses Parcels H and I).

The plan associated with the 1985 Lang Farm subdivision approval, recorded in Slide 159 of the Town’s Land Records (attachment 2), shows a 100-foot setback between the Inn at Essex property (Parcel D-1) and Parcel H, the first phase of the Woodlands neighborhood.

On March 14, 1985, the Planning Commission approved development of Parcel D-1, currently addressed as 70 Essex Way, for the Inn at Essex (now “The Essex Resort”) with associated site improvements. The application was reopened and approved by the Selectboard on September 8, 1986. Neither approval, nor any subsequent approvals, specifically required a buffer or setback from adjoining parcels.

The administrative findings for the Parcel H sketch plan dated July 8, 1986 (attachment 3) acknowledge that a 100-foot buffer zone is shown between Parcel D-1 (the Inn at Essex) and Parcel H (not part of Parcel H), and that it is designated as open space and retained by John and Nancy Lang. Neither this finding nor any conditions related to the buffer were included in the final plan approval by the Planning Commission.
The Planning Commission issued a conceptual (or master plan) approval for the Lang Farm Development on January 15, 1988 (attachment 4). Parcel D-2 is listed as “Open Space” in this approval under Finding 1 and included the 100-foot buffer between Parcel D and H as well as a 2.25-acre piece of land east of the Inn at Essex property. Finding 5 notes that the Langs intended to convey Parcel D-2 to the Inn at Essex (Parcel D-1). Additionally, Finding 2 noted that not all the subdivided parcels, including D-2, had been formally surveyed, and that those parcels should be shown on any mylar approved in the future. Subsequent master plans, including one dated October 25, 1993 (attachment 6), continued to show Parcel D-2 as “Open Space.”

On August 25, 1988, the Langs conveyed the 2.25-acre portion of Parcel D-2 (not including the 100-foot buffer) to the H.E.F. Partnership (the developers of the Inn at Essex property). The warranty deed (Land Records book 297 page 230) references Slide 209 (the plat for the Parcel H subdivision). This new parcel became known as Parcel D-2.1. An Act 250 permit (#4C0608-9, recorded in Land Records book 235 page 111) was issued for the subdivision and conveyance of this parcel on August 25, 1988, but it is unclear when, if ever, Town approval was granted explicitly for the subdivision of Parcel D-2.1.

Correspondence between the Zoning Administrator and the owners of the Inn at Essex in 1995 (attachment 7) confirms that Parcel D-2 was designated as a buffer. With regards to its development potential, the Zoning Administrator’s letter stated that the Planning Commission may determine that the buffer is still necessary, or it may determine that current zoning restrictions regarding buffers would apply (which currently require a 30-foot landscaped buffer between new commercial or multifamily uses and existing residential uses).

On November 17, 2003 the Community Development Director approved a minor site plan amendment for the development of tennis courts on the 2.25-acre Parcel D-2.1.

II. Article II, Section 2.12, Modifications and Amendments

The February 28, 1985 final subdivision approval for the Lang Farm clearly designates a 100-foot buffer between commercial development on Parcel D-1 and residential development on Parcel H. This intent was reinforced in subsequent subdivision and master plan approvals for the Lang Farm, which specifically referenced the parcel in question as “Open Space.”

The applicant’s proposal would constitute a change to this approved layout, and thus requires review under Section 2.12 of the Subdivision Regulations (SR), which states:

When a subdivision has received final approval in accordance with the provisions of this Article, the approved plans may not be amended without approval in accordance with the provisions of this section. Before granting approval it must be determined that the proposed amendments are consistent with the intent of the original subdivision approval.

The Town Attorney has indicated that development of the lot may be allowed only through this process, and only if the Planning Commission determines that the proposal is consistent with the intent of the original approval.

The proposal constitutes a change in land use designation from open space to development, and further subdivision of the lot as a PUD is contemplated. PUDs are considered subdivisions under SR Section 2.2(D) and the definition of “subdivision.” Since review of a new subdivision is warranted, under SR Section 2.12(C)(2), this constitutes a change to the overall layout of the
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subdivision and a major amendment. Even if the proposal is considered solely in the context of
adjoining parcels and not the overall Lang Farm subdivision, the proposal constitutes a change to
a buffer area, which qualifies as screening under SR Section 2.12(B), and is not eligible for
classification as a minor amendment. Therefore, the proposal qualifies as a major amendment
under SR Section 2.12(C).

There is no permit condition explicitly prohibiting development of Parcel D-2 or specifying how
it should be used, except as “open space.” However, based on the approved plans and conditions
for the Lang Farm, open space is clearly distinguished from other types of development,
including residential and commercial and even recreational. The Town’s 1989 Open Lands Study
and the 2008 Open Space Plan broadly define open space as “land that is not yet built upon or
developed.” Therefore, the proposal for development is inconsistent with the original Lang Farm
subdivision because the parcel was not to be developed, instead remaining as a buffer
between commercial and residential development. This intent was acknowledged from the
earliest reviews and approvals of the overall subdivision, Parcel D-1, and Parcel H, and was
never altered by the landowner or the Planning Commission. Also, though the landowners
expressed an interest in conveying the land to the owner of Parcel D-1 in 1988, at no point
during review of any of the Lang Farm projects did the landowner indicate any intent to further
develop Parcel D-2.

Part of the original Parcel D-2 (Parcel D-2.1, the 2.25 acres between Parcel D-1 and the Town-
owned open space known as Freeman Woods) has been developed for private outdoor
recreational use; however, this portion was not part of the 100-foot buffer in the original Lang
Farm subdivision approval. Furthermore, it is not clear whether further subdivision of parcel D-2
was ever explicitly approved.

Also, under the current proposal, single-unit homes are proposed, but only two-unit and multiple-
unit homes are allowed in the MXD subzone of the MXD-PUD district. Furthermore, Lot 2
would not meet the minimum frontage requirement (75 feet) for PUD-Rs in the MXD district.
Finally, the proposal does not include any open space as is required for PUD-Rs. If any
development of the lot were allowed, the applicant would need to submit a revised plan that
conforms to the Zoning and Subdivision Regulations.

Given all of the above, the proposal for a 2-lot residential planned unit development (PUD-R) on
Parcel D-2 (74 Essex Way) of the Lang Farm Development, which constitutes a final plan
amendment to the approved subdivision, is hereby denied.

List of Attachments
1) Lang Farm subdivision approval, dated 02/28/1985
2) Land Records Slide 159, “Sketch Plan, The Lang Farm, Essex, VT,” prepared by Donald
   L. Hamlin Consulting Engineers, Inc., dated 08/19/1985, signed 08/29/1985 by June
   Carmichael, Planning Commission Chair
3) “Administrative Findings and Recommendations for Parcel H,” by Dawn Francis, Town
   Planner, dated July 8, 1986
4) Planning Commission approval for Lang Farm Development, dated 01/15/1988
5) “Master Plan, The Lang Farm, Essex, VT,” prepared by Lamoureux Consulting Engineer
   and Surveyor, dated 08/17/1987, revised 10/07/1993
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