

City of Keene
New Hampshire

MUNICIPAL SERVICES, FACILITIES AND INFRASTRUCTURE COMMITTEE
MEETING MINUTES

Wednesday, April 13, 2016

6:00 PM

Council Chambers

Members Present:

Janis O. Manwaring, Chair
Randy L. Filiault, Vice-Chair
Robert J. O'Connor
Stephen L. Hooper
Gary P. Lamoureux

Staff Present:

Thomas Mullins, City Attorney
Elizabeth Fox, Finance Director
Kürt Blomquist, Public Works Director
Don Lussier, City Engineer
Rhett Lamb, Planning Director
Tara Germond, Planner

Kendall W. Lane, Mayor

Chair Manwaring called the meeting to order at 6:00 PM and explained the procedures of the meeting. She then explained that Ms. O'Meara has a family emergency and will not be present, so the MSFI Committee will put item 4 on more time.

1) COMMUNICATION – Donald Alex – Driveway Curb Cut – Appeal of Planning Board Decision

City Attorney Thomas Mullins explained that an appeal of a Planning Board decision is an unusual procedure. This arises under the driveway permit exception of City Code Section 71-36. Usually, someone who wants an exception goes to the Planning Board. Mr. Alex is looking for an additional curb cut at his residence on Baker St. He presented the request to the Planning Board. The Planning Board decided not to grant the request. Under the ordinance, Mr. Alex has the right to appeal that decision. Unlike other Planning Board matters, this can come before the City Council. Because Keene has a committee structure it comes to the Standing Committee for a recommendation to the full City Council.

City staff requested that the City Engineer look at the request. The City Engineer did review the request and will present his opinion to the Committee. Mr. Mullins stated that this is a *de novo* (new) review under the ordinance." The MSFI Committee can hear Mr. Alex's position, the City's position, consider the information, and then make a decision as to either recommending the Planning Board decision be upheld or changed. Mr. Mullins further stated that the copies of Section 70.136 of the City Code should act as criteria for their questions of Mr. Alex and/or the City Engineer, the committee's discussion, and ultimate recommendation.

Councilor Lamoureux asked if they can recommend granting Mr. Alex an exception if he meets one criterion, or does he have to meet all of them. The City Attorney replied all; that is the standard for the Planning Board. If the committee is going to be fair to all they should follow the same criteria, but they can consider whatever they think is relevant.

Chair Manwaring asked Mr. Alex to speak.

Donald Alex introduced himself and his wife, Lisa Alex of 27 Baker St. Ms. Alex referred to photos of their house, which she stated are four or five years old. She stated that she will go through a list of criteria and address each. She read "Issuance of the exception will not reduce the safety of pedestrians, bicyclists, and vehicles using adjacent streets and intersections." She continued explaining that having the curb cut- would not cause a safety concern. The safety concern occurs when she and her family members have to park on the side of the street.

She went on to say a police officer stopped at their house at 6:00 AM to express concern about the vehicle being on the street. Mrs. Alex explained that it is a black pick-up truck and hard for drivers to see in the dark. She stated that she had been hit when her vehicle was parked there. It blocks traffic coming from both directions. As recently as last week, people were screaming and swearing at each other because of the blockage. The current situation creates more of a safety issue than having the curb cut and additional parking. Whether you back up from the left or right does not make a difference for pedestrians or bicyclists, because three vehicles still have to get out of the driveway.

Ms. Alex continued that regarding the second criterion, "Issuance of the exception does not adversely affect the efficiency and capacity of the street or intersection," again, having to park on the road impedes traffic. Regarding the third criterion, "There are unique characteristics of the land or property which present a physical hardship to the requestor," they cannot park three cars on the right side because the driveway is too close to the house and snow and ice come off of the roof onto their vehicles, causing damage. They cannot move further to the right because that space belongs to the other property owners.

Mr. Alex added that their garage is not safe enough to park vehicles in. Ms. Alex continued that it is an old house and the garage is on a brick foundation and can only support smaller items like a lawn mower or motorcycle.

Ms. Alex continued that regarding the fourth criterion, "In no case shall financial hardship be used to justify the granting of the exception," this is not really a financial hardship for them; it is more of a safety concern about having vehicles on the street.

Mr. Alex stated that the safety concern that someone mentioned at the Planning Board meeting is that when you back out you cannot see too far on either side, but they do have enough of a view – at least 200 yards in both directions. Ms. Alex added that it is flat and a straight away; it is not a blind driveway. Drivers see her and her family members backing out, well before they get there, but if they have to back out to let another vehicle

out, that is a safety concern because traffic has to wait for her and her family to shuffle their vehicles around. That has caused road rage from others.

Councilor Hooper stated that he had a tour of the property and he thanked the Alex's. He continued stating that he has general comments. At the top of Baker St. hill there is a house with two curb cuts. That is a very blind part of the street. It is more dangerous, in his opinion, to come in or go out of that particular area. He showed a photo of the curb cuts.

Councilor Hooper continued that one concern he has about the criteria is that he does not see the request as a safety issue compared to what is happening at the top of the hill. It seems like at the Alex property there is a lot of flat space where you can see cars coming in both directions, whereas the curb cuts at the top of the hill are blind and dangerous. His concern is consistency with granting requests and what has already been there. He stated that perhaps the curb cuts at the top of the hill were grandfathered in. The basic issue with this permit is safety and he does not see a safety issue with the Alex's' request. There is plenty of space to park by their house without impeding any car or truck backing in and out of 33 Baker St. Since there is plenty of room, it is not impeding vision going up or down Baker St. He parked his car on Baker St. to take photos and he got yelled at by someone passing him. He showed a photo of what the other vehicle had to do while passing him. At this point, he thinks this should be accepted. Ice coming off the roof is a unique characteristic. Regarding financial hardship, this will not bankrupt the Alex's', but it costs money to pay for damages to the vehicles caused by falling ice.

Chair Manwaring asked if the Alex's' had anything else to add. Hearing none, she asked for the Public Works Department staff to speak.

Public Works Director Kürt Blomquist stated that there were comments about parking in the street. He continued that under Keene's ordinances for parking, what Councilor Hooper was doing is not allowed. You are not allowed to park on the street if it requires that a vehicle move around you. Councilor Hooper could have been issued a ticket by the Keene Police Department. Not all areas are designated for parking.

City Engineer Don Lussier stated that he reviewed the application, specifically with respect to the four criteria under Sec. 70-136 in the City Code. Before getting into the criteria, he wanted to give more context for a broader review. Baker St. is in a relatively dense residential neighborhood. The existing parking that the applicant is using crosses the sidewalk, which has been damaged by the parking. It is in very close proximity to the driveway at 33 Baker St, which does play into one of the criteria. Mr. Lussier continued he looked at a set of aerial photos that were taken in April 1989. The Engineering Division uses them as a benchmark as a way to look at this objectively and see if it is a preexisting condition. From that photograph it is not evident that this parking was taking place there in 1989. The ordinance was passed in 1990. The best guess is that this was not a preexisting condition.

Mr. Lussier continued that he will go through the criteria. With respect to criterion 1, his concern with safety is mostly due to the proximity to the driveway of 27 and 33 Baker St. The application says they will extend the driveway past the steps. When he imagines a vehicle parked closer to the sidewalk, he sees that a vehicle backing out of 33 Baker St. would have poor visibility of pedestrians or bicyclists. It is difficult for him to say that this curb cut would not reduce pedestrian safety. Regarding criterion 2, because of the number and the close proximity of the driveways along this section, it is hard for him to say that adding another curb cut/another point of conflict for vehicles in the roadway or driveways, or pedestrians, would not decrease the efficiency of the public way.

Regarding criterion 3, he understands what the Alexs' are saying about snow falling off the roof. The driveway is very close to the drip line. In his opinion, that is an inconvenience but not a unique characteristic of this property or this land. Regarding criterion 4, the applicant has not mentioned financial hardship so that does not apply.

Sec. 70-136 says that after all four criteria are met, the Planning Board should not grant the requested exemption. In his opinion, the Planning Board was right; the applicant did not meet all four criteria.

Councilor Lamoureux asked if the Planning Board found that the applicant met any of the criteria. Mr. Lussier replied that the applicant did not claim financial hardship. That is one of the criteria. He continued that the Alexs addressed their thoughts on the other three. He would defer to the Planning Board's discussion, regarding what they found.

The City Attorney stated that as a *de novo* review, the MSFI Committee can hear information from the Planning Board's discussion or they can make their own decision on the criteria. He continued that they are not bound by the Planning Board's decision.

Chair Manwaring stated that the Alexs did not comment on criterion 4, but what about criteria 1 through 3? Did the Planning Board see merit? Mr. Lussier replied that he did not attend that meeting and is not comfortable stating what the Planning Board did or did not find.

Councilor Hooper stated that if the Alexs' backed into the parking spot, they could have better visibility when exiting the driveway. He asked if that is something that might be considered. That would be much safer. Mr. Lussier replied that if this exception was granted it would be a land right that would incur to the property and continue after the Alexs' were no longer owners. He continued that it would be hard to hold a new owner to the requirement that they back their vehicles into the driveway. He does not know if they could say the drivers at 33 Baker St. have to back in. Yes, it would help, but they do not have a mechanism to enforce that.

Councilor Lamoureux asked if they know where the boundary line is with the abutters. Mr. Lussier replied that the GIS survey data is very approximate but their best guess is that it is in very close proximity to the driveway of 33 Baker St. The Alexs' mentioned that their driveway would be five feet from the property line and that is probably correct.

Councilor Lamoureux asked if there are standards saying how far away the property line must be. Mr. Lussier replied that the minimum is three feet.

Councilor Lamoureux asked if the City Engineer is aware of other approvals that have happened in this fashion. Mr. Lussier replied that other properties on Baker St. have this situation. He showed a drawing on the easel and indicated a four-family residential complex down the street that is near the top of the crest in the road. He said that he did not look into the files to see if there was an application and approval of that [curb cut] or if it was simply a non-confirming use.

Ms. Alex replied that that is not what Councilor Hooper was referring to – across the street is a house with two curb cuts. It was paved in the past year. That is the house he was referring to. Mr. Lussier replied that he did not review the files to see if there was an approved application or if it is just something that someone did.

Councilor O'Connor asked what RSA governs parking. Mr. Blomquist replied that it is Sec. 94-66 in the City Code. Councilor O'Connor replied that when he was an officer with the KPD, he tried to get a parked car removed from Baker St. and was overruled by his supervisor because there was nothing in the statute. Mr. Blomquist replied that sometimes officers are very familiar with the State statutes but not so much the City Code. He continued that the Public Works Department has had to educate some of the KPD folks that they can issue a ticket under the State statute or the City Code. Some Officers did not know about the code that covers general things like parking so far from a fire hydrant or existing driveway.

Mr. Lussier stated that he wanted to correct something he said earlier - the space from the edge of the neighbors' pavement to where the Alexs are going to park is about four feet from the property line. He misspoke earlier when he said five feet.

Councilor Hooper stated that when he was looking at the area, a person parked in the driveway at 33 Baker St. all the way in near the garage. He continued that since it is a long driveway with the vehicle all the way back, not right near the sidewalk, he does not think it would impede the Alexs' coming out of the new parking spot.

Chair Manwaring asked for public comment.

Councilor Clark stated that the general public should not be expected, when they come before the Planning Board, to know all the ins and outs and bring lawyers to see if they are meeting all the specifics. He continued to say that he thinks that is up to the public officials and he encourages the MSFI Committee to ascertain whether the Alexs' met these guidelines. This has come up before. He has had several constituents with curb cut issues. This is not any different than what the Planning Director was talking about Monday night and the need to review zoning, which is built around circumstances of the 1940s and 1950s. . Everyone here can recognize that today there are numerous cars in households. Another change is now adult children are living with their parents. There are changing circumstances that are putting burdens on people. They should not be

expected to face these burdens without the City Council at least looking at what they are expecting people to comply with. He hopes the committee thinks about recommending this exception, and tries to find a way to deal with the safety of the community while looking at the new burdens people are faced with today.

Ms. Alex stated that the Planning Board suggested that she and her husband expand their driveway to the right, which they cannot do because of the property line. She continued saying that the Planning Board also suggested putting a heating strip on their roof so snow would melt, which the roofer she and her husband consulted recommended against, saying that they corrode and crack and become a fire hazard if not replaced every year or two. They looked into the Planning Board's suggestions but they were not feasible.

Councilor Filiault stated that he stopped by the Alexs' house today with an open mind. He continued that as he looked at it more he found the request to be more than reasonable. Regarding the criteria, (4) is off the board. They are all a matter of opinion. He looks at criteria (1), (2), and (3) and finds them in favor of the request. Regarding the safety issue: even if they wanted to park on the side of the road, as Mr. Blomquist pointed out, they cannot. They have to park in the driveway where there is not enough room. Councilor Clark brings up a good point, too, about the amount of vehicles and people living at home – things have changed. There are legalities, so he looks at these criteria and finds they are a matter of opinion. It is the Alexs' right to bring this to the MSFI Committee if they did not agree with the Planning Board decision. The committee looks at how they see it, not how someone else saw it. He physically looked at the site to see the actual burden and he thinks the applicants have proven, beyond a reasonable doubt, that this request should be granted. He does not see a safety issue if they park in the driveway, but it is a safety issue if they have to park in front of the house. He intends to grant this reasonable request.

Councilor O'Connor asked if there is a cost to the City for a curb cut. Mr. Lussier replied that it would be borne by the applicant.

Councilor Lamoureux stated that he heard that if the exception for the curb cut is granted it stays with the property forever. He asked if there is a way to remove the curb cut if the Alexs' sell the property. The City Attorney replied that the criteria do not provide for that and it could become problematic, for enforcement purposes. Part of the problem with these curb cuts is they happen and the City is trying to define when that happens so they can go forward and lock things in stone. If you grant this, they should grant it with the expectation that this will follow the property, like any other variance would. It would be too problematic to put a condition that the curb cut terminate if the property is ever sold going forward. But that is a decision for the committee and the City Council.

Councilor Lamoureux asked the Alexs' how long this parking has been going on the way it is today. Ms. Alex explained that it has been seven years on a daily basis, and longer on a weekly basis. She continued that in addition, their younger daughter comes home every other weekend; thus, there are four driving adults living in their three-bedroom

home. She loves the neighborhood and grew up in it. Councilor Clark is right that times have changed – there are more vehicles and more people in houses than ever before.

Councilor Filiault stated that (1) and (2) have already been proven, since this parking situation has existed for 7+ years, and no one has been killed coming out of that driveway. Also, (3) has been proven; they have unique characteristics. To him, that shows that they have met the criteria.

Mr. Alex stated that regarding the last criterion, he does not know if he stated this in his letter, but two of their vehicles sustained extensive damage due to the ice coming off the roof in huge chunks and bouncing off the pavement onto the vehicles. Ms. Alex added that when one of their vehicles was parked in front of the house, it got backed into. Once the police found the people who did it, the cost to the couple was a thousand dollars to fix

Chair Manwaring asked for public comment. Hearing none, she asked for a motion.

Councilor Filiault made a motion for the Municipal Services, Facilities, and Infrastructure Committee recommend granting the application for a second driveway at 27 Baker St, which was seconded by Councilor O'Connor.

The City Attorney stated that the Planning Board discussed two conditions that the committee may want to consider. One is that there be no storm water directed into the public right-of-way. He thinks that is a requirement that already exists under the ordinances, but they may want to be clear about that. The second condition is that the Alexs' get the necessary permits and approvals before commencing construction. The MSFI Committee may or may not want to add those conditions to the motion.

Councilor Filiault replied that he will not amend the motion, but it should be taken for granted that if the Alexs' do this, they have to do it legally.

On a vote of 5 – 0, the Municipal Services, Facilities and Infrastructure Committee recommend granting the application for a second driveway at 27 Baker Street.

The City Attorney stated that this is a recommendation that now goes to the full City Council and that the City Council will deliberate and make the final determination.

2) MEMORANDUM – City Engineer – Appeal of Planning Board Decision – Exemption from Sec. 70-135 (c)(4) – 27 Baker Street

Councilor O'Connor made the following motion, which was seconded by Councilor Filiault.

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee recommend the City Engineer's memorandum be accepted as informational.

3) MEMORANDUM – City Engineer – Road Rehabilitation – 2016 and Beyond

Mr. Lussier stated that he is not here to ask for anything or to change anything the City Council has already approved or allocated to the CIP. He continued to say that he is here to speak in broader terms about a road rehabilitation program and how the program will be implemented in accordance with what the City Council has told them to do. They want to achieve the best overall system condition that they can, for the most number of users. The focus is rehabilitation more than reconstruction. If a roadway is deteriorating, and showing its age with potholes and ruts, bringing it back up to standard is rehabilitation. Reconstruction is ripping out the old pavement, oftentimes removing the existing base material, and rebuilding the road from the ground up. The focus of CIP projects is now rehabilitation - doing a limited scope of work in order to achieve a good road conditions at a more reasonable cost.

Mr. Lussier continued that in the near term, the Public Works Department is trying to incorporate some lower cost construction methods. For example, this summer, Hurricane Rd. is slated for rehabilitation. As part of the FY17 project money after July 1, they will be looking at Roxbury Rd. and East Surry Rd. Those three are good candidates for an environmentally-sensitive, resource efficient construction method called "hot in-place recycling." Instead of milling the road and removing the deteriorated pavement and bringing it to a place to get recycled and hauling it back in, the process is done in place. A machine grinds the pavement up and adds bituminous material and spreads it out and compacts it in place. It is more resource efficient than having to truck material in and out. One disadvantage is it has to be followed up with a second layer with a waterproofing seal. With more rural roads they are looking at doing that with a chip seal. It is a very old, proven method that has been used historically in the City, but maybe not in recent years.

Mr. Lussier continued that in terms of the 2017-2023 CIP projects, staff will look to have more preservation-minded repairs. The simplest example is crack sealing. That is a classic, low-cost method. It seals the defects in the pavement so the water does not come in and there are no frost heaves. It keeps good condition pavement in good condition for a longer period of time. It means adding years of life to pavement. Preservation is at a much lower cost and it is effective. But it must be done when the pavement is still in good condition. The political challenge is that constituents may ask, "Why are you working on a road already in great shape, when my road is in worse condition?" The answer is, over the lifespan of the whole system, they are saving the City a lot of money by keeping the good pavement in good condition instead of waiting until it is deteriorated and needing more expensive repairs.

Mr. Lussier directed the committee's attention to a graphic on the easel of a road in Connecticut that straddles the boundary between Bridgeport and Fairfield. The two municipalities teamed up in 2004 and did one contract to repair the roadway. They milled it and overlaid it with two inches of pavement. In 2010 Fairfield came back and did crack sealing with a micro-surfacing. The photo was taken at the beginning of this year and you can see the difference in condition between the Bridgeport and Fairfield sides. The Fairfield side has minor cracks and the Bridgeport side has significant cracking,

delamination, and ruts. It will need much more expensive repairs, whereas Fairfield can probably just do another surface treatment and continue on. The graph on bottom right is an industry standard graph. It tries to show that in the first two thirds of a pavement's life, it is in good shape and does not need a lot of work, but when it starts to break down it happens very quickly. The Public Works Department's challenge is always to do the low cost repairs/preservation when the road is still in good condition rather than waiting a couple more years until it needs very expensive repairs.

Chair Manwaring asked what he would say to constituents who ask why a "good" road is being worked on while their "bad" road is not. Mr. Lussier replied that the secret to making good, objective decisions about asset management is to have good data. He continued that in the coming months they will have a pavement survey completed. In years past this would have been subjective assessments done by folks making notes on clipboards. There are now systems available - sensors and cameras mounted on GPS-enabled vehicles that will drive around the City. It is an objective and standardized way to measure road conditions. It gives a numeric pavement condition index for each segment of roadway. The Cartegraph OMS system that will be rolled out in January 2017 has sophisticated tools for playing 'what if' scenarios. They can see what gives them the best bang for their buck for the overall pavement network. He will come back to the MSFI Committee to show the results of the study, and talk about the problem spots and how it affects the rehabilitation program. The short answer to Chair Manwaring's question is, as an Engineering Division they will make the best objective decisions they can to achieve the best results for the most number of system users.

Chair Manwaring asked for public comment. Hearing none, she asked for a motion.

Councilor Lamoureux made the following motion, which was seconded by Councilor Filiault.

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee recommend the "Roadway Rehabilitation – 2016 and Beyond" report be accepted as informational.

4) **REFERRED BACK – Removal of Granite Curbing – West Side of Central Square**

Councilor Filiault made the following motion, which was seconded by Councilor Lamoureux.

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee recommends the topic of "Removal of Granite Curbing – West Side of Central Square" be placed on more time, for two weeks, since the petitioner could not be present tonight.

5) **Adjournment**

Hearing no further business, Chair Manwaring adjourned the meeting at 7:00 PM.

MSFI Meeting Minutes
April 13, 2016

Respectfully submitted by,
Britta Reida, Minute Taker