

ORDINANCE NO. 27-89

BY: Joanne H. Rufft

An Ordinance authorizing the Mayor and Auditor to sign a Consent and Hold Harmless Agreement on behalf of the City of Bexley with the property owners at 536 N. Columbia Avenue (Part of Lot Number 36; Bexley Heights Addition) regarding improvements to be made upon and within the City owned right-of-way of N. Columbia Avenue.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That the property owners at 536 N. Columbia Avenue (Part of Lot Number 36; Bexley Heights Addition) have requested approval to construct a stone retaining wall in the front yard setback of said property which would encroach a distance of approximately 26 inches upon and within the N. Columbia Avenue right-of-way owned by the City of Bexley.

Section 2. That the Mayor and the Auditor be, and they hereby are, authorized to enter into a Consent and Hold Harmless Agreement with the property owners, in form and substance satisfactory to the City Solicitor, authorizing the encroachment as proposed in accordance with the submitted request on the condition that the property owners assume all responsibility for damage, loss, and injury arising out of the location of said retaining wall including any additional cost to the City of Bexley incurred in connection with its use of the right-of-way occasioned by the location of the structure.

Section 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: June 13, 1989

Albert Meyer  
President of Council

Attest: J.W. Kirby

Approved: June 13, 1989

David H. Madison  
David H. Madison, Mayor

May 9, 1989 - 1<sup>st</sup> reading  
May 23, 1989 - 2<sup>nd</sup> reading  
June 13, 1989 - 3<sup>rd</sup> reading  
Adopted

C O N S E N T   A N D

H O L D   H A R M L E S S   A G R E E M E N T

The undersigned property owners and the City of Bexley, Ohio (the "City") agree as follows:

The owners have sought and obtained permission from the City to erect a stone retaining wall as indicated below on the property described below and in the easement/right-of-way as described. Approval of the proposed retaining wall and use of the easement/right-of-way area is conditioned upon this Agreement.

Florence and Kenneth Hall, their successors and assigns, shall save the City harmless from any and all damages which may arise from, or grow out of, the construction and installation of the retaining wall, and said grantees, their successors and assigns, shall defend, at their own cost, every suit in which the City shall be made a party, brought and prosecuted for the recovery of any such damages; that the occupancy of public property is hereby permitted merely as an accommodation to the said grantees and that no right, title or interest of the public is waived or abridged in any way thereby; that said grantees, their successors or assigns, shall at all times maintain the retaining wall in a manner satisfactory to the City; that said grantees, their successors or assigns, upon notice from the City of Bexley, Ohio duly authorized by the Council of the City, shall forthwith remove said retaining wall and shall yield to said City all rights to occupy the space used for such structure, whenever said City shall determine the same to be necessary or desirable; that said structure shall be so constructed as to not interfere with or damage any utility facilities and in the event that changes become necessary to construct and accommodate said retaining wall, the grantees, their successors and assigns, shall pay the entire cost of the necessary changes, relocations or rearrangements thereof.

This Agreement shall not be construed as in any way limiting the rights presently held by the City in the easement/right-of-way area, or the use thereof for public purposes, except to promote the construction and maintenance of the below mentioned structure in the easement/right-of-way.

<u>536 N. Columbia Avenue</u> Address of Property	<u>Street Right-Of-Way</u> Type of Easement/Right-Of-Way
Part of Lot 36; Bexley <u>Heights Addition</u> Lot No. or Other Description	<u>Stone Retaining Wall</u> Building or Structure
40' Measured from Center of <u>N. Columbia Avenue</u> Easement/Right-Of-Way Width - Property Location	<u>6 feet 10 inches</u> Maximum Encroachment Into Easement/Right-Of-Way
Street, Sidewalk & <u>Public Utilities</u> Services Existing in Easement/ Right-Of-Way	<u>Ordinance No. -89</u> Approving Authority
<hr/> Date of Agreement	<hr/> Date of Agreement

This Agreement shall be binding on and for the benefit of the parties hereto and their respective successors and assigns.

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The foregoing instrument was acknowledged before me this  
17th day of July,  
1989, by David H. Madison, Mayor of  
the City of Bexley, Ohio, and John W. Hornberger,  
Auditor of the City of Bexley, Ohio.

Thomas W. Thlin  
Witness

D. H. Madison  
Mayor

Herbert E. Fouck  
Witness

John W. Hornberger  
Auditor

Anita S. Hughes  
Notary Public

**ANITA S. HUGHES**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JULY 21, 1993

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The foregoing instrument was acknowledged before me this  
28th day of July,  
1989, by FR.

Franklin Busby  
Witness

Kenneth J. Hall  
Property Owner

Paul John  
Witness

Florence Hall  
Property Owner

Franklin Busby  
Notary Public  
FRANKLIN BUSBY  
NOTARY PUBLIC - STATE OF OHIO  
MY COMMISSION EXPIRES NOV. 26, 1989

# *City of Bexley, Ohio*

*2242 East Main Street, 43209*

*235-8694*

## *City Council*

Albert J. Myers, President  
John M. Brennan  
John T. Loehnert  
Mark R. Masser  
John H. Offenberg  
Joanne H. Ranft  
Robert K. Schmitz  
James H. Gross, City Attorney  
John W. Hornberger, Auditor

*David H. Madison, Mayor*

## PUBLIC NOTICE

This is to inform you that a public meeting will be held by the Council of the City of Bexley, Ohio, at 7:00pm, Tuesday, June 13, 1989, at Bexley City Hall, 2242 East Main Street, to consider adoption of Ordinance No. 27-89. This Ordinance, if approved, will allow a stone wall to be constructed on City right-of-way at 536 N. Columbia Avenue. All interested persons are invited to attend.