

ORDINANCE NO. 63 -89

BY: Joanna Raft

An Ordinance to repeal Ordinance No. 5-89 and to adopt this Ordinance which grants approval for a timber and brick, 18" high retaining wall in the City owned right-of-way at 2363 Sherwood Road; and authorizing the Mayor and Auditor to sign a Consent and Hold Harmless Agreement on behalf of the City of Bexley with the property owners of said property.

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

Section 1. That the property owners at 2363 Sherwood Road (Lot 334; T. Miller Farm Subdivision) have requested approval to construct a timber and brick retaining wall with a maximum height of 18 inches in the front yard setback of said property which would encroach a distance of approximately 6 inches upon and within the Sherwood Road right-of-way and approximately 3.5 feet upon and within the Dawson 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 construction of the brick portion of the retaining wall shall be completed 60 days after the beginning of it's construction.

Section 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: December 12, 1989

Albert Meyer  
President of Council

Attest: J. J. Dohy

Approved: Dec. 12, 1989

D. Madison  
David H. Madison, Mayor

*Nov. 14, 1989 - 1st reading*

*Nov. 28, 1989 - 2nd reading*

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 timber & brick 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.

Brian L. and Rita J. Herzberger, 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 brick retaining wall, the grantees, their successors and assigns, shall pay the entire cost of the necessary changes, relocations or rearrangements thereof. The right of the property owner to construct the brick retaining wall shall cease unless said construction shall be completed 60 days after the beginning of construction. The owners acknowledge that failure to complete construction of the retaining wall by the above stated time may necessitate it's removal and is a violation of the Bexley Building and Housing Code which provides for a fine of not more than two hundred fifty dollars (\$250.00) a day, for each day the violation exists.

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>2363 Sherwood Road</u> Address of Property	<u>Street Right-Of-Way</u> Type of Easement/Right-Of-Way
Lot No. 334; T. Miller <u>Farm Subdivision</u> Lot No. or Other Description	<u>Timber &amp; Brick Retaining Wall</u> Building or Structure
30' Measured from Center of <u>Sherwood Road &amp; Dawson Avenue</u> Easement/Right-Of-Way Width - Property Location	6 inches on Sherwood Rd. & <u>3.5 feet on Dawson Avenue</u> Maximum Encroachment Into Easement/Right-Of-Way
Street, Sidewalk & <u>Public Utilities</u> Services Existing in Easement/ Right-Of-Way	<u>Ordinance No. 63-89</u> Approving Authority
<u>December 12, 1989</u> Date of Agreement	<u>December 12, 1989</u> 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  
18th day of January,  
1989, by David H. Madison, Mayor of  
the City of Bexley, Ohio, and John W. Hornberger,  
Auditor of the City of Bexley, Ohio.

Deborah E. Foulk  
Witness

D. Madison  
Mayor

Deborah E. Foulk  
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  
18th day of January,  
1989, by DAVID H. MADISON.

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Witness

Rita Herzberger  
Property Owner

Deborah E. Foulk  
Witness

R. W. Hornberger  
Property Owner

Kathleen Marie Rose  
Notary Public

**KATHLEEN MARIE ROSE**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JULY 1, 1990