ORDINANCE NO. <u>70</u>-89

BY: Joanne L. Garft

An Ordinance to authorize a variance to allow an 18 inch high stone retaining wall in the front yard setback area at 928 Chelsea Avenue (Lot Number 272; Eastlawn Addition), premises owned by Joseph L. and Agnes M. Mackinnon; to authorize the Mayor and Auditor to sign a Consent and Hold Harmless Agreement on behalf of the City of Porlay with the presents average regarding behalf of the City of Bexley with the property owners regarding improvements (stone retaining wall) made upon and within the City owned right-of-way of Chelsea Avenue; and to declare an emergency.

WHEREAS, Joseph L. and Agnes M. Mackinnon have applied for a variance to allow for a stone retaining wall as part of an overall landscape plan for the front yard setback area of the property owned by them at 928 Chelsea Avenue; and,

WHEREAS, the approval of the variance would not be detrimental to the character of the surrounding residential neighborhood and complies with the requirements of Ordinance No. 42-85; NOW, THEREFORE,

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

Section 1. That the application of Joseph L. and Agnes M. Mackinnon, dated December 5, 1989, for a variance to authorize and allow a stone retaining wall to remain in the front yard setback area as part of an overall landscaping plan of the premises at 928 Chelsea Avenue (Lot Number 272; Eastlawn Addition), complies with the requirements of Ordinance No. 42-85 and it is therefore granted and the location of the stone and it is, therefore, granted and the location of the stone retaining wall as proposed is approved.

<u>Section 2</u>. 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 is an emergency measure necessary for the immediate preservation of the public peace, health and safety, said emergency being the need to complete construction of the wall prior to the onset of severe weather. This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed:\_

President of Council

Approved:

Alec. 12, 1989- 1st reading Alec. 26, 1989- 2nd reading Jan. 9, 1990-3rd reading tables

David H. Madison, Mayor

Jan. 23, 1990 - Adopted

### CONSENT AND

## HOLD HARMLESS AGREEMENT

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 an 18 inch high stone retaining wall as indicated below on the property described below and in the easement/right-of-way as described. Approval of the retaining wall and use of the easement/right-of-way area is conditioned upon this Agreement.

Joseph L. and Agnes M. Mackinnon, 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 stone 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.

928 Chelsea Avenue Address of Property	Street Right-Of-Way Type of Easement/Right-Of-Way
Lot 272; Eastlawn Addition Lot No. or Other Description	Stone Retaining Wall Building or Structure
25 Feet Measured from Center of Chelsea Avenue Easement/Right-Of-Way Width - Property Location	2 feet Maximum Encroachment Into Easement/Right-Of-Way
Street, Sidewalk & Public Utilities Services Existing in Easement/ Right-Of-Way	Ordinance No89 Approving Authority
Date of Agreement	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
	day of,
90 19 <b>2</b> , by_	David H. Madison , Mayor of
the City	of Bexley, Ohio, andJohn W. Hornberger,
Auditor o	of the City of Bexley, Ohio.
Witness	E. Frulk D. Walis
X <i>indo</i> Witness	J. Hoops Auditor
	Notary Public KAREN MARIE SLUDED Notary Public, State of Ohio My Commission Expires 7-1-90
STATE OF	OHIO, COUNTY OF FRANKLIN: SS:
The	foregoing instrument was acknowledged before me this
19 <b>90</b> , by_	JOSEPH L. MACKINNON AND AGNES M. MACKINNON.
Witness	in Nollow Deept L. Mac June
Nober Witness	Agree M. Mac Kinnon Property Owner
	Notary Public
	JOHN J. MACKINNON, Attorney At-Lau
	Notary Public, State of Ohio My Commission Has No Expiration Date Section 147.03 R.C.



December 5th, 1989

City of Bexley
City Council Members

The Sullivan Landscape Company is requesting an emergency approval on the completion of the Ottawa cut dry stone wall at the MacKinnon residence of 928 Chelsea Ave.

Enclosed is the design of the wall and the landscaping plans. Note: the back of the wall is four feet off the sidewalk eighteen inches high. The wall angles in toward the sidewalk with tapering ends, minimizing the quanity of stone on the City easement.

In discussion with the homeowner of the situation that has evolved, Mr. Mackinnon does recognize and accepts the responsibility that if the city deam necessary to disturb the ground within the two foot easement that the expense of any repair of that two foot section would be that of the homeowner.

Because of the time of the year we would appreciate your approval of the wall as designed so that we may expedite the completion of the project and avoid any extreme weather conditions.

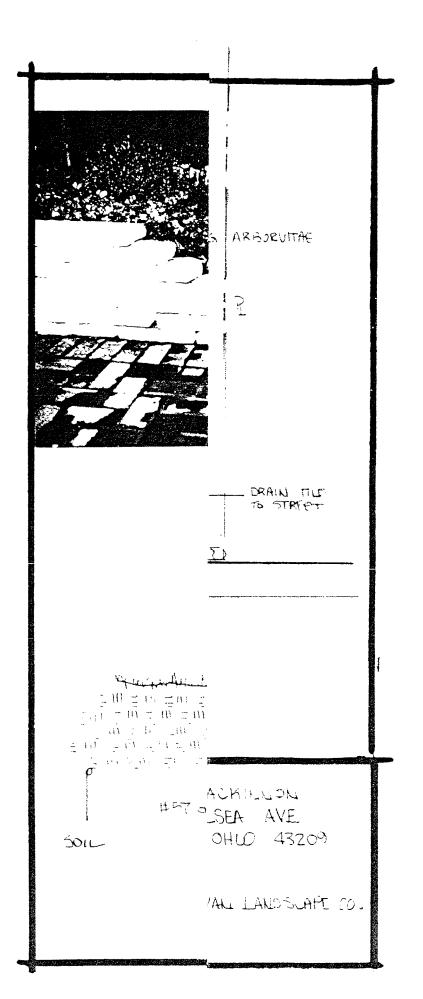
We at the Sullivan Landscape do recognize the need for approval of such projects being constructed on city property and in the future we now knowingly will submit any futher construction plans for approval by council.

Thank you.

Sincerely yours,

Mark A. Sullivan Cwner, President

7950 Clark State Road • Blacklick, Ohio 43004 • (614) 855-1098





# City of Bexley, Ohio BUILDING DEPARTMENT

2242 EAST MAIN STREET, 43209

DAVID H. MADISON, MAYOR

#### NOTICE OF PUBLIC MEETING

This is to inform you that a public meeting will be held by the Council of the City of Bexley, Ohio, at 7:00 p.m., Tuesday, January 9, 1990, at Bexley City Hall, 2242 East Main Street, to consider adoption of Ordinance No. 70-89. This Ordinance, if approved, will allow for the construction of a stone retaining wall in the front yard setback of 928 Chelsea Avenue. All interested parties are invited to attend are invited to attend.