ORDINANCE NO. 5/ -90

BY: \_\_\_\_\_\_ John H. Offenburg

An Ordinance to authorize a variance to permit a 6 inch high brick landscape wall in the front yard setback area and to allow a public sidewalk constructed of brick to remain in place at 726 Chelsea Avenue (Lot Number 11, Eastlawn Addition), premises owned by David W. and Anne M. Wentworth; and to authorize the Mayor and Auditor to sign a Consent and Hold Harmless Agreement on behalf of the City of Bexley with the property owners regarding improvements (brick landscape wall and brick sidewalk) made upon and within the City owned right-of-way of Chelsea Avenue.

WHEREAS, David W. and Anne M. Wentworth have applied for a variance to allow for a brick landscape wall and brick sidewalk as part of an overall landscape plan for the front yard setback area of the property owned by them at 726 Chelsea Avenue;

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 David W. and Anne M. Wentworth dated April 23, 1990, for a variance to authorize and allow for a brick landscape wall in the front yard setback area and a brick sidewalk as part of an overall landscaping plan of the premises at 726 Chelsea Avenue (Lot Number 11, Eastlawn Addition), complies with the requirements of Ordinance No. 42-85 and it is, therefore, granted and the location of the wall as proposed is approved. Approval of the brick sidewalk is conditioned upon removal and replacement with concrete sidewalk in accordance with City specifications when the condition of the brick sidewalk is such that it must be repaired.

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 or injury arising out of the location of said brick landscape wall and brick sidewalk 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.

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

Passed: July 10, 1990

President of Council

Attact:

Terk of Council

David H. Madison

June 12,1990-1st reading June 26,1990-2nd reading July 10, 1990-3nd reading Adopted

Mayor

## 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 a brick landscape wall and brick sidewalk as indicated below on the property described below and in the easement/right-of-way as described. Approval of the brick landscape wall and brick sidewalk and use of the easement/right-of-way area is conditioned upon this Agreement.

David W. and Anne M. Wentworth, their successors and assigns, shall save the City harmless from any and all damages which may arise from, or grow out of, the installation of the brick landscape wall and brick sidewalk, 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 brick landscape wall and brick sidewalk 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 brick landscape wall and brick sidewalk 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 landscape wall and brick sidewalk, 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.

Street Right-Of-Way
Type of Easement/Right-Of-Way 726 Chelsea Avenue Address of Property Lot 11; Eastlawn Addition Brick Landscape Wall & Sidewalk Lot No. or Other Description Building or Structure 25 Feet Measured from Center of Chelsea Avenue 2.0 feet Easement/Right-Of-Way Width -Maximum Encroachment Into Property Location Easement/Right-Of-Way Street, Sidewalk & Public Utilities Ordinance No. Approving Authority Services Existing in Easement/ Right-Of-Way 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:

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City of Bexley, Ohio 235-8694

2242 East Main Street, 43209

David H. Madison, Mayor

City Council

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

## PUBLIC NOTICE

This is to inform you that a public meeting will be held by the Council of the City of Bexley, Ohio, at 7:00 P.M., Tuesday, July 10, 1990, at Bexley City Hall, 2242 East Main Street, to consider adoption of Ordinance No. 51-90. This Ordinance, if approved, will allow for a 6" brick wall and a brick sidewalk which was constructed on City right-of-way in the front yard of 726 Chelsea Avenue to remain in place. All interested persons are invited to attend interested persons are invited to attend.