

ORDINANCE NO. 45-97

BY: Melisa S. Shroyer

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 911 Sheridan Avenue (Lot No. 56; Bexley Drive #3 Addition) regarding improvements to be made upon and within the City-owned right-of-way on Sheridan Avenue.

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

Section 1. That the property owners at 911 Sheridan Avenue (Lot No. 56; Bexley Drive #3 Addition) have requested approval to allow a stone retaining wall to remain in the front yard setback of said property which would encroach a distance of approximately four feet upon and within the Sheridan Avenue right-of-way owned by the City of Bexley, as shown on the drawing which is attached to and made a part of this Ordinance.

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 Attorney, 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 their 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: October 14, 1997

[Signature]
President of Council

Attest: [Signature]
Clerk of Council

Sept. 9, 1997, first reading
Sept. 23, 1997, Record Reading
Oct. 14, 1997, third reading
Passed

Approved: 10/14, 1997

[Signature]
David H. Madison, Mayor

CONSENT AND HOLD HARMLESS AGREEMENT

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

The property owners have sought and obtained permission from the City of Bexley to construct a 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 an easement/right-of-way area which is public property is conditioned upon this Agreement.

Donald F. Harvey and Donna F. Hamilton, their successors and assigns (collectively the "Owners"), shall save the City harmless from any and all damages which may arise from, or grow out of, the construction, installation, maintenance, repair, relocation, removal or replacement of the retaining wall for any reason and shall defend, at their own cost, every suit in which the City of Bexley, Ohio, 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 the Owners, upon notice from the City of Bexley, Ohio, duly authorized by the Council of Bexley, Ohio, shall forthwith remove said retaining wall from the public property occupied by it and shall yield to said City all rights to occupy the public property used for such retaining wall whenever said City shall determine the same to be necessary or desirable; that the Owners release the City, its employees and agents, from any liability for damage to the retaining wall arising out of or in connection with any cause whatsoever; that said retaining wall shall be so constructed as to not interfere with or damage any utility facilities or to impede nor interfere with in any way the use of the easement/right-of-way area, streets, alleys, sidewalks, and curbs by the City and the public; and in the event that the City determines changes to the retaining wall to be necessary or desirable, the Owners shall promptly make any such changes, relocations, or rearrangements solely at their expense.

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

<u>911 Sheridan Avenue</u> Address of Properties	<u>Street Right-Of-Way</u> Type of Easement/Right-Of-Way
<u>Lot No. 56; Bexley Drive #3 Addition</u> Lot Numbers or Other Description	<u>Stone Retaining Wall</u> Building or Structure
<u>25 Feet Measured from the Center of Sheridan Avenue</u> Easement/Right-Of-Way Width Property Location	<u>4.00 feet</u> Maximum Encroachment Into Easement/Right-Of-Way
<u>Street, Sidewalk & Public Utilities</u> Services Existing in Easement/ Right-Of-Way	<u>Ordinance No. -97</u> Approving Authority

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

Donald F. Hardy Jr.
Donna F. Hamilton
911 Sheridan Ave.
Bexley, OH 43209

July 21, 1997

Ms. Dorothy Pritchard
Service Director
City of Bexley
2242 E. Main St.
Bexley, OH 43209

Dear Ms. Pritchard:

This letter is to formally request that the wall on our property at 911 Sheridan Avenue, which is partially located on the City of Bexley public-right-of-way, be permitted to remain intact. I am responding to the letter from David W. Elmer dated July 14, 1997.

The wall consists of "large" boulders at the northeast and southeast corners of the wall, see attached drawing. The center portion, (which runs along the city sidewalk), and the second tier as well as portions running along our driveway, (north side), and our neighbor's driveway, (south side), are built of flat stacked stone. The Northern most portion of the wall is approximately twelve feet in length and is built of the "large" boulders. At the other end, the South most four feet consists of boulders. The center section (approximately twenty-six feet) consists of flat stacked stone. At the northeast and southeast corners, the boulders extend back from the sidewalk approximately four feet--flanking the corresponding driveways. The second tier of stacked stone sits approximately four feet back from the sidewalk. None of the material is secured using mortar or concrete. The boulders have been dug into the ground to assure stability, while the stacked stone relies on friction to keep it in place.

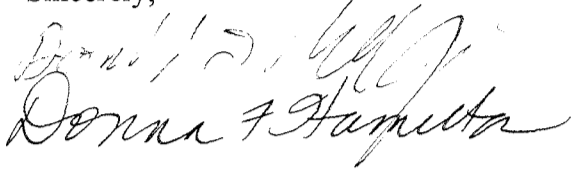
The numbered sections on the attached drawing refer to the time-frame of construction. Number one (1) was constructed in July of 1991. Number two (2) was constructed in November of 1991, and number three (3) was constructed in the spring of this year (1997).

The planting areas behind the wall are to be filled with perennial flowering plants and ground covers. The upper tiers at the South will contain roses while the northern tier contains small ornamental trees, shrubs, flowering plants and flowering ground-covers.

If you have any questions please contact us, by phone at 231-5428, by fax at 231-9424 or via E-MAIL at dfhardy@worldnet.att.net.

day 692-8357 Mr.
Hardy

Sincerely,

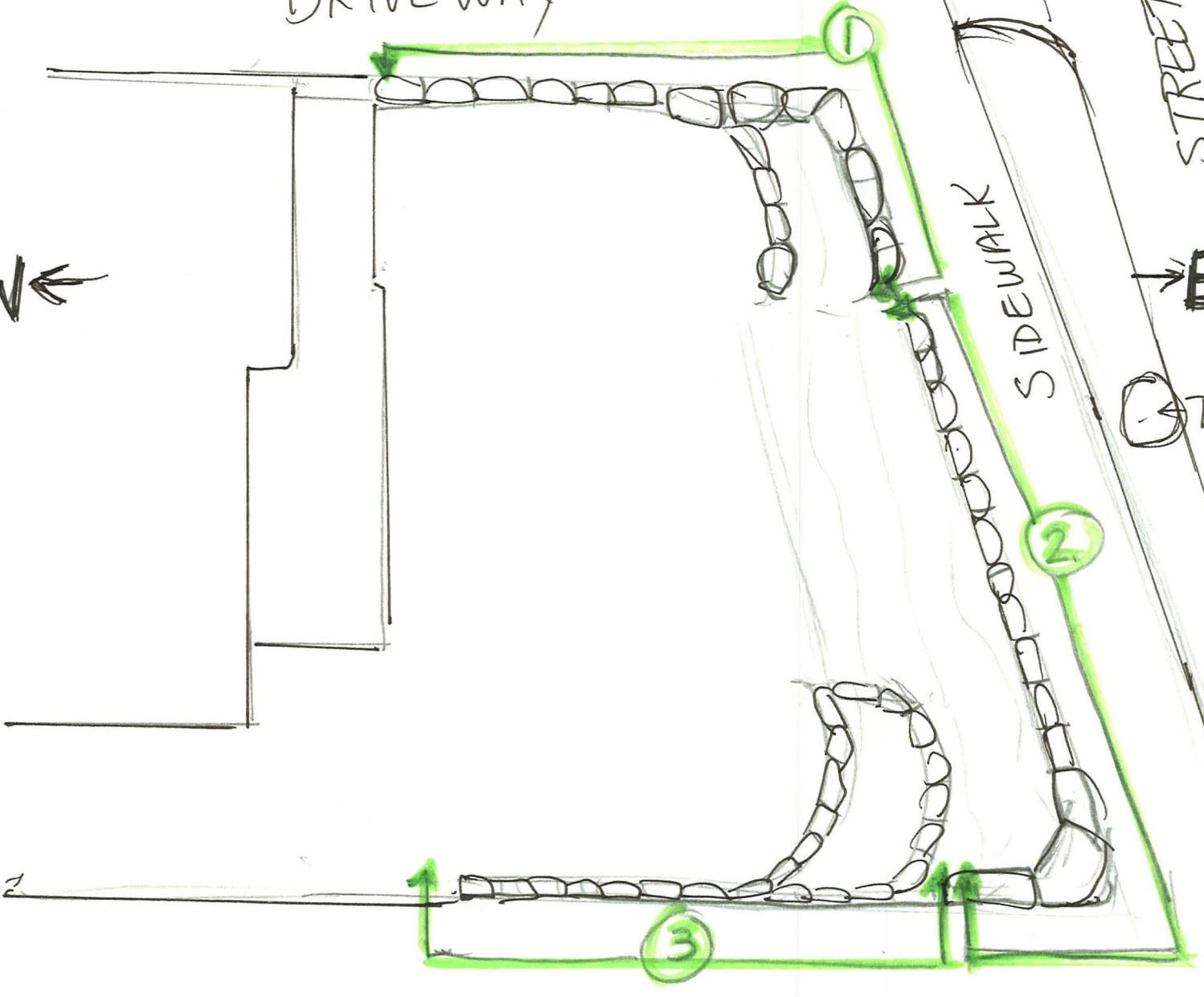
A handwritten signature in cursive script, appearing to read "Donna F. Hamilton".

Donald F. Hardy Jr.
Donna F. Hamilton

dfh

Attachment

911 SHERIDAN AVE
DRIVEWAY



STREET



SIDEWALK

2

3

DRIVEWAY



See letter