

ORDINANCE NO. 76 - 04

By: Mr. Weber

An Ordinance granting a Councilmatic Variance for 190 Stanbery Avenue to permit a paver sidewalk in the City right-of-way to remain in place.

Whereas, the owner of 190 Stanbery Avenue, Todd Applebaum, constructed a portion of the public walk adjacent to 190 Stanbery with pavers, and

Whereas, pavers are not a permitted material for the construction of public sidewalks, and

Whereas, Mr. Applebaum wishes to retain the paver sidewalk. **NOW, THEREFORE,**

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

Section 1. That the paver sidewalk constructed within the public right-of-way at 190 North Stanbery Avenue is granted a Councilmatic Variance and is permitted to remain subject to the owner signing a Consent and Hold Harmless Agreement.

Section 2. That this Ordinance shall take effect and be in force at the earliest period allowed by law.

Passed: 11-09, 2004




President of Council

Attest: 

Clerk of Council

Approved: 11/9, 2004



David H. Madison, Mayor

10-12-04 First Reading
10-26-04 Second Reading
11-09-04 Third Reading
Passed.

CONSENT AND HOLD HARMLESS AGREEMENT

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

The property owner has sought and obtained permission from the City to replace a portion of the public sidewalk on the property and in the easement/right-of-way identified below:

Approval of the Project and permission to use the easement/right-of-way area which is public property is hereby granted by the City on the conditions that (i) the property owner shall construct the Project in accordance with the plans and specifications approved in writing by the City and attached to this Agreement and incorporated herein by this reference, (ii) the property owner shall at all times maintain and keep the Project open, in repair and free from nuisance, (iii) the property owner shall cause the Project to comply with all legal requirements now or hereafter in effect, including, without limitation, applicable federal, state and local requirements under the Americans With Disabilities Act or similar laws and regulations promulgated thereunder, (iv) if the property owner fails to comply with this Agreement, the City may remove the Project and assess the property owner the costs of removal and replacement; and (v) the property owner shall sign and deliver this Agreement to the City.

and the adjoining sections of the concrete walk

of the Project and the adjoining sections of the concrete walk, as needed.

The property owner, for himself and his successors and assigns (collectively the "Owner"), shall save the City harmless from any and all losses, expenses (including legal fees) and damages incurred by the City arising from, or growing out of or in connection with, the installation, maintenance, removal or replacement of the project and the use of the Project by any person and shall defend, at his own cost, every suit, action or proceeding to which the City is, or shall be threatened to be, made a party, arising out of or in connection with the Project; the use and occupancy of public property under this Agreement is hereby permitted by the City merely as an accommodation to the Owner and no right, title or interest of the public is waived or abridged in any way thereby; the City shall not be liable to the Owner for any damage to the Project arising out of or in connection with the use, maintenance, repair or replacement of or improvement to any public street, alley, curb, sidewalk, public easement, right-of-way or other public property; the Owner, upon notice from the City of Bexley, shall forthwith remove the Project from the public property occupied by it and shall yield to said City all rights to occupy the public property used for the Project whenever said City shall determine the same to be necessary or desirable; the Owner releases the City, its elected and appointed officials, employees and agents, from any liability for any loss, expense or damage to the Project, the subject property or otherwise arising out of or in connection with any cause whatsoever; the Project shall be so constructed as to not interfere with any utility facilities or to impede or 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 Project to be necessary or desirable, the Owner shall promptly make any such changes solely at his expense.

Sara Chinn
Witness

Tony Appel
Property Owner

Witness

Property Owner

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The foregoing instrument was acknowledged before this 15th day of
December, 2004, by *Anita S. Foley*
Notary Public

Anita S. Foley
Notary Public, State of Ohio
My Commission Expires July 23, 2008