ORDINANCE NO. 2 -06

By: Mr. John B. Rohyans

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 2635 E. Broad St. (Lot No. 37; Ardmore Addition) regarding improvements to be made upon and with the City owned street right-of-way adjacent to South Cassingham Road. **NOW THEREFORE**,

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

<u>Section 1.</u> That the property owners at 2635 E. Broad Street (Lot No. 37; Ardmore Addition) have requested approval to construct a 12" - 18" high retaining wall within the street right-of-way; said wall to be approximately 85' in length running parallel and adjacent to South Cassingham Road.

Section 2. That the Mayor and 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 damange, loss and injury arising out of the location of said 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 shall go into effect and be in force from and after the earliest period allowed by law.

Passed: $//\cdot//$, 2006

Attest: 2 // Q

Approved:

2006

David H. Madison, Mayor

10.10.06 For

Second Reading

APPLICATION	INU	MBER	70000	
FILING FEE:	\$			

C

CITY OF BEXLEY, OHIO

APPLICATION TO APPEAR BEFORE BEXLEY CITY COUNCIL

1.	This application is submitted for: (please check)
	() Rezoning () Lot Split () Plat Approval () Variance for fance
2.	APPLICATION SUBMITTED FOR PROPERTY LOCATED: 2635 E BROAD ST BEXLEY, OH 43209
3.	NAME OF APPLICANT: TRACY McCORD
	ADDRESS: SAME
	TELEPHONE NUMBER 614 235 - 8895
4.	NAME OF OWNER: SAME
	ADDRESS: SAME
	TELEPHONE NUMBER: SAME
5.	Narrative description of project (attached additional sheets, if necessary.)
	REPLACE EXISTING 4X6 TIMBER RETAINING WALL (18"HT)
	WITH LIMESTONE DRYSTACKED RETAINING WALL (18" AT)
6.	IF THIS APPLICATION INVOLVES A VARIANCE, PLEASE EXPLAIN WHY THE VARIANCE IS NECESSARY. (Attach additional sheets, if necessary.)
	APPLICANT DATE 10.2.06 (Signature)
	E: If the applicant is not the owner, a letter from the owner stating his or her approval of the application must nitted with the application.)

CONSENT AND HOLD HARMLESS AGREEMENT

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

The property owners at 2635 E. Broad St., (Lot No.37; Ardmore Addition) have sought and obtained permission from the City of Bexley to construct a 12" – 18" high retaining wall within the street right-of-way; said wall to be approximately 85' in length running parallel and adjacent to South Cassingham Road.

Mr. Tracy McCord, 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 12" - 18" high retaining wall within the street right-of-way; said wall to be approximately 85' in length running parallel and adjacent to South Cassingham, 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 12' - 18' high retaining wall from the public property occupied by it and shall yield to said City all rights to occupy the public property 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 12' - 18' high retaining wall within the street right-of-way out of or in connection with any cause whatsoever; that said 12' - 18" 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 stone 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 stone wall in the easement/right-of-way area.

2635 E. Broad St. Address of Property	Street Right-Of-Way Type of Easement/Right-Of-Way
Lot No. 37; Ardmore Addition Lot Number or Other Description	Retaining Wall Building or Structure
Easement/Right-Of-Way Width Property Location	Maximum Encroachment Into Easement/Right-Of-Way
Streets, Sidewalks & Public Utilities Services Existing in Easement/ Right-Of-Way	Ordinance No. 81-06 Approving Authority

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

The foregoing instrument was acknowled Color of the Color, and Richard Color of the	adison_, Mayor of the City of Bexley,			
Witness	Mayor			
Geall m 2 cm Witness	Auditor Auditor			
	Notary Public Anita S. Foley Motary Public, State of Ohio My Commission Expires July 23, 2008			
STATE OF OHIO, COUNTY OF FRANKLIN: SS:				
The foregoing instrument was acknowledged before me this 27th day of Tracy McCord				
Kathlan Str Ven Witness	Property Owner			
Minda (d. Basha) Witness	Property Owner			
	Motary A. Ban-			

STATE OF OHIO, COUNTY OF FRANKLIN: