

ORDINANCE NO. 12 -86

BY:

*James H. Raft*

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 272 North Stanwood Road (Lot Number 113; Beacon Hill Addition) regarding improvements to be made upon and within the City owned right-of-way of Maryland Avenue.

WHEREAS, it has been determined that said property has several unusual and unique characteristics because of it's location at an intersection abutting on the south side of Maryland Avenue which is a heavily traveled thoroughfare, and the location of the residence on the northeast corner of the lot which effectively eliminates any back or rear yard space; and,

WHEREAS, it has been determined that the unique characteristics of said property impose unnecessary hardships with respect to the property; and,

WHEREAS, on October 12, 1982, a Councilmatic Variance was granted to authorize and approve a fence located in the side yard setback of premises at 272 N. Stanwood Road, permitting the fence along the south property line and for one fence length around the corner abutting the Stanwood Road right-of-way; and,

WHEREAS, the current owners of the property, Timothy H. and Caryn A. Greene, have requested permission to attach a gate of similar style and construction to the fence; and,

WHEREAS, said gate would not be detrimental to the character of the surrounding residential neighborhood and would assist in protecting the property;

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

Section 1. That the property owners at 272 North Stanwood Road (Lot Number 113; Beacon Hill Addition) have requested approval to construct a split rail gate in the side yard setback of said property, which, as proposed, would encroach upon and within the Maryland Avenue right-of-way owned by the City of Bexley;

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, a copy of which is attached hereto and made a part hereof as if fully rewritten, authorizing the encroachment as proposed in accordance with the submitted site plan on the condition that the property owners assume all responsibility for damages, loss and injury arising out of the location of said gate 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 Ordinance necessary for the preservation of the public peace, health and safety, said emergency being the necessity to protect said property owners children from traffic on Maryland Avenue; and, therefore, this Ordinance shall go into immediate force and effect upon its passage and approval by the Mayor.

Passed: May 24, 1988

Allen Mayes  
President of Council

Attest: John Tonley  
Clerk of Council

Approved: May 24, 1988

DM Madison  
David H. Madison, Mayor

May 24, 1988- 1<sup>st</sup> reading  
Susp. & Adopt.

C O N S E N T

H O L D H A R M L E S S A G R E E M E N T

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

The owners have sought and obtained permission for the City of Bexley to attach a split rail style gate to an existing split rail fence as indicated below on the property described below and in the easement/right-of-way as described. Approval of the proposed gate and existing fence and use of the easement/right-of-way area is conditioned upon this Agreement and construction in accordance with the plot plan.

Timothy H. and Caryn A. Greene, 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 gate and existing fence, and said grantees, their successors and assigns, 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 said grantees, their successors or assigns, upon notice from the City of Bexley, Ohio duly authorized by the Council of Bexley, Ohio, shall forthwith remove said gate and fence and shall yield to said City all rights to occupy the space used for such structures, whenever said City shall determine the same to be necessary; that said structures 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 gate and fence, 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.

272 North Stanwood Road  
Address of Property

Street Right-Of-Way  
Type of Easement/Right-Of-Way

Lot 113; Beacon Hill Addition  
Lot No. or Other Description

Gate and Existing Fence  
Building or Structure

30' Measured from Center of  
Maryland Avenue  
Easement/Right-Of-Way Width -  
Property Location

Maximum Encroachment Into  
Easement/Right-Of-Way

Street and Public Utilities  
Services Existing in Easement/  
Right-Of-Way

Ordinance No. -88  
Approving Authority (Council)

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

25th day of May, 1988,  
by

David H. Madison, Mayor of the City of Bexley, Ohio,  
and,

John W. Hornberger, Auditor of the City of Bexley,  
Ohio.

Deborah C. Foulk  
Witness

David H. Madison  
Mayor

Marianna McCullough  
Witness

John W. Hornberger  
Auditor

Marianna McCullough  
Notary Public

**MARIANNA McCULLOUGH**  
Notary Public-State of Ohio  
My Commission Expires 6-6-90

STATE OF OHIO, COUNTY OF FRANKLIN: SS:

The foregoing instrument was acknowledged before me  
this

25th day of May, 1988,  
by

Timothy H. Greene and Caryn A. Greene

Deborah C. Foulk  
Witness

Timothy H. Greene  
Property Owner

M. a. Holbrook  
Witness

Caryn A. Greene  
Property Owner

Marianna McCullough  
Notary Public

**MARIANNA McCULLOUGH**  
Notary Public-State of Ohio  
My Commission Expires 6-6-90