

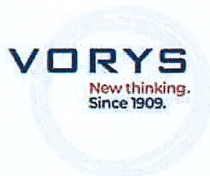
**From:** Parker, Eric A. <eaparker@vorys.com>  
**Sent:** Friday, May 24, 2024 2:36 PM  
**To:** Jeremy VanMeter  
**Cc:** Alexander, Elizabeth S.; Ingram, Christopher L.  
**Subject:** Skilken Gold Real Estate Development - Notice of Appeal to Gahanna BZA  
**Attachments:** Statement of Appeal - Skilken Gold.pdf; Parker Affidavit.pdf

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Jeremy-

Please see attached for the statement of appeal and affidavit (with exhibit A for contiguous addresses). Please return a time stamped copy at your earliest convenience. Thank you!

Best,  
Eric



**Eric A. Parker**  
Associate  
o: 614.545.6758  
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From the law offices of Vorys, Sater, Seymour and Pease LLP.

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**BOARD OF ZONING AND BUILDING APPEALS  
CITY OF GAHANNA, OHIO**

<b>SKILKEN GOLD REAL ESTATE DEVELOPMENT,</b>	:	
<i>Appellant,</i>	:	Re: CU-0002-2024
	:	DR-0006-2024
	:	FDP-0005-2024
v.	:	
<b>CITY OF GAHANNA, OHIO PLANNING COMMISSION,</b>	:	
<i>Appellee.</i>	:	

**RECEIVED**

MAY 24 2024

BY: *J. Van Meter, Clerk*  
COUNCIL OFFICE

**STATEMENT OF APPEAL**

Skilken Gold Real Estate Development (“Skilken Gold”), by and through the undersigned counsel, hereby appeals the Gahanna Planning Commission’s denial of Skilken Gold’s Conditional Use Application, Design Review Application, and Final Development Plan Application (collectively, the “Application”) on April 24, 2024. As set forth in the attached memorandum of support, Skilken Gold’s development is a conditionally permitted use that satisfies the Zoning Code’s criteria. The Planning Commission’s decision was improper and contrary to the Zoning Code. Pursuant to Zoning Code § 147.03, an affidavit listing the names and addresses of all property owners contiguous to or directly across the street from the subject property is enclosed.

Respectfully submitted,

*/s/ Joseph R. Miller*

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Christopher L. Ingram (0086325)  
Elizabeth S. Alexander (0096401)  
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*Counsel for Appellant*

## MEMORANDUM IN SUPPORT

### I. BACKGROUND

This appeal concerns the improper denial of the Application for the property located at 230 Granville Street, Gahanna, Ohio 43230 (the “Property”). The Property is zoned within the Community Commercial District. The Property is surrounded by numerous businesses, including Alpine Beverage Drive-Thru, Capital Games, Tame Hair Salon, Rita’s Italian Ice & Frozen Custard, Creative Nails of Gahanna, Massey’s Pizza, and Mighty Lion Express Car Wash.

Skilken Gold seeks to develop the Property with a Sheetz that will be a one-stop shop for food, beverages, and fuel (the “Development”). The Development will promote a live-work-play environment that has a convenient location for both made-to-order restaurant quality food and a quick snack for those stopping in before visiting Shull Park. The Development will also have amenities that provide residents with areas to relax and socialize. The Development has been meticulously designed to satisfy the Zoning Code and the aspirations of the Land Use Plan.

Skilken Gold filed the Application, and the Planning Commission conducted a hearing on April 24, 2024. During the hearing, the Commission ignored the plain terms of the Zoning Code and arbitrarily denied the Application.<sup>1</sup> The Commission’s decision must be reversed.

### II. LAW AND ARGUMENT

The Planning Commission was required to approve the Application because it satisfied the plain terms of the Zoning Code. Pursuant to the express terms in the Zoning Code, the Planning Commission lacked discretion to deny the Application:

The Planning Commission **shall approve** an application for a conditional use if the following four conditions are met:

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<sup>1</sup> The Planning Commission did not reach Skilken Gold’s Design Review Application or Final Development Plan Application, both of which should also have been approved due to their compliance with the applicable Zoning Code provisions.

- (1) The proposed use is a conditional use of the zoning district and the applicable development standards established in this Zoning Ordinance are met.
- (2) The proposed development is in accord with appropriate plans for the area.
- (3) The proposed development will not have undesirable effects on the surrounding area.
- (4) The proposed development will be in keeping with the existing land use character and physical development potential of the area.

Zoning Code § 1169.04(a) (emphasis added.); *see also Nunamaker v. Bd. of Zoning Appeals*, 2 Ohio St. 3d 115, 116 n.1, 443 N.E.2d 172, 174 (1982) (A conditional use is “a species of administrative permission which allows a property owner to put his property to a use which the regulations expressly permit under conditions specified in the zoning regulations.”). Because each of the four criteria are satisfied – the Application must be approved.

**1. The proposed mix of uses are both explicitly permitted and conditionally permitted and the development standards are satisfied.**

Eating and drinking places, including pizzeria and carry-out restaurants, grocery stores, and general merchandise stores are permitted uses in a Community Commercial District. Zoning Code § 1153.03(a)(1). Gasoline stations are an express, conditionally permitted use. *Id.* § 1153.03(b)(3). As set forth in the Zoning Code, the proposed uses in the Application are permitted or conditionally permitted uses. In addition, the Application contains no variances from the applicable development standards. Thus, the first element of the Zoning Code is satisfied.

**2. The proposed Development is in accord with plans for the area.**

According to the Gahanna Land Use Plan, the Development is within Focus Area #1, Downtown. Gahanna Land Use Plan, 72. The Downtown area “should continue to grow and expand as a traditional mixed use district where the community can live, work, and play.”<sup>2</sup> *Id.*

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<sup>2</sup> By its plain terms, the Land Use Plans do not supersede the uses permitted or conditionally

The Downtown area contains four unique development principles:

- (1) A cohesive, integrated district that includes the core Downtown and expands onto Granville Street.
- (2) A mix of uses that will attract and accommodate both businesses and new residential development.
- (3) Development that creates a comfortable human experience, both in the public and private realms through human-scale development with an emphasis on the pedestrian.
- (4) Expanded non-motorized network withing and to this Focus Area.

*Id.* Here, as expert witness Gary Smith testified, the Development is in accord with the plans for this area, including satisfaction of each of the applicable development principles. The Development provides a convenient location for pedestrians, cyclists, and motorists to stop while travelling from the core Downtown onto Granville Street, including a walking path to offer easier access to Shull Park. The Development will serve several different purposes, such as fuel for personal and work vehicles, quality food options, a convenient location to pick up grocery items and other necessities, and an opportune location for a quick snack or meal for those on the go to or from Shull Park. These different purposes will attract and accommodate both businesses and new residential development while further strengthening the comfortable human experience Gahanna is known for. And lastly, the Development with expand the non-motorized network with walking paths and an outdoor seating area for those pedestrians and cyclists looking for a comfortable place to take a break.

**3. The Development will not have an undesirable effect on the surrounding area.**

The Development will only benefit the surrounding area. As stated above, the

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permitted by the Zoning Code. Land Use Plan, at 98 (“These Guidelines do not supersede the Zoning Code, but supplement those standards in a more flexible format, being rapidly adjustable to site-specific issues.”).

Development serves the needs of residents and visitors alike and has been thoughtfully designed to not only fit into the area, but to complement the already prominent features of the growing downtown. For example, the Development is a residential scale design, minimizing its footprint and facilitating both pedestrian and vehicular traffic. For the first time, there will be sidewalk access to Shull Park. Likewise, there is a 28% *increase* in greenspace – replacing the current landscape of asphalt and empty parking spaces. With an outdoor seating area, a smaller design, and features that complement the area – there is no evidence to suggest any undesirable effects.

Indeed, under Ohio Law, “evidence” for purposes of adjudicating an application for a conditional use “should be direct evidence, which is more than speculation or opinion.” *Fallang v. Butler County Bd. of Zoning Appeals*, 12th Dist. Butler No. CA97-06-118, 1998 Ohio App. LEXIS 287, \*7-8 (Feb. 2, 1998) (citation omitted). Specific direct evidence is required to deny a conditional use application. *Id.* at \*10. Unsupported opinions or speculations have no weight. *See Hindu Soc’y of Greater Cincinnati v. Union Twp. Bd. of Zoning Appeals*, 12th Dist. Clermont No. CA2018-11-081, 2019-Ohio-2494, ¶ 29 (holding that speculation and opinion could not be considered because “legal matters are determined by facts, not beliefs or desires.”). Here, there is no evidence to support a finding that the Development would have an undesirable effect on the surrounding area. To the contrary, all of the evidence in the record established that the Development will be an asset to the community.

**4. The Development will be in keeping with the existing land use character and physical development potential of the area.**

The Development is not only consistent with the existing land use character and physical development of the area, but it also improves upon it. The Development adds a sidewalk to Shull Park, connecting the local business to the community green space. Moreover, the Development was designed to fit within the range of businesses that surround the area. Residents will be offered

an easily accessible location to stop in for fuel, to grab a snack to go, or to get their groceries on the way home.

**5. Any ambiguities must be resolved in Skilken Gold's favor.**

As set forth above, the Development fulfills each criteria set forth in Zoning Code § 1169.04(a). To the extent there is any ambiguity in the Zoning Code's criteria, the ambiguity must be resolved in favor of Skilken Gold's use of the Property. Under Ohio law, "[i]f ambiguity exists, [in a zoning measure] courts must strictly construe restrictions on the use of real property in favor of the property owner." *Bierlein v. Grandview Heights Bd. of Zoning Appeals*, 10th Dist. Franklin No. 18AP-874, 2020-Ohio-1395, ¶¶ 22-23, 153 N.E.3d 817, 825. Because such restrictions must be strictly construed, "the scope of the restrictions cannot be extended to include limitations not clearly prescribed." *Saunders v. Clark County Zoning Dept.*, 66 Ohio St.2d 259, 261 (1981). Here, if Zoning Code § 1169.04(a) criteria are in any way unclear or ambiguous, they must be construed in favor of Skilken Gold and the Application must be approved.

**III. CONCLUSION**

For the foregoing reasons, the Planning Commission's decision should be overruled, the Application approved, and Skilken Gold permitted to proceed with its Development of the Property.

Respectfully submitted,

/s/ Joseph R. Miller

Joseph R. Miller (0068463)

Christopher L. Ingram (0086325)

Elizabeth S. Alexander (0096401)

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*Counsel for Appellant*

MAY 24 2024

BY: *J. Van Meter Clerk*  
COUNCIL OFFICE

**AFFIDAVIT OF ERIC A. PARKER**

STATE OF OHIO

COUNTY OF FRANKLIN, SS:

I, Eric A. Parker, having been duly cautioned and sworn, state the following facts:

1. I am over the age of eighteen and competent to testify to the facts contained in this affidavit.

2. I make this affidavit based upon personal knowledge and for the purpose of submitting an application for appeal to the City of Gahanna Board of Zoning and Building Appeals regarding CU-0002-2024, DR-0006-2024, FDP-0005-2024 (the "Applications") for 230 Granville Street Gahanna, Ohio 43230 (the "Property").

3. Attached hereto as **Exhibit A** is a true and accurate list of the names and addresses of all property owners contiguous to, and directly across the street from the Property, as appearing on the Franklin County Auditor's current tax list.

*Further affiant sayeth naught.*

*Eric A. Parker*



05/24/2024 12:18 PM EDT

Eric A. Parker

Sworn and subscribed before me, the undersigned notary public, by Eric A. Parker on

the 24th day of May, 2024. This is a jurat certificate; an oath or affidavit was administered to the signer.

*Christopher M. Blum*



05/24/2024 12:19 PM EDT

Notary Public



CHRISTOPHER M. BLUM  
Notary Public, State of Ohio  
My Comm. Exp. on Expires:  
October 31, 2026

ie Notary Public. This notarial act involved the  
if online audio/video communication technology.  
rization facilitated by SIGNIX®



# **EXHIBIT A**

Parcel Number	Parcel Address	Owner Name	Owner Address 1	Owner Address 2
025-001086-00	200 GRANVILLE ST.	ISHIDA KALAYANEE V TR	26778 TALLY HO LN.	BLACKLICK OH 43004
025-000190-00	80 SHULL AVE.	DURIS FAMILY LLC		
025-000279-00	00000 GRANVILLE ST.	CITY OF GAHANNA		
025-000289-00	00000 GRANVILLE ST.	CITY OF GAHANNA		
025-000792-00	00000 GRANVILLE ST.	BD. OF TR. OF THE COLUMBUS METRO. LIBRARY	96 SOUTH GRANT AVE.	COLUMBUS OH 43215
025-007429-00	246 LINCOLN CIR.	LND STRAWBERRY PLAZA LTD	PO BOX 284	GALENA OH 43021
025-007431-00	259 GRANVILLE ST.	JSRD HOLDINGS LLC	1911 SURREY RD.	BLACKLICK OH 43004
025-007432-00	265 LINCOLN CIR.	DKENT INVESTMENT LLC	5723 LYNX LANE	DUBLIN OH 43017
025-000281-00	191 GRANVILLE ST.	191 GRANVILLE STREET LLC	1851 COLLINGSWOOD RD.	COLUMBUS OH 43221