

CITY OF SHELBYVILLE

Adam M. Rude  
Director



Allan Henderson  
Deputy Director

BOARD OF ZONING APPEALS

MEETING DATE: 2/11/2020

<b>Case #:</b>	BZA 2020-3: GetGo Café and Market, DSV			
<b>Petitioner's Name:</b>	Giant Eagle, Inc. d.b.a. GetGo Café and Market			
<b>Owner's Name:</b>	Exit 109, LLC			
<b>Petitioner's Representative:</b>	Bryan Sheward, Kimley Horn			
<b>Address of Property:</b>	3877-3977 North Michigan Road			
<b>Subject Property Zoning Classification:</b>	BH – Business Highway within the Race Track Overlay District (RT-OL)			
<b>Comprehensive Future Land use:</b>	Gateway Mixed Use			
	<b>North</b>	<b>North</b>	<b>North</b>	<b>North</b>
<b>Surrounding Properties' Zoning Classifications:</b>	BH – Business Highway	BH – Business Highway	BH – Business Highway	BH – Business Highway
<b>Surrounding Properties' Future Land Use</b>	Entertainment	Entertainment	Entertainment	Entertainment
<b>History:</b>	In both 2006, 2009, and 2016 development attempts were made on this property, neither were successful and ended before all required approvals from the Planning Commission were granted. In 2006 the driving development was a hotel, which initiated a preliminary plat of the land. Again in 2009 the driving development was a hotel, this again initiated a preliminary plat that was approved. Due to external concerns, the final plat was never submitted to the Planning Commission. In 2016 the driving development was a fast food restaurant, with additional possible out lots, the final plat was never filed with the Plan Commission.			
<b>Vicinity Map:</b>				
<b>Action Requested:</b>	Approval of one development standard variance from UDO 5.15 (B) to increase the width of two access drives.			

1. UDO 5.15 (B); Non-residential Driveway Standards sets the maximum width of access road to thirty-six (36) feet; three (3) lanes, each twelve (12) foot in width.
2. GetGo Café and Market would like to build on the lot located at 3877- 3977 North Michigan Road. GetGo Café and Market is a chain of convenience stores that include fuel sales; fuel sales for cars and larger vehicles. GetGo Café and Market would like to increase the width of their two entrances along Michigan Road from the standard thirty-six (36) feet to one at 73 feet and one at 64 feet.

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***BZA 2019-15.A Variance from UDO 5.15(B), Nonresidential Driveway Standards***

Finding of Fact #1 – That the approval of the Development Standards Variance will not be injurious to the public health, safety, morals and general welfare of the community.

*Applicant provided the following response to Finding of Fact #1: “The extra driveway width will actually promote safety by providing adequate driveway width for both commercial and passenger vehicles to gain safe ingress and egress to and from the site.”*

The planning staff has determined that the requested increase in drive-way width should not be injurious to the public health, safety, morals, or general welfare of the community. The planning staff believes the increase in driveway width and the separations of ingress and egress for truck traffic will help alleviate traffic congestion and stacking of trucks along North Michigan Road.

*Finding #1 has been satisfied by the petitioner*

Finding of Fact #2 – That the use and value of the area adjacent to the subject property seeking a Development Standards Variance will not be affected in a substantially adverse manner;

*Applicant provided the following response to Finding of Fact #2: “The driveway width will only improve the use and value of adjacent properties by providing safe and efficient ingress and egress to and from the subject property.”*

The planning staff has determined that the requested increase in driveway width should not have a substantially adverse affect on the use and value of the adjacent areas. The surrounding properties are zoned Business Highway – BH and the improvements to the lot will improve the safety of this entire intersection.

*Finding #2 has been satisfied by the petitioner*

Finding of Fact #3 – That the strict application of the terms of the ordinance will result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain;

*Applicant provided the following response to Finding of Fact #3: “The driveway width provided by the ordinance is not sufficient to accommodate expected passenger vehicle and commercial vehicles coming to the site, especially considering the proximity of the property.”*

The planning staff has determined that the strict application of the terms of the ordinance could result in a practical difficulty in the use of the property. Limiting the driveway widths to thirty-six (36) foot may adversely impact the site through increased maintenance costs and landscape replacement if truck drivers are continuously hitting the curb, making a curb that is at a greater angle than 90 degrees.

*Finding #3 has been satisfied by the petitioner*

**STAFF RECOMMENDATION: APPROVAL**

DEVELOPMENT STANDARDS VARIANCE: BZA 2020-3: GetGo Café and Market, DSV  
FINDINGS OF FACT BY THE SHELBYVILLE BOARD OF ZONING APPEALS

Staff Prepared

Motion: (I) would like to make a motion to approve the requested development standard variance to allow for a wider width driveways in accordance with the plans presented to this body, pursuant to the findings of fact presented in the planning staff's report.

- 1.  The approval of the Development Standards Variance **will not** be injurious to the public health, safety, morals and general welfare of the community.
- The approval of the Development Standards Variance **will** be injurious to the public health, safety, morals and general welfare of the community.
- 2.  The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will not** be affected in a substantially adverse manner.
- The use and value of the area adjacent to the subject property seeking a Development Standards Variance **will** be affected in a substantially adverse manner.
- 3.  The strict application of the terms of the ordinance **will** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.
- The strict application of the terms of the ordinance **will not** result in practical difficulties in the use of the property. The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.

Additional conditions imposed by the Board of Zoning Appeals:

- 1.
- 2.
- 3.

Shelbyville Board of Zoning Appeals

By: \_\_\_\_\_

Chairperson / Presiding Officer

Attest: \_\_\_\_\_

Adam M. Rude, Secretary



# DEVELOPMENT STANDARDS VARIANCE APPLICATION

Shelbyville Planning & Building Department  
44 West Washington Street  
Shelbyville, IN 46176  
P: 317.392.5102

RECEIVED /  FILED

JAN 28 2020

**For Office Use Only:**

Case #: BZA 2020 02  
Hearing Date 02-11-2020  
Fees Paid: \$ \_\_\_\_\_  
Final Decision:  
Approved \_\_\_\_\_ Denied \_\_\_\_\_

**1.**

**Applicant**

Name: Giant Eagle, Inc. d/b/a GetGo Cafe & Market  
Address: 101 Kappa Dr. RIDC Park, Pittsburgh, PA 15238

Phone Number: 412.327.6703  
Fax Number: \_\_\_\_\_  
Email: pat.avolio@gianteagle.com

**Property Owners Information (If different than Applicant)**

Name: Exit 109, LLC c/o Kulkarni Properties  
Address: 400 Smith Rd., Suite 190, Cincinnati, OH 45209

Phone Number: 513.863.1400  
Fax Number: \_\_\_\_\_  
Email: shtree.kulkarni@kulkarniproperties.com

**2.**

**Applicant's Attorney/Representative**

Name: Joseph D. Calderon, Barnes & Thornburg, LLP  
Address: 11 S. Meridian St., Indianapolis, IN 46204

Phone Number: 317.231.1313  
Fax Number: \_\_\_\_\_  
Email: jcalderon@btlaw.com

**Project Engineer**

Name: Bryan Sheward, Kimley-Horn and Associates, Inc.  
Address: 250 E. 96th St., Suite 580, Indianapolis, IN 46240

Phone Number: 317.218.9563  
Fax Number: \_\_\_\_\_  
Email: bryan.sheward@kimley-horn.com

**3. Project Information:**

General Location of Property (and address is applicable): 3877-3977 N. Michigan Rd. (Southwest Corner of Michigan Rd. & 400 S. - Exit 109)

Current Zoning Classification: BH\* Existing Use: Vacant  
Number of Requested Variances: 2 Proposed Use: Convenient Store & Fuel Station  
\*Race Track Overlay, Airport Compatibility Overlay

Section(s) of the Ordinance Requesting Variance(s) from; including Article, Section, Subsection, and Page Number: \_\_\_\_\_  
Article 5, 5.15, ED-04, B (Driveway Width)  
Article 5, 5.58, Q.3.c (Pole Sign Size within Interstate Corridor)

**4. Attachments**

- Affidavit and Consent of Property Owner (if applicable)
- Vicinity Map
- Proof of Ownership (copy of deed, recent property card)
- Findings of Fact
- Letter of Intent
- Application Fee
- Supporting Documents and Exhibits (Optional)

The undersigned states the above information is true and correct as s/he is informed and believes.

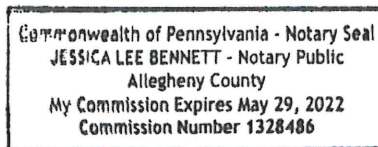
Applicant: Pat Avolio Date: 12/30/19

State of Pennsylvania  
County of Allegheny SS:

Subscribed and sworn to before me this 30th day of December 2019.

Jessica Lee Bennett Notary Public  
Jessica Lee Bennett Printed

Residing in Allegheny County. My Commission Expires May 29, 2022





CLT

2008089163 MW \$23.00  
12/30/2008 04:41:12P 4 PGS  
Mary Jo Phares  
SHELBY County Recorder IN  
Recorded as Presented

ENTER FOR TAXATION

DEC 30 2008

*James H. [Signature]*  
SHELBY COUNTY AUDITOR

C&I  
CTIC# 417100 MIS

WARRANTY DEED

THIS INDENTURE WITNESSETH, that RUMPKE OF INDIANA, INC., an Indiana corporation (f/k/a Rumpke of Indiana-Shelbyville, Inc.) ("Grantor") CONVEYS AND WARRANTS to EXIT 109, LLC, an Indiana limited liability company, for the sum of Ten and 00/100 Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the real estate located in Shelby County, in the State of Indiana, which is described in Exhibit "A", attached hereto and made a part hereof, together with all improvements located thereon, (the "Real Estate").

The foregoing conveyance shall be subject only to: (i) real estate taxes and assessments due and payable in 2008, and all subsequent taxes, and (ii) those easements, restrictions, agreements, covenants and encumbrances more particularly described on Exhibit "B" attached hereto and incorporated herein by reference.

TOGETHER WITH all rights, privileges, interests, easements, hereditaments, appurtenances and tenements therunto belonging or pertaining to the Real Estate.

The undersigned person executing this Warranty Deed on behalf of Grantor represents and certifies that he is the duly authorized officer of Grantor and has been fully empowered and duly authorized by all necessary action of Grantor to execute and deliver this Warranty Deed; that Grantor has full capacity to convey the Real Estate; and that all necessary action for the making of such conveyance has been taken or done.

IN WITNESS WHEREOF, Grantor has caused this Warranty Deed to be executed as of the 16 day of October, 2008.


Rumpke of Indiana, Inc., an Indiana corporation

By: *William J. Rumpke*  
William J. Rumpke, President

STATE OF Ohio )  
INDIANA ) SS:  
COUNTY OF Hamilton )

Before me, a Notary Public in and for said County and State, personally appeared William J. Rumpke, the President of Grantor, and being first duly sworn, acknowledged the execution of the foregoing Warranty Deed for and on behalf of Grantor and stated that any representations therein contained are true.

Witness my hand and Seal this 16 day of October, 2008.

My Commission Expires \_\_\_\_\_  
 **CYNTHIA SCHULTZ** Notary Public  
Cynthia L. Schultz  
My County of Hamilton My Commission Expires 01-30-2012 Printed Name

Return and send tax statements to: by email address Exit 109, LLC, 3320 Tylersville Road, Suite K, Hamilton, Ohio 45011

This instrument prepared by Alexa L. Woods, TAFT STETTINIUS & HOLLISTER LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204.

I affirm, under penalty of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Alexa L. Woods



**Exhibit "A"**  
**Legal Description**

A part of the Northeast quarter of Section 14, a part of the Southeast quarter of Section 11, and part of the Northwest quarter of Section 13, all in Township 13 North, Range 6 East, Shelby County, Indiana described as follows:

Commencing at the Northeast corner of said Section 14; thence North 88 degrees 43 minutes 49 seconds West along the North line of Section 14 a distance of 40.00 feet to a 3/8 inch rebar on the West line of County Road 200 West and the Point of Beginning; thence along said West Right-of-Way South 01 degree 15 minutes 43 seconds West a distance of 328.01 feet to a tangent curve having a radius of 756.17 feet and being concave to the Northeast; thence Southerly along said curve and Right-of-Way 628.76 feet; thence South 46 degrees 11 minutes 55 seconds East along said Right-of-Way a distance of 674.27 feet; thence North 88 degrees 33 minutes 34 seconds West a distance of 39.53 feet to the Northeasterly Right-of-Way of E-74; thence the next six (6) courses being along said Right-of-Way

1. North 45 degrees 20 minutes 25 seconds West a distance of 1022.77 feet
2. North 43 degrees 09 minutes 28 seconds West a distance of 270.72 feet
3. North 41 degrees 56 minutes 29 seconds West a distance of 245.62 feet
4. North 32 degrees 44 minutes 09 seconds West a distance of 276.94 feet
5. North 24 degrees 38 minutes 54 seconds West a distance of 203.84 feet
6. North 24 degrees 54 minutes 30 seconds East a distance of 62.87 feet to the South Right-of-Way of County Road 400 North; thence the next three (3) courses being along said Right-of-Way
  1. North 84 degrees 07 minutes 41 seconds East a distance 310.06 feet to a tangent curve concave to the South having a radius of 1105.92 feet
  2. Thence Easterly along said curve 265.40 feet
  3. Thence South 38 degrees 04 minutes 02 seconds East a distance of 77.79 feet to the West Right-of-Way of County Road 200 West; thence along said Right-of-Way South 01 degrees 15 minutes 43 seconds West a distance of 124.39 feet to the Point of Beginning containing 8.68 acres.

**Exhibit "B"**  
**Permitted Exceptions**

1. Taxes for the year 2007 due and payable in 2008 are a lien not yet due and payable.
2. Taxes for the year 2008 due and payable in 2009 are a lien not yet due and payable.
3. Permanent extinguishment of all rights and easements of ingress and egress, to, from and across the limited access facility known as Interstate 74, to and from the land.
4. Sixteen (16) foot underground electric line easement and rights of way granted to Public Service Company of Indiana, Inc. as set forth in an electric underground line easement dated December 1, 1989 and recorded April 27, 1990 in Deed Record 304, pages 583-584 as instrument No. 01758. (Tract B)
5. Indiana Department of Environmental Management Certificate of Completion issued to Rumpke of Indiana, Inc., pursuant to IC 13-25-5, recorded April 30, 2002 as instrument No. 0204240. (Tract B)
6. Overhead power lines as shown on the ALTA Survey prepared by Blaisoe Riggert Guerrettez as Project No. 3851 last revised on October 16, 2008.

LAND DESCRIPTION (PER TITLE REPORT)

A PART OF THE NORTHEAST QUARTER OF SECTION 14, A PART OF THE SOUTHEAST QUARTER SECTION 11, AND PART OF THE NORTHWEST QUARTER OF SECTION 13, ALL IN TOWNSHIP 13 NORTH, RANGE 6 EAST, SHELBY COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 14; THENCE NORTH 88 DEGREES 43 MINUTES 49 SECONDS WEST ALONG THE NORTH LINE OF SECTION 14 A DISTANCE OF 40.00 FEET TO A 5/8 INCH REBAR ON THE WEST LINE OF COUNTY ROAD 200 WEST AND THE POINT OF BEGINNING; THENCE ALONG SAID WEST RIGHT OF WAY SOUTH 01 DEGREE 15 MINUTES 43 SECONDS WEST A DISTANCE OF 328.01 FEET TO A TANGENT CURVE HAVING A RADIUS OF 756.17 FEET AND BEING CONCAVE TO THE NORTHEAST; SOUTHERLY ALONG SAID CURVE AND RIGHT-OF-WAY 628.76 FEET; THENCE SOUTH 46 DEGREES 11 MINUTES 55 SECONDS EAST ALONG SAID RIGHT OF WAY A DISTANCE OF 674.27 FEET; THENCE NORTH 88 DEGREES 33 MINUTES 34 SECONDS WEST A DISTANCE OF 39.53 FEET TO THE NORTHEASTERLY RIGHT OF WAY OF I-74; THENCE THE NEXT SIX (6) COURSES BEING ALONG SAID RIGHT OF WAY: 1). NORTH 45 DEGREES 20 MINUTES 25 SECONDS WEST A DISTANCE OF 1022.77 FEET; 2). NORTH 43 DEGREES 09 MINUTES 28 SECONDS WEST A DISTANCE OF 270.72 FEET 3). NORTH 41 DEGREES 56 MINUTES 29 SECONDS WEST A DISTANCE OF 245.62 FEET 4). NORTH 32 DEGREES 44 MINUTES 09 SECONDS WEST A DISTANCE OF 276.94 FEET 5). NORTH 24 DEGREES 38 MINUTES 54 SECONDS WEST A DISTANCE OF 203.84 FEET 6). NORTH 24 DEGREES 54 MINUTES 30 SECONDS EAST A DISTANCE OF 62.87 FEET THE SOUTH RIGHT OF WAY OF COUNTY ROAD 400 NORTH; THENCE THE NEXT THREE (3) COURSES BEING ALONG SAID RIGHT OF WAY: 1). NORTH 84 DEGREES 07 MINUTES 41 SECONDS EAST A DISTANCE 310.06 FEET TO TANGENT CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 1105.92 FEET 2). THENCE EASTERLY ALONG SAID CURVE 265.40 FEET 3). THENCE SOUTH 38 DEGREES 04 MINUTES 02 SECONDS EAST A DISTANCE OF 77.9 FEET TO THE WEST RIGHT-OF-WAY OF COUNTY ROAD 200 WEST; THENCE ALONG SAID RIGHT OF WAY SOUTH 01 DEGREES 15 MINUTES 43 SECONDS WEST A DISTANCE OF 124.39 FEET TO THE POINT OF BEGINNING CONTAINING 8.68 ACRES.



LETTER OF INTENT  
BOARD OF ZONING APPEALS

Please write a brief summary the case you are presenting to the Board of Zoning Appeals. You may submit on this form or on your own letterhead.

Petitioner, Giant Eagle, Inc. d/b/a GetGo Cafe + Market seeks a variance of development

standards to allow for driveway widths of 73.2 feet (passenger vehicle entrance) and 64.2 feet (truck entrance) at the right of way line (36 feet maximum). The additional width is necessary to provide safe and adequate ingress/egress to and from the subject property.



DEVELOPMENT STANDARDS VARIANCE  
FINDINGS OF FACT

Petitioner's Name: Giant Eagle, Inc. d/b/a GetGo Cafe + Market  
Location: 3877-3977 N. Michigan Road  
Variance for: Excess Driveway Width at Right of Way

The Shelbyville Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Development Standard Variance. Using the lines provided, please explain how your request meets each of these criteria.

- 1. General Welfare: Explain why granting the request for a development standard variance will not be harmful to the public health, safety and general welfare of the City of Shelbyville.

The extra driveway width will actually promote safety by providing adequate driveway width for both commercial and passenger vehicles to gain safe ingress and egress to and from the site.

- 2. Adjacent Property: Explain why the development standard variance request will not affect the use and the value of adjacent properties.

The driveway width will only improve the use and value of adjacent properties by providing safe and efficient ingress and egress to and from the subject property.

- 3. Practical Difficulty: Please state the difficulties that will be faced if the project is not granted the requested development standard variance.

The driveway width provided by the ordinance is not sufficient to accommodate expected passenger vehicle and commercial vehicles coming to the site, especially considering the proximity of the property

*Note: For petitions with multiple requested variances, please submit one completed "Findings of Fact" for each requested variance.*

# GetGo #3565

VICINITY MAP

N-150 W

Co Rd 125 W

GETGO #3565 PROJECT SITE



3000 ft

