

**CITY OF CHESTERFIELD  
BOARD OF ADJUSTMENT  
MEETING SUMMARY  
Thursday, August 3, 2023**

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The Board of Adjustment meeting was called to order at 6:00 p.m. on Thursday, August 3, 2023 by Ms. Katherine Hipp, Chair of the Board of Adjustment.

**I. Introduction of Board and City Staff**

The following individuals were in attendance:

Ms. Katherine Hipp, Chair  
Ms. Melissa Heberle, Vice Chair  
Mr. Brendan Block  
Ms. Jeannie Rader  
Ms. Barb Whitman

Ms. Mary Monachella, City Council Liaison  
Mr. Chris Graville, City of Chesterfield Attorney  
Ms. Petree Powell, Assistant City Planner, City of Chesterfield  
Mr. Isaac Simmers, Planner, City of Chesterfield  
Ms. Kathy Reiter, Recording Secretary, City of Chesterfield  
Court Reporter, Lexitas Litigation Services

**II. Approval of October 6, 2023 Meeting Transcript**

**Barb Whitman made a motion to approve the Meeting Transcript.** The motion was seconded by Melissa Heberle. Upon roll call, the vote was as follows:

|                        |            |
|------------------------|------------|
| <b>Katherine Hipp</b>  | <b>Yes</b> |
| <b>Melissa Heberle</b> | <b>Yes</b> |
| <b>Brendan Block</b>   | <b>Yes</b> |
| <b>Jeannie Rader</b>   | <b>Yes</b> |
| <b>Barb Whitman</b>    | <b>Yes</b> |

**The motion passed by a vote of 5-0.**

**III. Request for Affidavit of Publication**

The Chair noted that the Affidavit of Publication and exhibits for the Petition had been placed on the dais.

#### IV. Public Hearing Items:

The Chair read the Opening Comments for the Public Hearing.

- A. **B.A. 01-2023 1624 Clarkson Road (Crumbl Cookies)**: A request for a variance from the hours of operation in Ordinance 2727 from 7:00 a.m. to 9:30 p.m. to 8 a.m. to 10:00 p.m. Monday through Thursday and 8:00 a.m. to 12 midnight on Friday and Saturday. (19S420415)

#### Staff Presentation:

Ms. Petree Powell, Assistant City Planner for the City of Chesterfield, was sworn in by the Court Reporter.

Ms. Powell stated the following:

- The petition tonight is requesting a variance from the hours of operation under Ordinance 2727, Attachment A, Section I.A.3 which provides that hours of operation for all uses shall be between 7:00 a.m. and 9:30 p.m. The applicant seeks to operate 8:00 a.m. to 10:00 p.m. Monday through Thursday and 8:00 a.m. to 12 midnight on Friday and Saturday.
- When the applicant entered into the lease for 1624 Clarkson Road with Chesterfield Oaks, she was not informed by the Lessor or real estate agent that there were limitations on the hours of operation. The City approved MZA's for interior work and signage and St. Louis County issued an Occupancy Permit. The hours of operation were not on the MZA's and the Occupancy Permit simply acknowledges that the space is habitable and meets building code requirements. On December 1, 2022 Crumbl Cookies filed an application for a business license with the hours of operation intended. (Enter City Exhibit #1-application). The application was incorrectly approved by the Business Assistance Coordinator and the Planner assigned to the application noted the conflict in the business hours (Enter City Exhibit #2-Ordinance 2727). and relayed that to the Business Assistance Coordinator. On December 7, 2022 the Business Coordinator reached out to Crumbl Cookies to alert them about the error (Enter City Exhibit #3-email between the City and the applicant) and the business license was rejected because the proposed hours of operation was in conflict with the hours provided in the ordinance. (Enter City Exhibit #4-rejected note). The City has determined that the business license was still valid but the store must still comply with the site specific Ordinance 2727 concerning the hours of operation. On May 17, 2023 Crumbl Cookies applied for a variance to the hours of operation. (Enter City Exhibit #5-Board of Adjustment application) The owners of Chesterfield Oaks Shopping Center support the request (Enter City Exhibit #6-letter) and the City received an email from a neighboring subdivision in support of the extended hours. (Enter City Exhibit #7-Sycamore HOA email). The Chesterfield police have no objection to the extended hours. It should be noted that there are two exceptions to the standard

operation hours in Ordinance 2727. The bookstore has extended hours until 10:00 pm and St. Louis Bread Co. the bakery can open at 6:00 am.

- To obtain a nonuse variance, the applicant must establish “practical difficulties or undue hardship”. This does not refer to the conditions personal to the owner, but conditions affecting the lot in question. This is an unusual request since the limitations come from Ordinance 2727 not the land itself. The applicant has provided a statement of hardship. First, the applicant is in violation of the Franchise Agreement and second, the applicant feels she is at a competitive disadvantage since all the other Crumbl Cookies locations in the area operate in accordance with the Franchise Hours of Operation. The City of Chesterfield city code (Enter City Exhibit #8-City Code 125.150) states where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of an ordinance, it is ok to modify the application of such ordinance relating to the use when the spirit of the ordinance is observed, public safety and welfare secured and substantial justice done. The extended hours proposed in this variance will not seriously affect any adjoining businesses or property owners or the general welfare of the public. The City has no objection to the applicant’s request.

#### Discussion:

Mr. Block asked if this is going to be a problem for future businesses, why not just amend the ordinance instead of seeking a variance? Ms. Powell replied that the usual process would be an ordinance amendment but it is a very long and expensive process.

Ms. Hipp then referenced Page 2 of 16 on City Exhibit 2, asking about the other exceptions for the book store and bakery’s hours of operation to which Ms. Powell replied that through re-zoning, those hours were amended.

#### **Petitioner’s Presentation**

Mr. Mike Doster, Doster Nations Ullom & Boyle, LLC, Land Use Attorney for the Petitioner, was sworn in by the Court Reporter.

Ms. Amy Rahm, 636Cookies, LLC dba Crumbl Cookies, the Petitioner, was sworn in by the Court Reporter.

Mr. Dan Capps, Caplaco Eighteen, Inc., Caparco Two, Inc., & Dierbergs Heritage, Inc., Representative, was sworn in by the Court Reporter.

Mr. Doster gave a PowerPoint presentation which went over the following points:

- The lease between Ms. Rahm and Caplaco Eighteen, Inc., Caparco Two, Inc. and Dierbergs Heritage, Inc. as Lessor, did not explain the ordinance restrictions.

The broker used did not explain the hours of operation either and it was not the landlord's place but the tenant's obligation to do the due diligence.

- Ordinance 2727, Attachment A shows the hours of operation. Both Barnes & Noble and Panera were able to get their requested hours of operation approved.
- The Franchise Agreement between Crumbl Cookies and 636Cookies, LLC was entered into October 29, 2021 which dictates the hours of operation and requirements per franchise agreement.
- The Business License was issued December 2, 2022. This was the first time any paperwork indicated the required hours of operation.
- Two letters, one from a neighboring subdivision HOA and the other from the Lessors, were received approving the requested hours of operation. Mr. Dan Capps, the landlord and owner of the center spoke at this time to say that the owners of the Chesterfield Oaks Shopping Center and other tenants were all in support of the variance request.

#### Discussion:

Ms. Hipp inquired if there would be any traffic pattern issues with the extended hours. Mr. Capps replied none that he would foresee at those late hours.

Mr. Block asked if Mr. Capps knew about the later hours proposed and did he make it known that there was a site specific ordinance? To which Mr. Capps replied no. Mr. Doster then explained that most commercial lessors put the burden of due diligence on the tenant, not the landlord. Ms. Rahm relied on her broker but the hours of operation never surfaced during the negotiations. The landlord didn't want to take on the responsibility of what the laws are, it is up to the tenant to do the due diligence.

Ms. Hipp asked Mr. Doster (who worked on the rezoning and Attachment A for Ordinance 2727) why they set up those particular hours of operation? Mr. Doster stated that there were concerns about the neighborhoods behind the retail center and some sensitivity to unrestricted hours. Barnes & Noble and Panera asked for different hours in a later amendment and they got them.

Mr. Block then asked if there were any case laws supporting the Board of Adjustment extending operational hours and if the Board had the power to do so? Mr. Doster explained that every variance procedure is only applicable to each individual case. He was not able to find any case law pertaining to this. City Attorney Graville said it is a legitimate and legal question: "does this Board have jurisdiction over this hours of operation appeal?" There is a practical aspect to the Board of Adjustment, that sometimes things get referred to them for relief. Because the City has so many planned districts with individual zoning ordinances, consistency between developments is not

always present. Ms. Hipp added that the Board is a quasi-judicial body and looking at Exhibit 8, paragraph 3, the spirit and justice of the law can be modified to be in the best interest of the community and that the Board has the authority to permit the variance to go forward.

Ms. Monachella wanted to address what the additional traffic from 10:00 to midnight would be and if there would be large parties indoors or outdoors and what the noise level would be. Ms. Rahm explained that a large part of the later hours were deliveries. There is no outdoor seating and only a small lobby but no tables indoors. It is a take and go situation, you come in, pick up your order and leave. There have been no issues with loitering or noise.

No Speakers were present to speak **in opposition** of the variance request.

## **CONCLUSION**

**Melissa Heberle made a motion to approve the request for a variance from the hours of operation in Ordinance 2727.** The motion was seconded by Katherine Hipp. Upon roll call, the vote was as follows:

|                        |            |
|------------------------|------------|
| <b>Katherine Hipp</b>  | <b>Yes</b> |
| <b>Melissa Heberle</b> | <b>Yes</b> |
| <b>Brendan Block</b>   | <b>Yes</b> |
| <b>Jeannie Rader</b>   | <b>Yes</b> |
| <b>Barb Whitman</b>    | <b>Yes</b> |

**The motion passed 5 to 0. The application was approved.**

## **V. Adjournment**

The meeting adjourned at 6:56 p.m.