The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, November 4, 2004, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  C. A. Pantle, Chairman
                         Gary Noffsinger, Planning Director
                         Ruth Ann Mason
                         Judy Dixon
                         Tim Miller
                         Sean Dysinger
                         Ward Pedley
                         Stewart Elliott
                         Attorney

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CHAIRMAN:  Call the meeting to order.

Want to welcome you all to the Owensboro Metropolitan Board of Adjustment this evening. We always start our program with a prayer and pledge of allegiance. We invite you to join if you so desire.

With that Ward will give us our prayer.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Want to welcome you all to the meeting here. If you have anything you want to add to the permits or variances we've got, please come to one
of the podiums. State your name for the record and be sworn in.

With that we'll go ahead and proceed with the first item which is consider the minutes of the October 7th meeting. They're on file in the office. We haven't come up with any problems or any corrections that need to be changed. So with that we'll entertain a motion to approve the minutes.

MS. DIXON: Move to approve.
MR. DYSINGER: Second.
CHAIRMAN: A motion has been made and a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.
Next item please, sir.

CONDITIONAL USE PERMITS

ITEM 2

2429 Browns Valley-Red Hill Road, in an A-R zone
Consider request for a Conditional Use Permit to locate a 0.8 acre family cemetery on the property.
Reference: Zoning Ordinance, Article 8, Section 8.2 J1
Applicant: Jason Keith Maynard

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. The application is found to be consistent with the uses that are

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allowed in the A-R Rural Agriculture zone. The application is for a Conditional Use Permit to construct a family cemetery on the property. The cemetery proposed is to be on the southwest portion of the parent tract. We found no adverse conditions at the site. Would recommend that you consider this application favorably.

CHAIRMAN: Any objections or comments made in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to object to this application, Conditional Use Permit?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything they would like to add on to it?

(NO RESPONSE)

CHAIRMAN: Any board members have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Hearing none entertain a motion to dispose of the item, please.

MS. DIXON: Move to approve because it's consistent with the A-R uses in the county and therefore in compliance with the comprehensive land use plan and is not adverse to the public health,
safety and welfare.

CHAIRMAN: Is there a second?

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second. Is there any other questions by anybody on the board?

(NO RESPONSE)

CHAIRMAN: The Staff have anything else to add to it?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Hearing none all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

5760 US 60 West, in an A-R zone
Consider request to amend a Conditional Use Permit in order to operate an agri-tourism entertainment center consisting with special events on weekdays and live entertainment on weekends in conjunction with the conditionally permitted indoor and outdoor horse arenas.
Reference: Zoning Ordinance, Article 8, Section 8.2 B11, K7
Applicant: Cowboys of Kentucky

MR. NOFFSINGER: Mr. Chairman, Mr. Doug Lane is here, he's with the Planning Staff, to make a presentation on behalf of the review of this
MR. ELLIOTT: State your name for the record, please.

MR. LANE: Doug Lane.

(MR. DOUG LANE SWORN BY ATTORNEY.)

MR. LANE: Cowboys, Incorporated received a Conditional Use Permit December of 2001 to operate an indoor and outdoor horse arena with accessory retail sales.

In February of 2002, the revision to the Conditional Use Permit was approved by the Owensboro Metropolitan Board of Adjustments to add an additional access point for trailer traffic. Both permits permitted landscaping along vehicular use area as well as pavement for 50 feet into the property on the access points. The access points have been paved; however, the landscaping as shown on the site plan is not present.

The applicants are proposing additional activities to be offered at the site in conjunction with the previously approved outdoor and indoor recreation activities of equine training, boarding, instruction and events facility previously approved.

The proposal is to include an entertainment center that will be utilized, a 6,000
square foot facility that currently houses the tack store, for hosting birthday parties, leasing to corporations and clubs for meetings or parties, hosting concert performances, hosting seminars, pet clinics, and other instructions during the weekdays of Monday through Thursday.

On Fridays and Saturdays, the proposal is to have Nashville live music, catered food and alcohol sales for shuttle service being provided. The retail tack store will be eliminated.

The applicants envisioned this proposal as an agri-tourism attraction that will allow visitors to Cowboys, Incorporated and continue the Western Equine program.

Agri-tourism was the act of visiting an agricultural, horticultural or agri-business operation for the purpose of enjoyment, education or active involvement in the activities of the operation.

The State Department of Agricultural at various state and local tourism offices and supporting agencies now list more than 140 businesses in 50 Kentucky counties with farm-related industries and institute interest and draw tourist.

State legislatures pass agri-tourism related bill and adopt a resolution to 2002 to promote Ohio Valley Reporting (270) 683-7383
the development of agri-tourism.

The critical part of determining whether to move forward with the particular agri-tourism venture involves legal and regulatory issues. Those include planning and zoning, help regulations, environmental regulations and more. At this particular case, the determination that the addition of the associated entertainment center to the conditionally approved outdoor and indoor recreation facility of horse arenas must be able to fit within the Owensboro Metropolitan Zoning Oridance to allow the Conditional Use Permit to be amended to include such activity.

Under strict interpretation of the Zoning Ordinance, an entertainment center that serves food and alcohol, and have persons for special events would be considered business use and would require the B-4 General Business Zoning classification; however, in this case the use is associated with the Equine Center and continues the western theme to activities that are proposed to be conducted in relationship to overall related activities also being conducted on the property.

In this case, an amended conditional use can be sought because the activities proposed related
to the activity already occurring on the site and could be considered an extension of services offered at the facility. However, in the event that the original conditionally permitted use as an Equine Center with indoor and outdoor arenas were to cease, the entertainment center could not continue as a stand alone activity on the site, as it is not independently permitted under our current zoning ordinance.

It should be noted for the record that the approval of this Conditional Use Permit to allow the entertainment facility to be approved is dependent on the Equine Center continuing its existence with the entertainment center being the secondary set of services offered on the site.

Keith Harpo, GRADD transportation planner, reviewed the site plan and business plan and determined that no improvement of U.S. 60 West were warranted at this time. He stressed that no new access point shall be permitted to the property, and the two access points present are sufficient. While no improvements are being required on U.S. 60 West, we do need to consider the additional traffic that will be generated on site and provide on-site parking to accommodate the uses that will be occurring on the property.
Parking should be added to accommodate the additional entertainment area traffic at a rate of one space per every 100 square feet, plus one space per every three employees on maximum shift.

Due to the potential increase of traffic on the site, the Staff recommends that at a minimum the required entertainment parking be paved to reduce the potential of mud and gravel being carried onto U.S. 60 West for the principal arterial roadway.

Additional parking provided for the outdoor area arena could remain gravel. The applicant is to have 84 paved parking spaces, 16 gravel spaces and a large grass parking area for special events that do not occur on a regular basis.

Additionally, the previously approved site plan meet the requirement for landscaping of the vehicular use area for U.S. right-of-way, but this landscaping has yet to be installed.

A condition of this approval should be made that landscaping be installed prior to the start of use of the entertainment facility. The applicant's site plan depicts the required vehicular use area of landscaping as required by the zoning ordinance.

If approved, the Staff would recommend that the conditional use be annually reviewed to
assure that the use is not detrimental to the public health, safety or welfare.

MR. NOFFSINGER: Mr. Chairman, if I might just summarize for everyone's benefit.

First, Staff is recommending approval.

The first condition would be that it must be operated in conjunction with an indoor and outdoor horse arena actively operating on that property. To put quite simply, it cannot operate as a stand alone bar or entertainment center.

Two, landscaping and paving as per the site plan prior to occupancy; and,

Three, an annual review.

CHAIRMAN: Any other comment by Staff?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Does the applicant have any comments to bring forward at this time, please? Do you understand all the requirements that Staff recommended?

Come and be sworn in. State your name for the record.

MS. YOUNG: Paula Young.

(PAMELA YOUNG SWORN BY ATTORNEY.)

MS. YOUNG: As far as the indoor and outdoor arenas info that's been in the paper, there's
125, 160 students the academy just started. That's not going anywhere because that's our main purpose for that is for the community. The horseback riding, this is to actually increase it for the 4-H Clubs, the Girl Scout organization, Boy Scout organization and like the Boys Club of Owensboro, Big Sister/Little Sister involved in the equine industry.

MR. MILLER: Mrs. Young, could I ask a question? I just saw you shaking your head when he said something about the tack shop closing.

MS. YOUNG: Actually, no. The retail sales, there will still be a small division inside that will carry because we keep the helmets and the safety boots and safety helmets for the students there. We also will be selling like logo shirts, cowboy hats, boots, the same thing we are now, but just on a much smaller scale. So there will still be a retail division inside that store.

CHAIRMAN: Thank you. The applicant have any other comment?

(NO RESPONSE)

CHAIRMAN: Any board member have any other questions or comments?

MR. DYSINGER: I have a question of the Staff.
Mr. Noffsinger, do you anticipate any kind of minimum threshold of these activities to be maintained for compliance to still be in effect? For the applicant's protection is really why I'm asking. I want to make sure they know what's expected.

MR. NOFFSINGER: Well, I think based upon the site plan in terms of 6,000 square feet. You know, it may generate one or two people. It may generate 2,000. We don't know. We've had Green River Area Development to look at the property, look at what's proposed for transportation improvements. That's one reason for the annual review, to make sure that the conditions are being complied with. We have at this point nothing to the contrary to believe they won't be.

MR. DYSINGER: In terms of the first proposed condition operating as an indoor/outdoor horse arena, is there any kind of minimum performance? I mean one rodeo a year, or one horse being boarded, or just any activity at all is going to qualify as compliance on that one?

MR. NOFFSINGER: Well, based upon what Mrs. Young just stated in terms of the horseback riding, community programs, I think that would all qualify. Again, it has to be actively, they have to
be actively engaged in something other than a bar or a honky tonk, if you will, on the site. The reason this is allowed as a Conditional Use Permit is because of the horse-related activities, and bull riding, whatever you might have that's going on there. If those types of activities cease to exist, then it would no longer be a conditionally permitted use and it would become a zoning violation. I think the applicants are aware of that. But to say how many shows per year, you know, at this point we're not recommending any threshold. I couldn't tell you how many had been going on at this point. I do know that they're actively engaged in that type of activity. This use will be contingent upon continuing to pursue those types of activities.

MR. DYSINGER: Thank you.

CHAIRMAN: Any other comments from the board?

(NO RESPONSE)

CHAIRMAN: Hearing none I entertain a motion to dispose of the item.

MR. DYSINGER: Move to approve the Conditional Use Permit with the conditions that it continue to operate with as an indoor/outdoor horse arena;

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2) Landscaping and parking be paved per
the site plan; and,

3) Annual review to ensure compliance
given the findings that it's current with its current
usage and there appears to be no objection.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

CHAIRMAN: A motion has been made and a
second.

MS. MASON: On the paving, make sure it's
prior to occupancy on that.

MR. DYSINGER: I'd like to amend my motion
of the second condition to be the landscaping of
parking paved per site plan before occupancy.

CHAIRMAN: You second that again?

MS. DIXON: Second that again.

CHAIRMAN: Any other questions or comments
from the board?

MR. ELLIOTT: State your name.

MR. YOUNG: Steve Young.

(MR. STEVE YOUNG SWORN BY ATTORNEY.)

MR. YOUNG: Quick question. I have no
problem with what you're wanting us to do. It's all
in the plan anyway. My only issue is the timing
aspect of it. What we're hoping to do is to be open
by ball park of February. How do you pave in January and in December? I won't be able. I mean nobody will do it because of the ground. Can you give me some kind of variance to allow me through at least like July or something because I hate to pave and it just all cracks all to pieces.

MR. DYSINGER: Mr. Chairman, can I ask a question of Staff again?

CHAIRMAN: Yes, sir.

MR. DYSINGER: Mr. Noffsinger, would it be amendable to Staff if we made the landscaping, make occupancy determine on landscaping and put some leniency in there for the parking issue? He brings a valid point up.

MR. YOUNG: I have no problem with landscaping. It's the construction issue on the paving.

MR. NOFFSINGER: Our concern is that the previous Conditional Use Permit was conditioned upon landscaping, and it hasn't been installed. If Staff, given the issue regarding the paving, we would say prior to occupancy it's to be paved or surety posted to cover the paving and that the paving be completed by June 1.

MR. DYSINGER: I think that seems fair.
CHAIRMAN: Upon the condition or a bond or something to do it?

MR. YOUNG: There's no problem. I just hated to spend the money and it all crumble away.

CHAIRMAN: Understand. Appreciate you bringing it up.

MR. DYSINGER: Do we need to amend the motion?

CHAIRMAN: Let's withdraw the motion and let's start over. Entertain a motion.

MR. DYSINGER: I withdraw my earlier motion.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

CHAIRMAN: Now will entertain a new motion.

MR. DYSINGER: I would like to make a motion that we grant the Conditional Use Permit with the following conditions:

1) That it continues to operate as an indoor/outdoor horse arena;

2) That the landscaping be done per the site plan before occupancy, and the parking be paved per the site plan by June 1, and a surety to that affect be posted with Planning Office prior to
occupancy;

3) Condition of annual review to ensure compliance.

MS. DIXON: Second.

CHAIRMAN: We have a motion and a second.

Any other comments by the board or the Staff?

(NO RESPONSE)

CHAIRMAN: The applicant understand what we're trying to do?

MR. YOUNG: Yes.

CHAIRMAN: Hearing none all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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VARIANCE

ITEM 4

10425 Kelly Cemetery Road, in an A-R zone
Consider request for a Variance to reduce the front yard setback from 30 feet to 3 feet in order to place a manufactured home on the property.

Reference: Zoning Ordinance, Article 8, Section 8.5.1(c)

Applicant: Herbert Johnson, Frances Audeline Johnson

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. It is a pretty substantial variance from the requirements of the

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zoning ordinance.

The Daviess County Building Inspector issued permits for the placement of this home on March 9, 1995, and August 16, 1995. The current owners or occupants are replacing the existing home that was on the property with a new manufactured home, I believe.

The Planning Staff has reviewed. They've been out to the property and they can find no place to place a home on this property other than the existing location.

The applicant is agreeable that no additional building permits shall be issued on the property due to topography reasons. They're willing to make that a condition to the variance. The Planning Staff has been out and due to what we've seen, yes, there are special circumstances and, yes, removal of the home would create a hardship of the applicant because there's simply no place else on the lot to put the home. They wouldn't be able to live on the property.

With this we find that the proposal will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or nuisance to the public; and will not allow unreasonable
circumvention of the requirements of the zoning regulations if the Planning Staff recommendation is accepted and we tie this to the two permits that were previously issued by the Daviess County Building Inspector.

CHAIRMAN: Any comments from the board?

(NO RESPONSE)

CHAIRMAN: The applicant have anything you'd like to add on to it?

MR. ELLIOTT: State your name, please.

MR. JOHNSON: I'm Herbert Johnson.

(MR. HERBERT JOHNSON SWORN BY ATTORNEY.)

MR. JOHNSON: There's been a mobile home there for years. I've never heard anything said about it before. Anyway, they take bankrupt and they finally moved it out after about four months. I just run an ad in the paper and this lady liked it. She come up there and she moved a mobile home in. I never thought about telling her about a permit or anything. I thought she ought to know that. Anyway, it's up there. It's ready for electricity. That's all is lacking on it. We've got to get a permit now before we can do that. That's all I really got to say.

CHAIRMAN: Good. We'll work on it then.

Thank you.

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You agree to the conditions on it?

MR. JOHNSON: Yes.

CHAIRMAN: Thank you, sir.

Will take a motion from the board at this time.

MR. DYSINGER: Move to grant the variance request given the findings that it will not adversely affect the public health, safety or welfare; it will not alter the essential character of the general vicinity; it will not cause a hazard or a nuisance to the public; it will not allow an unreasonable circumvention of the requirements of the zoning regulations if Planning Staff recommendation is accepted; with the condition that no additional building permit shall be issued on the property due to the topography.

CHAIRMAN: Is there a second?

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second. Any other questions from the board or comments from the Staff?

(NO RESPONSE)

CHAIRMAN: Hearing none all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPOND AYE.)
CHAIRMAN: Motion carries.
Entertain one final motion.

MS. DIXON: Move to adjourn.

MR. MILLER: Second

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY)
COUNTY OF DAVIESS)

I, LYNETTE KOLLER, Notary Public in and for
the State of Kentucky at Large, do hereby certify that
the foregoing Owensboro Metropolitan Board of
Adjustment meeting was held at the time and place as
stated in the caption to the foregoing proceedings;
that each person commenting on issues under discussion
were duly sworn before testifying; that the Board
members present were as stated in the caption; that
said proceedings were taken by me in stenotype and
electronically recorded and was thereafter, by me,
accurately and correctly transcribed into the
foregoing 21 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this
the 20th day of November, 2004.

LYNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 2
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES:
DECEMBER 19, 2006

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

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