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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

NOVEMBER 4, 2004

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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

\* \* \* \* \*

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

1 of the podiums. State your name for the record and be  
2 sworn in.

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

9 MS. DIXON: Move to approve.

10 MR. DYSINGER: Second.

11 CHAIRMAN: A motion has been made and a  
12 second. All in favor raise your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 Next item please, sir.

16 -----

17 CONDITIONAL USE PERMITS

18 ITEM 2

19 2429 Browns Valley-Red Hill Road, in an A-R zone  
20 Consider request for a Conditional Use Permit to  
21 locate a 0.8 acre family cemetery on the property.  
22 Reference: Zoning Ordinance, Article 8,  
23 Section 8.2 J1  
24 Applicant: Jason Keith Maynard

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

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

8 CHAIRMAN: Any objections or comments made  
9 in the office?

10 MR. NOFFSINGER: No, sir.

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

13 (NO RESPONSE)

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

16 (NO RESPONSE)

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

19 (NO RESPONSE)

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

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

1 safety and welfare.

2 CHAIRMAN: Is there a second?

3 MS. MASON: Second.

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

7 (NO RESPONSE)

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

10 MR. NOFFSINGER: No, sir.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 Next item, please.

16 ITEM 3

17 5760 US 60 West, in an A-R zone  
18 Consider request to amend a Conditional Use Permit in  
19 order to operate an agri-tourism entertainment center  
20 consisting with special events on weekdays and live  
entertainment on weekends in conjunction with the  
conditionally permitted indoor and outdoor horse  
arenas.

21 Reference: Zoning Ordinance, Article 8,  
Section 8.2 B11, K7

22 Applicant: Cowboys of Kentucky

23 MR. NOFFSINGER: Mr. Chairman, Mr. Doug  
24 Lane is here, he's with the Planning Staff, to make a  
25 presentation on behalf of the review of this

1 application.

2 MR. ELLIOTT: State your name for the  
3 record, please.

4 MR. LANE: Doug Lane.

5 (MR. DOUG LANE SWORN BY ATTORNEY.)

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

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

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

24 The proposal is to include an  
25 entertainment center that will be utilized, a 6,000

1 square foot facility that currently houses the tack  
2 store, for hosting birthday parties, leasing to  
3 corporations and clubs for meetings or parties,  
4 hosting concert performances, hosting seminars, pet  
5 clinics, and other instructions during the weekdays of  
6 Monday through Thursday.

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

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

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

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

24 State legislatures pass agri-tourism  
25 related bill and adopt a resolution to 2002 to promote

1 the development of agri-tourism.

2 The critical part of determining whether  
3 to move forward with the particular agri-tourism  
4 venture involves legal and regulatory issues. Those  
5 include planning and zoning, health regulations,  
6 environmental regulations and more. At this  
7 particular case, the determination that the addition  
8 of the associated entertainment center to the  
9 conditionally approved outdoor and indoor recreation  
10 facility of horse arenas must be able to fit within  
11 the Owensboro Metropolitan Zoning Ordinance to allow  
12 the Conditional Use Permit to be amended to include  
13 such activity.

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

24 In this case, an amended conditional use  
25 can be sought because the activities proposed related

1 to the activity already occurring on the site and  
2 could be considered an extension of services offered  
3 at the facility. However, in the event that the  
4 original conditionally permitted use as an Equine  
5 Center with indoor and outdoor arenas were to cease,  
6 the entertainment center could not continue as a stand  
7 alone activity on the site, as it is not independently  
8 permitted under our current zoning ordinance.

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

15 Keith Harpo, GRADD transportation planner,  
16 reviewed the site plan and business plan and  
17 determined that no improvement of U.S. 60 West were  
18 warranted at this time. He stressed that no new  
19 access point shall be permitted to the property, and  
20 the two access points present are sufficient. While  
21 no improvements are being required on U.S. 60 West, we  
22 do need to consider the additional traffic that will  
23 be generated on site and provide on-site parking to  
24 accommodate the uses that will be occurring on the  
25 property.

1                   Parking should be added to accommodate the  
2 additional entertainment area traffic at a rate of one  
3 space per every 100 square feet, plus one space per  
4 every three employees on maximum shift.

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

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

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

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

24                  If approved, the Staff would recommend  
25 that the conditional use be annually reviewed to

1 assure that the use is not detrimental to the public  
2 health, safety or welfare.

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

5 First, Staff is recommending approval.  
6 The first condition would be that it must be operated  
7 in conjunction with an indoor and outdoor horse arena  
8 actively operating on that property. To put quite  
9 simply, it cannot operate as a stand alone bar or  
10 entertainment center.

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

13 Three, an annual review.

14 CHAIRMAN: Any other comment by Staff?

15 MR. NOFFSINGER: No, sir.

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

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

22 MS. YOUNG: Paula Young.

23 (PAMELA YOUNG SWORN BY ATTORNEY.)

24 MS. YOUNG: As far as the indoor and  
25 outdoor arenas info that's been in the paper, there's

1 125, 160 students the academy just started. That's  
2 not going anywhere because that's our main purpose for  
3 that is for the community. The horseback riding, this  
4 is to actually increase it for the 4-H Clubs, the Girl  
5 Scout organization, Boy Scout organization and like  
6 the Boys Club of Owensboro, Big Sister/Little Sister  
7 involved in the equine industry.

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

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

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

21 (NO RESPONSE)

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

24 MR. DYSINGER: I have a question of the  
25 Staff.

1                   Mr. Noffsinger, do you anticipate any kind  
2 of minimum threshold of these activities to be  
3 maintained for compliance to still be in effect? For  
4 the applicant's protection is really why I'm asking.  
5 I want to make sure they know what's expected.

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

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

22                   MR. NOFFSINGER: Well, based upon what  
23 Mrs. Young just stated in terms of the horseback  
24 riding, community programs, I think that would all  
25 qualify. Again, it has to be actively, they have to

1 be actively engaged in something other than a bar or a  
2 honky tonk, if you will, on the site. The reason this  
3 is allowed as a Conditional Use Permit is because of  
4 the horse-related activities, and bull riding,  
5 whatever you might have that's going on there. If  
6 those types of activities cease to exist, then it  
7 would no longer be a conditionally permitted use and  
8 it would become a zoning violation. I think the  
9 applicants are aware of that. But to say how many  
10 shows per year, you know, at this point we're not  
11 recommending any threshold. I couldn't tell you how  
12 many had been going on at this point. I do know that  
13 they're actively engaged in that type of activity.  
14 This use will be contingent upon continuing to pursue  
15 those types of activities.

16 MR. DYSINGER: Thank you.

17 CHAIRMAN: Any other comments from the  
18 board?

19 (NO RESPONSE)

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

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

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

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

6                   CHAIRMAN: Is there a second?

7                   MS. DIXON: Second.

8                   CHAIRMAN: A motion has been made and a  
9 second.

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

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

15                  CHAIRMAN: You second that again?

16                  MS. DIXON: Second that again.

17                  CHAIRMAN: Any other questions or comments  
18 from the board?

19                  MR. ELLIOTT: State your name.

20                  MR. YOUNG: Steve Young.

21                  (MR. STEVE YOUNG SWORN BY ATTORNEY.)

22                  MR. YOUNG: Quick question. I have no  
23 problem with what you're wanting us to do. It's all  
24 in the plan anyway. My only issue is the timing  
25 aspect of it. What we're hoping to do is to be open

1 by ball park of February. How do you pave in January  
2 and in December? I won't be able. I mean nobody will  
3 do it because of the ground. Can you give me some  
4 kind of variance to allow me through at least like  
5 July or something because I hate to pave and it just  
6 all cracks all to pieces.

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

9 CHAIRMAN: Yes, sir.

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

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

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

25 MR. DYSINGER: I think that seems fair.

1                   CHAIRMAN: Upon the condition or a bond or  
2 something to do it?

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

5                   CHAIRMAN: Understand. Appreciate you  
6 bringing it up.

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

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

11                   MR. DYSINGER: I withdraw my earlier  
12 motion.

13                   CHAIRMAN: Is there a second?

14                   MS. DIXON: Second.

15                   CHAIRMAN: Now will entertain a new  
16 motion.

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

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

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

1 occupancy;

2 3) Condition of annual review to ensure  
3 compliance.

4 MS. DIXON: Second.

5 CHAIRMAN: We have a motion and a second.  
6 Any other comments by the board or the Staff?

7 (NO RESPONSE)

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

10 MR. YOUNG: Yes.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 Next item, please.

16 -----

17 VARIANCE

18 ITEM 4

19 10425 Kelly Cemetery Road, in an A-R zone  
20 Consider request for a Variance to reduce the front  
21 yard setback from 30 feet to 3 feet in order to place  
22 a manufactured home on the property.  
23 Reference: Zoning Ordinance, Article 8,  
24 Section 8.5.1(c)  
25 Applicant: Herbert Johnson, Frances Audeline Johnson

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

1 zoning ordinance.

2           The Daviess County Building Inspector  
3 issued permits for the placement of this home on March  
4 9, 1995, and August 16, 1995. The current owners or  
5 occupants are replacing the existing home that was on  
6 the property with a new manufactured home, I believe.

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

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

21           With this we find that the proposal will  
22 not adversely affect the public health, safety or  
23 welfare; will not alter the essential character of the  
24 general vicinity; will not cause a hazard or nuisance  
25 to the public; and will not allow unreasonable

1 circumvention of the requirements of the zoning  
2 regulations if the Planning Staff recommendation is  
3 accepted and we tie this to the two permits that were  
4 previously issued by the Daviess County Building  
5 Inspector.

6 CHAIRMAN: Any comments from the board?

7 (NO RESPONSE)

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

10 MR. ELLIOTT: State your name, please.

11 MR. JOHNSON: I'm Herbert Johnson.

12 (MR. HERBERT JOHNSON SWORN BY ATTORNEY.)

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

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

25 Thank you.

1                   You agree to the conditions on it?

2                   MR. JOHNSON: Yes.

3                   CHAIRMAN: Thank you, sir.

4                   Will take a motion from the board at this  
5 time.

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

17                   CHAIRMAN: Is there a second?

18                   MS. MASON: Second.

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

22                   (NO RESPONSE)

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

25                   (ALL BOARD MEMBERS PRESENT RESPOND AYE.)

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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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1 STATE OF KENTUCKY)  
 ) SS: REPORTER'S CERTIFICATE  
2 COUNTY OF DAVIESS)

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

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

18

19

\_\_\_\_\_  
LYNNETTE KOLLER, NOTARY PUBLIC  
OHIO VALLEY REPORTING SERVICE  
202 WEST THIRD STREET, SUITE 2  
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:  
23 DECEMBER 19, 2006

24 COUNTY OF RESIDENCE:  
DAVIESS COUNTY, KENTUCKY

25