

FEB 20 1992

REVIEW NO. \_\_\_\_\_

RECEIVED

APPLICATION FORM

BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION

(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

1. (Check One)  Boone \_\_\_\_\_ Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_
2. (Check One)  Conditional Use Permit \_\_\_\_\_ Variance \_\_\_\_\_ Appeal \_\_\_\_\_  
\_\_\_\_\_ Change in Non-Conforming Use \_\_\_\_\_
3. Applicant's Name D+M Enterprises DBA Midnight Videos  
Phone Number 485-4279  
Applicant's Address 3010 Verona Mudlick Rd  
Verona Ky 41092  
City State Zip
4. Description of Request: Conditional Use Permit for existing video business since 1986.
5. Name of Development Midnight Videos
6. Location of Development 2008<sup>th</sup> Verona Mudlick Rd  
Verona, Ky 41092
7. Acreage Under Review 0.298
8. Lot Number and Name of Subdivision (if part of a subdivision) \_\_\_\_\_
9. Owner of Property JW Thomas  
Phone Number 606-666-2537
10. Address of Property Owner P.O. Box 71  
Vanleue Ky 41385  
City State Zip
11. Proposed Use(s) On Site Video rentals + sales
12. Total Square Footage of Existing and/or Proposed Buildings  
17x30 - 510 square feet
13. Current Zoning on Property SRI-SC
14. Deed Book 388 Page No. 283 Group No. \_\_\_\_\_
15. Is the site subject to a zone change? NO  
If yes, give date of approval \_\_\_\_\_
16. Have you submitted a Site Plan with this request? YES
17. Have you submitted a list of adjoining property owners with this request? YES
18. Applicant's Signature: Richard Wade + Diane Wade
19. Property Owner's Signature: JW Thomas

SECTION B

(To be completed by Boone County Planning Commission Staff)

- 1. Date Received: 2-20-92
- 2. Fee Received \$ 326.00 R7746
- 3. Is application complete?  Yes  No
- 4. Staff Reviewer Amy Moore
- 5. Scheduled Board Action Date 3/11/92
- 6. Board Action:

Approval  
 Approved with Conditions (See #7)  
 Disapproved (See #8)

- 7. Conditions: Planning Commission should check with  
KDOT to see if a no parking sign or barrier can  
be placed in front of the building to prevent  
autos from parking there.
- 8. Reasons for Disapproval: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## STAFF REPORT

#3

DEVELOPMENT: Midnight Video Store  
APPLICANT: J.W. Thomas (owner)  
LOCATION: 2010 Verona-Mudlick Road (KY 16), Boone County, Kentucky  
ZONING: Suburban Residential One/Small Community (SR-1/SC)  
DATE: March 11, 1992

### REMARKS:

The applicant is seeking a Conditional Use Permit to allow the continuance of a video tape rental store which is currently not a permitted use on the site. The 0.298 acre site is located at 2010 Verona-Mudlick Road (KY 16), Boone County, Kentucky. The property is zoned Suburban Residential One/Small Community (SR-1/SC) and is owned by J.W. Thomas.

On October 12, 1988, a Conditional Use Permit was issued by the Boone County Board of Adjustment to only allow a tanning salon on this 0.298 acre parcel. On October 24, 1991 and December 26, 1991, the Zoning Enforcement Officer sent letters to the applicant notifying her that the video tape rental store was not currently a permitted use on the site.

Article 20, Section 2012 of the Boone County Zoning Regulations states that one Conditional Use permitted on any site having a Small Community overlay district designation is "Radio, t.v., music supplies, cameras, photographic supplies and specialty household appliances." (p. 58) The Zoning Administrator has determined that these uses include video tape rentals.

Section 2015 of the Boone County Zoning Regulations also states that:

"All permitted, accessory and conditional uses, buildings and structures in the SC overlay district are subject to the supplemental, parking and loading, and signage regulations of this order unless exempted by the Board of Adjustment and Zoning Appeals when literal conformance to such regulations would be to the detriment of the district. In exempting uses, buildings, and structures from these regulations, the Board may impose any conditions or limitations which are no more restrictive than the regulations being exempted. All uses in this article are still subject to Site Plan Review or Article 30 of this Zoning Order." (p. 138)

The following reviews the criteria that the Board must use to judge all Conditional Use Permit requests:

1. The activity will be harmonious with and in accordance with the general objectives, or with any specific objective of the County's comprehensive plan and/or zoning order.

The Boone County Comprehensive Plan Future Land Use Map indicates the site to be Suburban Density Residential (SD). The text describes SD as "residential uses that do not exceed four dwelling units per acre." (p. 199)

The text further describes this portion of Boone County..

"The town of Verona should experience limited residential and commercial growth; commercial development between Verona proper and the interchange should be discouraged in order to preserve the small community nature of the town." (p. 218)

Article 33, Off-Street Parking and Loading Facilities, of the Boone County Zoning Regulations outlines the minimum parking provisions required for all sites. Section 3300 specifically states that:

1. "No building or structure shall be erected, substantially altered, or its use changed unless permanently maintained off-street parking and loading spaces have been provided in accordance with the provisions of this order;
2. The provisions of this Article, except where there is a change of use, shall not apply to any existing building or structure. Where there is a change of use, there shall be provided as many of such spaces as may be required by this order." (p. 203)

Joint parking provisions are permitted and regulated by Section 3320.

"Two or more non-residential uses may jointly provide and use parking spaces when their hours of operation do not normally overlap. The use of joint parking in lieu of the required parking will require a written agreement between property owner and a parking study to be approved by the Zoning Administrator." (p. 207)

2. The activity will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and shall not change the essential character of the area.
3. The activity will not be hazardous to existing or future neighboring uses.
4. The activity be adequately served by essential public facilities and services.
5. Excessive additional requirements at the public cost for public facilities and services will not be created or be detrimental to the economic welfare of the community.
6. The proposed use and operation will not be detrimental to any persons, property or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare or odor.

7. The vehicular approaches to the property will be designed so as not to create an interference with traffic on surrounding public streets.

The applicant has indicated to the Staff that customers usually park in the New Bethel Baptist Church parking lot, other nearby parking lots or on Verona-Mudlick Road (KY 16) in front of the store.

Parking within the right-of-way of any KY 16 is a violation of the Kentucky Department of Transportation (KDOT) codes. The regulation is enforced by the State police. KDOT can not issue a permit to allow this type of parking.

The Board must also consider specific criteria which apply to Conditional Uses in Small Community overlay districts:

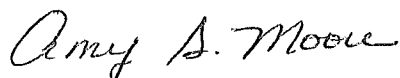
- a. The activity is an integral part of the area's function as a small community center, and is not of scale, nature, or character which will detract from or conflict with the principal purpose and continued well-being of the enter; and
- b. the arrangement of use, building, or structure is compatible with the arrangement or organization of permitted and accessory uses which are to be protected in the district.

**STAFF CONCERNS:**

1. The 0.298 acre site has no on-site parking available for its employees and customers. The applicant has indicated to Staff that the customers of the tanning salon parked on nearby properties although she did not have and currently does not have a written joint parking agreement with the New Bethel Baptist Church or any other property owners.
2. It is not only illegal but dangerous for automobiles to park in front of the building on KY 16. The building is located directly on the intersection of KY 16 and Glencoe-Verona Road which is the main intersection of Verona.

Attached to the Staff Report a plat of the site and copies of the two letters sent by the Zoning Enforcement Officer to the applicant. A copy of the minutes from the October 12, 1988 meeting are also attached.

Respectfully submitted,



Amy S. Moore  
Planner I

ASM:kat

# SURVEY FOR DESCRIPTION

**LOCATION:** North side of KY-16 and Northeast side of KY-14 at the intersection of KY-14 and KY-16 in Verona, Kentucky

**OWNER:** Allie A. Chandler

**BACK REFERENCE:** Deed Book 92, Page 275 (Store Lot)  
Deed Book 112, Page 34 (Small Lot known as Dr. R. L. Finnel Office.)  
Will Book 18, Page 104

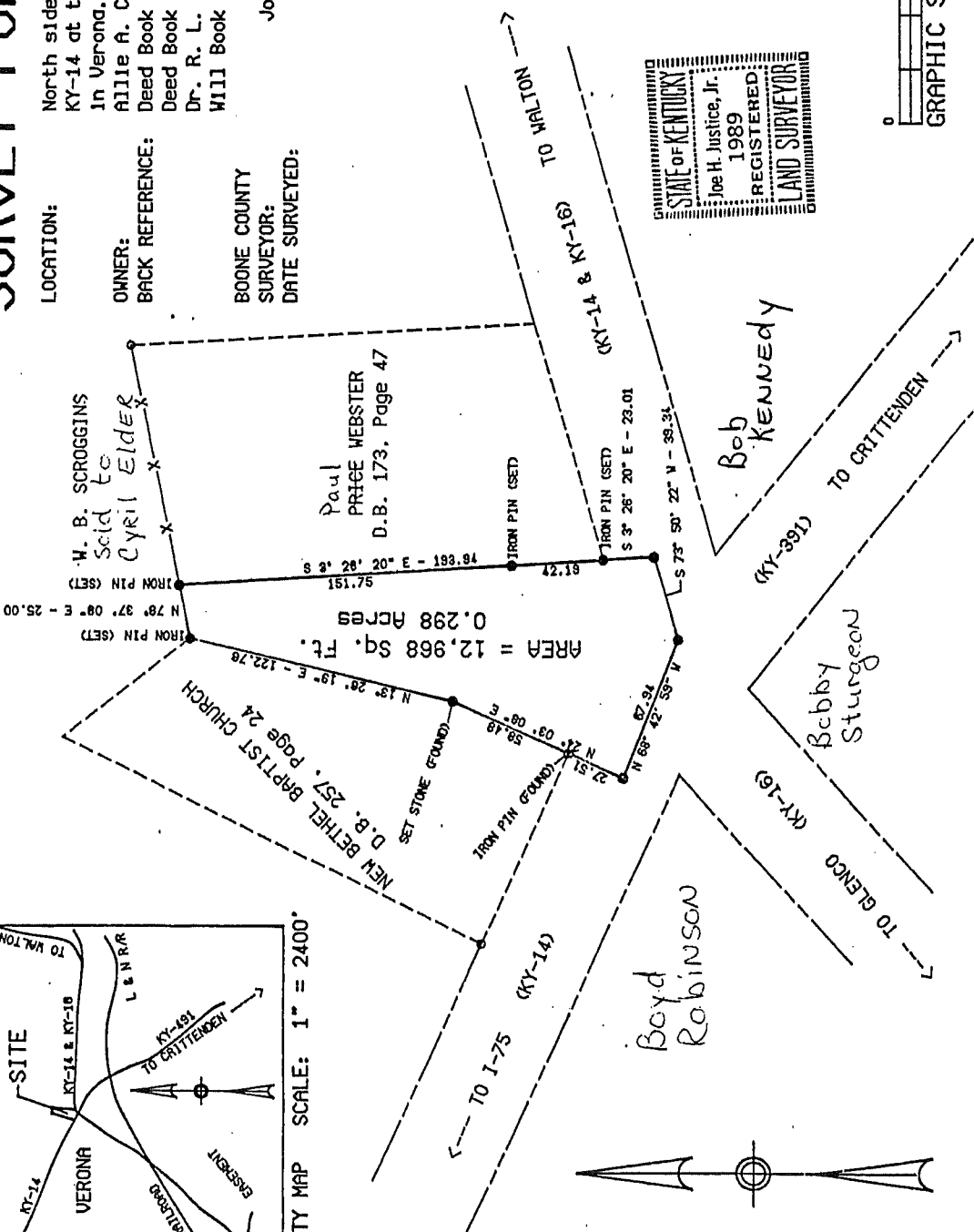
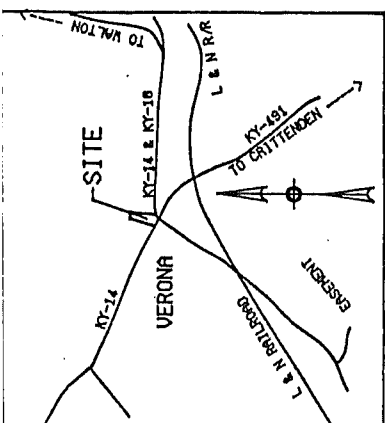
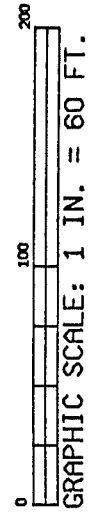
**BOONE COUNTY SURVEYOR:** Joe H. Justice, Jr.  
**DATE SURVEYED:** February 26, 1987

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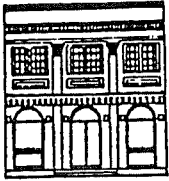
**SURVEYOR'S CERTIFICATION:**  
I do hereby certify that the survey shown hereon was performed under my direction by random traverse. The unadjusted error of closure was 1:5000 and the bearings and distances shown hereon have been adjusted for closure. The bearings shown hereon are magnetic.

*Joe H. Justice, Jr.*  
Joe H. Justice, Jr.  
Registered Land Surveyor # 1989  
2019 Longview Drive  
Georgetown, Kentucky 40324  
Phone 502/863-3063



Midnight Video Rentals  
Conditional Use Permit

BOONE COUNTY



October 24, 1991

Diana Thomas  
2010 Verona-Mudlick Rd.  
Verona, KY 41094

Dear Ms. Thomas:

This letter is written to follow up our conversation at your property earlier this week. Specifically, I visited your video store to determine whether a permit was issued for its operation.

I reviewed the files of the Boone County Board of Adjustment and found that a Conditional Use Permit was issued for this site on October 12, 1988. However, this permit was issued for a tanning salon only. No other type of business, including a video store, was approved at that time. I have found no other indication in any of the Board's files that a video store was ever approved for this site.

With this information in mind, it is my determination that your operation of the Midnight Video store is in violation of the Boone County Zoning Regulations. You have two (2) options at this time:

1. discontinue the business within two weeks (14 days) of receipt of this letter, or;
2. apply, within 14 days, to the Board of Adjustment for a modification of the Conditional Use Permit issued on October 12, 1988. An application form is enclosed.

Please call me as soon as possible with your decision.

Sincerely,

Thomas W. Breidenstein  
Zoning Enforcement Officer

cc: Kevin P. Costello, AICP, Zoning Administrator

Enclosure

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return recipient will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for details and check box(es) for additional service(s) requested.

1.  Show to whom delivered, date, and addressee's address. 2.  Restricted Delivery (Extra charge)

3. Article Addressed to:  
*Diana Thomas  
2010 Verona-Mudlick Rd  
Verona, Ky 41094  
TWB*

4. Article Number  
*P-204-248-345*

Type of Service:  
 Registered  Insured  
 Certified  COB  
 Express Mail  Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee  
*X*

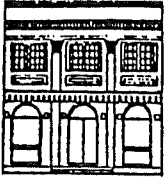
6. Signature - Agent  
*X*

7. Date of Delivery  
*10-29-91*

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989 \*U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RI

Midnight Video Rentals  
 Conditional Use Permit  
**BOONE COUNTY**



December 26, 1991

Ms. Diane Thomas Wade  
 2010 Verona-Mudlick Rd.  
 Verona, KY 41094

Dear Ms. Wade:

This letter is written to follow up on previous conversations we have had regarding the Midnight Video store in Verona.

Please recall that on October 29, 1991, you left a message that Mr. Herbert Brewer obtained a Conditional Use Permit for a video store at the above address in April of 1986. The Boone County Board of Adjustment files contain no indication that such a permit was issued during that month to Mr. Brewer. In fact, I have been unable to find any file, from any date, which would show that your current video rental business at the address above is permitted.

Unless you can demonstrate that the video business is a pre-existing, non-conforming use (as previously claimed by your husband), I must insist that you exercise one of the following options:

1. Discontinue the business within two weeks (14 days) of receipt of this letter, or;
2. Apply, with two weeks (14 days), to the Boone County Board of Adjustment for a Conditional Use Permit. An application form is enclosed.

Please call me as soon as possible with your decision.

Sincerely,

Thomas W. Breidenstein  
 Zoning Enforcement Officer

TWB:kat

cc: Kevin P. Costello, AICP, Zoning Administrator

Enclosures

<p><b>SEND TO:</b> Put your return address on the reverse side. Failure to do this will prevent return. Postage and return fee will provide you the name of the person delivering the article. For additional fees the following services are available. Consult postmaster and check box(es) for additional service(s) requested.</p> <p>1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
<p>3. Article Addressed to:  <i>Ms. Diane Thomas Wade</i>  <i>2010 Verona-Mudlick Rd.</i>  <i>Verona, Ky 41094</i></p>	<p>4. Article Number  <i>P426 42768</i></p> <p>Type of Service:  <input type="checkbox"/> Registered <input type="checkbox"/> Insured  <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD  <input type="checkbox"/> Express Mail <input type="checkbox"/> Return R for Merc</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>5. Signature - Addressee  <input checked="" type="checkbox"/> <i>[Signature]</i></p>	<p>8. Addressee's Address (ONLY requested and fee paid)</p>
<p>6. Signature - Agent  <input checked="" type="checkbox"/></p>	
<p>7. Date of Delivery  <i>12-28-91</i></p>	
<p>PS Form 3811, Apr. 1989 *U.S.G.P.O. 1989-238-815 <b>DOMESTIC RETURN</b></p>	

COPY

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER (S)

J.W. Thomas  
P.O. Box 71  
Vancleve, KY 41285

2. ADDRESS OF PROPERTY

208 Verona Mudlick Road  
Verona, KY 41092

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

Midnight Videos

DEED BOOK: 388

PAGE NO.: 283

GROUP NO.: 2085

4. TYPE OF RESTRICTION (S) (Check all that apply)

_____	Zoning Map Amendment from _____ to _____	<u>  X  </u>	Conditional Use Permit
_____	Development Plan	_____	Conditional Zoning Condition
_____	Subdivision Plat (unrecorded)	_____	Other: (Specify)
_____	Variance		

5. NAME AND ADDRESS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, LEGISLATIVE BODY OR FISCAL COURT WHICH MAINTAINS THE ORIGINAL RECORDS CONTAINING THE RESTRICTION

BOONE COUNTY PLANNING COMMISSION  
2995 WASHINGTON STREET  
BURLINGTON, KENTUCKY 41005

Amy S. Moore  
SIGNATURE OF COMPLETING OFFICIAL

Amy S. Moore, Planner I  
NAME AND TITLE OF COMPLETING OFFICIAL  
(type or print)

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

Subscribed, sworn to, and acknowledge before me by Amy S. Moore  
on behalf of the Boone County Planning Commission this 18th day  
of May, 1992.

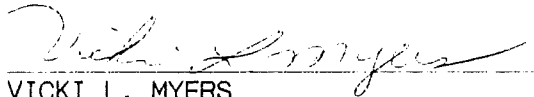


VICKI L. MYERS  
NOTARY PUBLIC, State at Large

My commission Expires:

April 8, 1995

This instrument was prepared for recording purposes only by:



VICKI L. MYERS  
Boone County Planning Commission  
2995 Washington Street  
Burlington, Kentucky 41005

NO TITLE EXAMINATION

(Legal Description and source of Title and Group Number furnished by the applicant.)

BCPC 01/89

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Conditional Use Permit as approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of March 11, 1992, (Certificate of Land Use Restriction # 92-BCBOA-006-A), for J.W. Thomas, property owner.

The Conditional Use Permit is approved with the condition that the Planning Commission should check with KDOT to see if a no parking sign or barrier can be placed in front of the building to prevent autos from parking there.

The approved Conditional Use Permit as well as the preceding conditions apply to the property described in: DEED BOOK 388 PAGE NO. 283 Group No. 2085