

BOULDER DANCE LLC

▼ Chuck Palmer
▼ 2270 Bluebell Ave
▼ Boulder, CO 80302
▼ chuck@river.com
▼ 303-786-8502

January 15, 2009

Boulder County Land Use Department
P.O. Box 471
Boulder, CO 80306

ATT: Ms. Hannah Hippely - Planner

RE: SU-08-008 Boulder Dance - Referral Comments

Dear Hannah,

The following is a summary of the referral comments we have received and our response to resolving any concerns identified. For sake of brevity we have not included the eleven referral responses that responded with “no conflict”

1. **Boulder County Building Division** – We have complete building permit BP-08-997 to address safety issues identified by Jeff Dwight upon inspection of work done without a permit. We are proceeding with the Special Use Review diligently so that we will be allowed to submit for a building permit.
2. **Rocky Mountain Fire District** – We have received a series of question from Ray Proulx concerning this property. As a result of Ray’s comments we have meet on-site (Oct 13, 2008) and completed a tour of the building which included the annual fire inspection. The annual inspection resulted in a conclusion of “no violations”. The applicant has responded in writing (attached) to the questions submitted by the fire district and discussed on site. The responses were considered satisfactory by the fire district based on a follow up discussion with Mr. Proulx.
3. **Boulder County Health Department** – The Applicant will comply with State and local regulations identified in the comment from the Health Department. Because any planned disturbance of the site as part of this application is significantly below the threshold identified we have not addressed the comments related to Land Disturbance and Stormwater Management.

4. **Boulder County Transportation Department** – We have reviewed the comments received for Anita Riley of the County Transportation Department and have provided these comments to Matt Delich, our traffic engineer. As noted by Anita, the project was also referred to Colorado Department of Transportation who provided one of the “no conflict” responses. A full traffic study by Delich Associates is attached.
5. **Boulder County Long Range Planning** – In response to Peter Fogg, Senior Planner, Current/Long Range Planner.

First a correction, Mr. Fogg identified the property under the BVCP as designated Transitional Business. Our review and confirmed by Susan Richstone, Long Range Planning Manager, City of Boulder, is that the property under the BVCP is designated Community Industrial. This was brought to Mr Fogg's attention in a meeting with Mr. Fogg, Ms. Richstone, Hannah Hippely (County Planner), and our personnel.

Mr. Fogg noted that the property is zoned Light Industrial and gave a short description of the Light Industrial District from the Land Use Code.

A. Purpose: Areas for the development of research, light industrial, warehouse, and/or distribution centers.

From this statement he is inferring incompatibility with zoning. But upon further reading of the Land Use Code, as excerpted below, recreational and office uses are fully compatible with Light Industrial zoning based on the fact the proposed uses are identified as “by-right” uses.

B. Principal Uses Permitted

...

5. *Industrial Uses (see 4-505)*

a. Light Industrial

b. Outside Storage (S)

c. Recycling Processing Facility (S)

...

9. *Office Uses (see 4-509)*

a. Professional Office

10. *Recreation Uses (see 4-510)*

a. Indoor Recreation

b. Membership Club

c. Outdoor Recreation, for day use

d. Outdoor Recreation, for night use (S)

...

15. *Warehouse Uses (see 4-515)*

a. Personal Storage Facility

b. Warehouse and Distribution Center

These uses go far beyond what is implied by the short description of Light

Industrial District. The uses that we are requesting as part of our Special Use are **boldly** indicated above. Our uses are clearly compatible in a Light Industrial District in Boulder County.

In Mr Fogg's referral comments he states that a "Special Use Review" triggers the designation of the project as "New Urban Development" as defined by the BVCP. This also over states the case. In the BVCP, "New Urban Development" is defined as:

*"Any proposed development within Area II subject to a county discretionary review process before the Board of County Commissioners, **provided** the county **determines** that the proposed development is **inconsistent** with the land use projections, maps or policies of the Boulder Valley Comprehensive Plan in effect at that time."*

The definition states that having a project within Area II and requiring Special Use Review does not require the project be designated as "New Urban Development" unless it meets the further **determination** that the specific project is **inconsistent** with the BVCP.

Based on our analysis of the BVCP, Boulder Dance is not "New Urban Development". We are not radically changing the building. The building was built in 1970 and we are not modifying the exterior of the building. We are only doing tenant finish to allow multiple "use by-right" activities to occur within a single building. In most cases these kind of facilities end up in rural areas because uses such as Boulder Dance LLC can't afford the cost of space associated with municipalities although the central purpose for the facility is to support the surrounding community similar to a grange.

We are very consistent with the County zoning and the BVCP. As part of our meeting with City and County staff Mr. Fogg noted, **It seem to be a consistent use. We don't know what the projections were.** [Referring to the "*proposed development is inconsistent with the land use projections*" clause of the BVCP] **So part of this depends on whether it is consistent with land use projections and master policies. And that's partly why we referred this to the city.** Based on the comments we received and our discussions with the Staff it is evident that the determination of "New Urban Development" was made by Mr. Fogg and not on a review of the BVCP by the City.

At the suggestion of the County staff, as part of the initial preapplication conference, it was recommended discussing the application with representatives of the City of Boulder due to the location of the project within Area II. We contacted the Ms. Richstone (city long range planner) and provided her information similar to what would be provided in the referral packet. Ms. Richstone's comments were provided in a email stating "From the information you provided and a discussion with Boulder County I did not see anything of concern for us outside of the need to address the change in utility service" (dated 7-9-08). Previous discussions were held with the City planning staff engineer, Steve Buckbee. During a 7-3-08 phone conversation with Mr. Buckbee, he stated

that “the proposed uses would not increase demand for water and sewer and that he would contact you [Ms. Richstone]to discuss further.” The 7-9-08 email from Ms. Richstone confirms that the subsequent referral comment from the city **only** reviewed this application in the light of the County's erroneous determination that the application is “New Urban Development”. Ms. Richstone (city long range planner) stated in our meeting that if the County had not made the determination of “New Urban Development” then the City would not be suggesting annexation.

Mr. Fogg's fifth point is that "The proposed uses more closely fit the BVCP Transitional Business designation than the County's Light Industrial Zoning District." To appropriately respond to this comment we first recognized that the project is within Community Industrial rather than Transitional Business as stated in Mr. Fogg's comments.

First the correction to Community Industrial of the BVCP which is described as:
“The Community Industrial classification is shown for those areas where the predominant uses provide a direct service to the planning area. These uses often have ancillary commercial activity and are essential to the life of the Boulder community.”

This appears to be an accurate description of the uses proposed as part of this application. Thus, we fit nicely within both the county's zoning and the BVCP land use ideals. The BVCP is an over arching land use plan to give direction to and provide consistency across the city and county. So we believe, based on the consistency of the application with County zoning and the BVCP classification the proposed use is located appropriately. In contrast it is unclear if the proposed use actually fit in any of the City's zoning districts that relate to Community Industrial land use of the BVCP. This is **not address** by either Mr. Fogg or Ms. Richstone.

The statement from Mr. Fogg that "The proposed uses more closely fit the BVCP Transitional Business designation than the county's Light Industrial District" in our analysis, is false.

Mr Fogg's concludes "Given all these facts ...” Our analysis disputes of many of Mr Fogg's *facts*. A summary follows:

- 1) The description of Light Industrial Zoning District is over simplified and does not accurately include the by-right uses.
- 2) The wrong Land Use Category of the BVCP and associated wrong description.
- 3) Thus the conclusion that the project is inconsistent with the BVCP is based on the wrong facts.
- 4) The statement that **only** a "Special Use Review" triggers the "New Urban Development" is inaccurate and does not include the required analysis of whether this application is consistent with land use projections and master policies of the BVCP.
- 5) The City's initial review of the application accepted the project as being appropriate in its existing location within Boulder County. It

was not until the County made the erroneous determination that the project was “New Urban Development” that the City stated is requirement to annex and was not based on consistency with an analysis of city zoning nor any review of the BVCP.

We respectfully disagree with Mr. Fogg's conclusion.

6. **City of Boulder Long Range Planning** – In response Ms. Susan Richstone, Long Range Planning Manager, City of Boulder.

Ms Richstone states,

Consistent with the Boulder Valley Comprehensive Plan and the county's finding that this proposal constitutes "new urban development,"

In additional conversations with Ms Richstone, she stated that her referral comment is based on the County’s determination that the application is “New Urban Development”. The suggestion to annex is based solely on the County’s determination.

The city's response and recommendation is directly and solely based on the county's finding of New Urban Development.

We would like to request that this application for Special Use be referred to the Planning Commission and the County Commissioners for further consideration.

Sincerely



Charles Palmer

Principal Member of Boulder Dance LLC

