

5.3.4. Variance of Use

- (A) **Purpose.** Occasionally, a use is proposed that is not allowed in the applicable zoning district. The BoCC may grant a variance of use to allow the proposed use if it determines that it meets the criteria contained in this Code.
- (B) **Applicability.**
- (1) **Where Applicable.** Those uses that are not otherwise an allowed use or special use in a zoning district, except in a PUD Zoning District, may be considered for a variance of use. A variance of use may not be considered in a PUD Zoning District. The power of the BoCC to vary the provisions of this Code is permissive, not mandatory, and shall not be exercised in such a way as to frustrate the scheme or intent of this Code. The power to grant variances shall be exercised sparingly.
 - (2) **Variance of Use to Comply with Review Criteria and Other Standards.** The BoCC evaluates each proposed variance of use for general compliance with the review criteria in this Code and the development standards that apply to all development.
- (C) **Criteria.** In approving a variance of use, the following criteria may be considered:
- The strict application of any of the provisions of this Code would result in peculiar and exceptional practical difficulties or undue hardship.
 - The variance of use is generally consistent with the applicable Master Plan;
 - The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and County;
 - The proposed use will be able to meet air, water, odor or noise standards established by County, State or federal regulations during construction and upon completion of the project;
 - The proposed use will comply with all applicable requirements of this Code and all applicable County, State and federal regulations except those portions varied by this action;
 - The proposed use will not adversely affect wildlife or wetlands;
 - The applicant has addressed all off-site impacts;
 - The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping; and/or
 - Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed variance of use as designed and proposed.
- (D) **Limit of Approval.** Issuance of a variance of use permit shall authorize only the particular use and activity for which it is issued, for the time period, if specified, and in accordance with the permit conditions imposed. The variance of use runs with the land. The variance of use is based on the parcel size stated in the application. A reduction or increase in parcel size is considered a substantial modification of the variance of use unless specifically provided for in the approval. The variance of use permit does not relieve the owner from compliance with any other permits, standards and regulations of this Code. No building permit shall be authorized to implement the use until the variance of use permit is approved.
- The Board of County Commissioners may impose time restrictions on the approved variance of use permit as a condition of approval as it deems necessary.
- (E) **Renewal/Expiration.** If the existing variance of use is subject to expiration, continued operation of the use after expiration of the variance of use permit constitutes a violation, subject to the requirements of [Chapter 11](#). Therefore, the applicant shall submit a new application prior to expiration of the permit conforming to the requirements in place at the time of submittal in order to renew the variance of use permit. If the permit expires, in order to resolve the violation, Applicant shall be required to submit a new application for a new variance of use permit.
- (F) **Administrative Renewal Authorized.** Any variance of use renewal may be acted upon by the PCD Director. In renewing a variance of use, the PCD Director shall consider the record of compliance with conditions of approval, proposed modifications in the scope of the land use, criteria for approval pursuant to this Section or as may otherwise be amended, and may consider other relevant factors. The PCD Director, in their sole discretion, is authorized to elevate a variance of use permit renewal to a public hearing.
- (G) **Suspension/Revocation.** The violation of any applicable requirement or standard of this Code, or of any condition, safeguard or commitments of record of the variance of use permit shall constitute sufficient grounds for suspension or revocation of the variance of use permit by the BoCC, subject to the requirements of [Chapter 11](#).
- (H) **Abandonment.** Unless otherwise specified by the BoCC, variance of use shall be deemed abandoned, and the variance of use permit shall be of no further force and effect, if: (1) the primary intended use or activity has not been substantially implemented within one year of the BoCC's approval; or (2) the primary intended use or activity has been discontinued for a period of one year. For purposes of this provision, a variance of use shall be deemed discontinued if the primary intended use has not been actively and regularly conducted.