



DeKalb County

Unified Development Ordinance

Foreword

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DeKalb County Unified Development Ordinance

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This Wind Energy System section applies to the following zoning districts:



- A. Purpose: This ordinance is to regulate the placement and use of wind energy systems in DeKalb County in regards to:
1. Assuring that the development and production of electricity using wind generators will preserve public health, safety, morals, and general welfare within the county.
 2. Protecting the property value of all parcels connected to and surrounding wind energy systems.
 3. Encouraging economic opportunities for residents of the county.
 4. Providing a set of regulated standards that will guide the development of wind energy systems (Wind Farms) in accordance with DeKalb County's Unified Development Ordinance.
- B. Intent: This ordinance is to provide an organized scheme for the placement, and operation of Wind Energy Systems in DeKalb County. Through the use of reasonable restrictions that are intended to preserve the health, safety, morals, and general welfare of the public.
- C. Applicability: This ordinance regulates the locating of WESs and on-site substations that generate electricity to be sold to a utility. (Owners of WESs with an aggregate generating capacity of less than 1 MW who locate the WES on their own property for their own personal electricity consumption are not regulated by this section of the UDO.) The WESs may be located and operated in any of DeKalb Counties 15 townships within the following zoning districts: A1, A2, A3, A4, I1, I2.
- D. Prohibition: No entity shall construct or operate a wind energy system without having fully complied with the provisions of the DeKalb County Unified Development Ordinance.
- E. Application Requirements: Before the construction of a WES, the applicant shall obtain approval for the following:
1. An application for a "Special Exception" from the DeKalb County Board of Zoning Appeals (BZA) to permit a WES only in the following zoning districts A1, A2, A3, A4, I1, I2, as described in the DeKalb County Unified Development Ordinance. The BZA shall conduct hearings, make written findings of fact, and decisions in accordance with the UDO and Indiana State law. The BZA may impose conditions deemed necessary for the public health, safety, and general welfare. Forms for application and findings of fact will be approved by the BZA.
 - a. The application for a Special Exception shall be filed with the BZA and include the following items:
 - 1.) A WES project summary, including, to the extent available:
 - a.) A general description of the project.
 - (1.) Include a legal description of the property(s) involved.
 - (2.) Include its name plate generating capacity.
 - (3.) The potential equipment manufacturer(s).
 - (4.) The type(s) of WES(s).
 - (5.) Number of towers.
 - (6.) Maximum height of each tower.
 - (7.) Maximum diameter of the WES rotor.
 - (8.) The general location of the project.
 - (9.) Environmental Impact Study
 - b.) A description of the applicant, owner, and operator, including their respective business structures.
 - c.) Studies showing the feasibility and financial practicality of the WES at said location.

- 2.) The name(s), address(es), and phone number(s) of the applicant(s), and operator, including property owner(s) with WESs on their property.
- 3.) Letters of compliance or non-objection from any relevant agencies of Federal, State, and Local jurisdictions, including but not limited to:
 - a.) DeKalb County Surveyor or Drainage Board
 - b.) DeKalb County Health Department
 - c.) DeKalb County Soil and Water Conservation District
 - d.) DeKalb County Highway Department
 - e.) DeKalb County Airport Authority
 - f.) Local Fire Department
 - g.) Federal Aviation Administration
 - h.) Indiana Department of Transportation
 - i.) Indiana Department of Environmental Management
 - j.) Indiana Department of Natural Resources
 - k.) United States Fish and Wildlife Agency
 - l.) Environmental Protection Agency
 - m.) Or as required by the DeKalb County Zoning Administrator
- 4.) The applicant shall comply with any conditions and requirements set forth in said reports from any of the agencies listed in "3.)" above. If there is a conflict in requirements between two or more of these agencies, the BZA will have the responsibility to establish a condition that will address the issue.
- 5.) A topographic map of the project site and the surrounding area which shall encompass an area at least a quarter mile radius from the proposed project site with contours of not more than two foot intervals.
- 6.) A transportation plan approved by the DeKalb County Highway Superintendent and the Indiana Department of Transportation (where necessary) showing how vehicles would access the site(s) and describing the impacts of the proposed energy project on the local and regional road system during construction and operation.

It must include:

 - a.) Routes and methods used in bringing equipment and materials onto the site(s).
 - b.) Movement of equipment from site to site.
 - c.) Removal of all equipment, machinery, and construction debris from the site upon completion.
 - d.) Measures to be taken to protect any underground pipelines, drainage tiles, or other infrastructure.

- 7.) A site restoration plan for repairing areas temporarily disturbed during construction.
It must include:
 - a.) The soil compaction from heavy equipment will be reduced.
 - b.) Top soil will be removed and set aside, then placed back on the surface to limit crop yield loss.
 - c.) This plan must meet the approval of the DeKalb County Soil and Water Conservation District and/or DeKalb County Surveyor/Drainage Board. Its intent is to address damage to drainage, streams, wetlands, and the natural habitat.
- 8.) A fire protection plan for construction and operation of the facility.
- 9.) Any other item reasonably requested by the BZA.
- 10.) A drainage plan for construction and operation must be developed and approved by the DeKalb County Drainage Board.
- 11.) An erosion control plan (Rule 5) must be developed in consultation with the DeKalb County Soil and Water Conservation District and the Indiana Department of Environmental Management
This will cover all disturbances of the soil, including but not limited to:
 - a.) Road cuts at intersections.
 - b.) Access roads (easements) created.
 - c.) Sites of construction.
- 12.) Submit evidence there will be no electromagnetic radio or television transmission interference.
- 13.) A site plan at an approximate scale of 1 inch equals 100 feet.
The drawing must include:
 - a.) A legal description of the property(s) involved.
 - b.) The proposed location of the WES facility.
 - c.) The location and elevation of each tower (including any guy wire or anchor bases if needed). The location coordinates shall be provided in Longitude and Latitude with an accuracy of +/- 15 feet and the elevation shall be in Mean Sea Level (NAVD 1988) with an accuracy of +/- 3 feet.
 - d.) Any WES access roads.
 - e.) Substations.
 - f.) Electrical cabling.
 - g.) Location of structures within one quarter of one mile of any WES project.
 - h.) Property lines including identification of all adjoining property owners.
 - i.) Setback lines.
 - j.) Public roads.
 - k.) Location of all above ground power lines within a distance of two (2) times the height of any WES tower.
 - l.) Location of any historic or heritage site within one quarter of one mile of the location as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources.
 - m.) Any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines.

- 14.) Locate all underground utilities associated with the WES project.
 - 15.) In determining whether to approve the Application for Special Exception, the BZA shall determine whether the application satisfies each of the criteria set forth in the Indiana Code, and make written findings thereof in accordance with Article 9 "Special Exceptions" of the Unified Development Ordinance.
 - 16.) The fee for the application for a Special Exception shall be payable at the time of submission of the application. The fee shall be calculated at the established fee and multiplied by the number of components to be placed, in accordance with Article 12 appendix B "Fee Schedule" of the UDO.
2. A request for variance from the DeKalb County Board of Zoning Appeals for any variances anticipated on the project.
 - a. Upon application for a Special Exception permit, the applicant shall submit an Application for Variance for any variances sought as part of the WES project. A single application for variance may be submitted for all variances sought.
 - b. In determining whether to approve the Application for Variance, the BZA shall determine whether the application satisfied the requirements set forth in the Indiana Code, and make written findings thereof in accordance with Article 9 "Development Standards Variances" in the United Development Ordinance.
 - c. The fee for any variances is included in the application fee.
 3. The BZA shall consider each of the above requirements and the applicant shall submit evidence of compliance with the BZA. The BZA will include said requirements in its findings of fact, requirements, or conditions in the event of any approval of the WES Special Exception.
- F. Improvement Location Permit: Each WES system structural component shall require an Improvement Location Permit. The fee for each Improvement Location Permit shall be as established in Appendix B of Article 12 of the UDO.
1. The applicant shall apply to the DeKalb County Plan Commission for an Improvement Location Permit as required by Indiana Code in accordance with Article 9 "Improvement Location Permit" of the Unified Development Ordinance. In addition to the information required on the application, the applicant shall provide the following information prior to issuance of an Improvement Location Permit:
 - a. Location of all above-ground utility lines within a radius equal to three (3) times the height of the proposed WES.
 - b. The location for each tower shall be provided in Longitude and Latitude with an accuracy of +/- 15 feet and the elevation shall be in Mean Sea Level (NAVD 1988) with an accuracy of +/- feet.
 - c. Location of all underground utility lines associated with the WES.
 - d. Dimensional description of the structural components of the tower construction including the base of footings.
 - e. Schematic of electrical systems associated with the WES including all existing and proposed electrical connections.
 - f. Manufacturer's specifications, installation and operation instructions or specific WES design information.
 - g. Certification by a professional engineer that the tower design is sufficient to withstand wind load requirements for the structure as defined by BOCA.

Wind Energy System (WE)

- h. All turbines shall be new equipment commercially available. Used, experimental, or prototype equipment still in testing shall require approval by the BZA as per the normal Special Exception process.
- i. Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the DeKalb County Zoning Administrator.
- j. No additional accessories, advertisements, etc., other than those associated with the wind turbine operations shall be connected to any wind tower except with express, written permission by the BZA.

G. Design and Installation

1. Design Safety Certification

- a. WESs shall conform to applicable industry standards. The applicant shall submit certificate(s) of design compliance that wind turbine manufactures have obtained from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energie, or an equivalent third party.
- b. Following the granting of location approval under the Ordinance, a Professional Engineer shall certify that each part of the WES is within accepted professional standards, given local soil and climate conditions.

2. Controls and Brakes

All WES turbines shall be equipped with a redundant braking system. This includes both aerodynamic over speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over speed protection.

3. Electrical Components

- a. All electrical components of the WES shall conform to applicable local, state and national codes, and relevant national and international standards.
- b. All WES electrical collection cables between each component shall be underground unless they are located on public or utility rights-of-way or with prior county approval. All transmission lines that are buried should be at a depth consistent with or greater than local utility and telecommunication underground lines standards or as negotiated with the land owner or the land owner's designate until the same reach the property line or a substation adjacent to the property line.

4. Color

- a. Towers and blades shall be a bright white.

5. Warnings

- a. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- b. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of not less than 15 feet from the ground.

6. Climb Prevention

All WES tower designs must include features to deter climbing or be protected by anti-climbing devices such as:

- a. Fences with locking portals at least six feet high; or
- b. Anti-climbing devices 15 feet vertically from the base of the WES tower.
- c. Locked WES tower doors.

7. Blade Clearance

a. The minimum distance between the ground and any protruding blade(s) utilized on a WES shall be thirty (30) feet, as measured at the lowest point of the arc of the blades. The minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.

8. Noise and vibration levels shall be in compliance with all County, State, and Federal regulations. The noise level will not exceed 45 decibels at the nearest property line. The noise level will not exceed 35 decibels as measured from the nearest residential structure. Sound levels shall be measured with a calibrated audiometer manufactured and used in compliance with standards prescribed by the American National Standards Institute. A sound study will be conducted at any neighboring residence within two thousands (2000) feet of any wind turbine in the development. It will evaluate sound levels before and after construction at varying times and wind speeds both day and night. Its intention is to determine if the sound levels are within compliance limits.

9. Shadow Flicker

In no circumstance is a wind turbine to cast intermittent strobe-like shadows (commonly known as flicker) onto a neighboring residential structure.

10. Utility Interconnection

The WES, when interconnected to a utility system, shall meet the requirements for interconnection and operate as set forth in the electrical utility's then-current service regulations applicable to WESs.

11. Waste Management

All solid waste whether generated from supplies, equipment, parts, packaging, operation or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner consistent with industry standards. All HAZARDOUS WASTE generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall be handled in a manner consistent with all Local, State, and Federal rules and regulations.

12. Lighting

Except with respect to obstruction lighting required by the FAA or any other government agencies, all lighting shall be shielded so that no light exists beyond the boundaries of the wind farm facilities.

- a. Obstruction lighting shall be required for all WES towers on the periphery of the development. Obstruction lighting for WES within the interior of the development shall be required, to the extent necessary to ensure that there are no unlighted separation or gaps of more than one-half (1/2) mile. Obstruction lighting shall also be required for any WES towers within the interior of the development that project above the elevation of the periphery by more than twenty-five (25) feet for any reason including, but not limited to, increased height or differing ground elevation. Top-mounted obstruction light fixtures shall be raised above the surface of the nacelle and rotor hub to the extent necessary so as to be visible to an aircraft directly in front of the WES tower.
- b. Lighting shall be by Federal Aviation Administration (FAA) L-864 aviation red-colored flashing lights with a minimum intensity of 2000 candelas or by an equivalent lighting solution if approved by the FAA and the DeKalb County Airport Authority. All obstruction lights shall be synchronized to flash simultaneously so as to delineate the WES development as a single, large development.
- c. Each lighted WES tower shall only require one fixture if the site is manned daily and a non-functioning light can be replaced within the next working day. If the WES operator does not possess the capability to repair/replace a failed light within the next working day, then the placement of two lights shall be required. At a minimum, any non-functioning obstruction light shall be repaired or replaced within two working days unless a more restrictive Federal, State, or Local law requires faster action by the WES operator.

13. Materials

Radar absorbent materials and/or coatings shall be used on the rotor, nacelle, and tower to reduce interference with existing or planned air traffic control, defense and/or weather radar installations.

14. Aviation Compatibility

- a. No portion of the WES development shall be constructed, altered and/or located in such a way that it conflicts with existing and/or proposed airport development plans indicated on the Airport Layout Plan as currently approved by the DeKalb County Airport Authority or with existing and/or proposed operations at the DeKalb County Airport.
- b. No portion of the WES shall be constructed, altered and/or located in such a way that it raises the approach minimums for the DeKalb County Airport. The applicant shall review the project with the appropriate department within the FAA and with the airport prior to obtaining local plan approval.

15. Compliance with Additional Regulations

- a. Any WES thereof declared to be unsafe by the DeKalb County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in the County Ordinances governing the removal of Nuisances.
- b. Nothing in this Ordinance is intended to preempt other applicable State and or Federal laws and regulations.

H. Setbacks

1. No WES shall be constructed in any setback, dedicated public easement or dedicated public right-of-way.
2. Installation of any WES tower may not be nearer than one thousand, three hundred (1,300) feet or 1.1 times the height of the WES tower height, whichever is greatest, to any property lines, dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. Distance shall be measured from the center of the foundation at the base of the tower. New structures built adjacent to wind power facilities may be constructed within the setback requirements but must sign a non-remonstrance waiver. Participating landowners within the area comprising the wind energy conversion system may waive property line setbacks with written approval from all landowners sharing such property line.
3. Except as provided herein, the setback distance for turbines shall be at least 1,500 feet from any existing residential structure. Distance shall be measured at the time of the application for the Improvement Location Permit from the center of the foundation at the base of the tower. The setback distance will be followed except when a variance is granted by the DeKalb County Board of Zoning Appeals.
4. The setback distance for the WES will be 1,500 feet from any institutional use such as a church, school, hospital, or from a platted residential subdivision under the zoning jurisdiction of a municipality. Distance shall be measured from the center of the foundation at the base of the WES tower to the closest Corporate limit boundary line.

I. Use of Roads or Services

An applicant, owner, or operator proposing to use any public road(s), for the purpose of transporting WES components or parts for construction, operation, or maintenance of the WES(s) or Substation(s), shall prior to construction:

1. Identify all such public roads and services;

a. Roads

- 1). Any proposed routes that will be used for construction and maintenance purposes shall be identified. If the route includes a public road, it must be approved by the DeKalb County Highway Superintendent. The Superintendent shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage.
- 2.) Any road damage caused by construction of the WES project equipment, the installation of same, or the removal of same, must be repaired to the satisfaction of the DeKalb County Highway Superintendent. The Superintendent may choose to require remediation of road repair upon completion of the project or is authorized to collect fees for oversized load permits. Further, a corporate surety bond in an amount to be fixed by a Professional Engineer may be required by the Superintendent to insure the County that future repairs are completed to the satisfaction of the DeKalb County Government and most importantly, the people of DeKalb County. The cost of bonding is to be paid by the applicant.

b. Dust Control

Reasonable dust control measures shall be required. The dust control measures shall be as determined by the DeKalb County Highway Superintendent during construction of the WES.

c. Sewer and Water

Any facility shall comply with existing septic and well regulation as required by the DeKalb County Health Department and the State of Indiana Department of Public Health.

d. Drainage Repair

Construction of or maintenance of the Wes project(s) may not impede the flow of water. All damages to waterways, draining ditches, field tiles, or any other infrastructures shall be completely repaired to original condition to the satisfaction of the DeKalb County Surveyor or the DeKalb County Drainage Board. These repairs must be made within six months of the completion of work done.

e. Soil Compaction Mitigation

Where temporary access to WES project(s) crosses agricultural ground, said ground must be returned to original compaction levels in a timely manner to allow for use by the property owner for normal agricultural use.

J. Operation

1. Maintenance/Inspection

- a. The owner or operator of the WES must submit, on an annual basis, a summary of the operation and maintenance reports to the DeKalb County Plan Commission. In addition to the above annual summary, the owner of operator must furnish such operation and maintenance reports as the DeKalb County Zoning Administrator reasonably requests.
- b. Any physical modification to the WES that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification. Like-kind replacements that do not increase irritation to nearby residents (i.e. noise, visual effects, etc.) do not need re-certification. Prior to any physical modification (other than like-kind replacement), the owner or operator shall confer with the Zoning Administrator to determine whether the physical modification requires re-certification.

- c. The DeKalb County Zoning Administrator and/or his designee, along with licensed third party professionals retained by the County for the specific purpose of conducting inspections of the WES shall have the right, at any reasonable time and with one week (7 days) prior notice, to accompany the owner or operator, or their agent, on the premises where a WES has been constructed, to inspect all parts of said WES installation and to require that repairs or alterations be made. The owner or operator of a WES may retain a licensed third party Professional Engineer familiar with WESs to prepare and submit to the DeKalb County Zoning Administrator a written report which address the repairs or alterations requested, and which suggests alternate methods for addressing the concerns or provides evidence that said repairs or alterations are not necessary, within thirty (30) days after receiving notice from the DeKalb County Zoning Administrator that repairs or alterations are requested, or within a longer period of time mutually agreed upon by both parties. The DeKalb County Zoning Administrator will consider any such written report and determine whether the repairs or alterations should be made as originally requested or as suggested in the written report. In the event that an agreement between the DeKalb County Zoning Administrator, the owner or operator, or the third party Professional Engineer retained by them, can not be formed as to these repairs or alterations requested, the decision of the Zoning Administrator shall be final.
2. Interference
 - a. If, after construction of the WES, the owner or operator receives a written complaint related to interference with local broadcast of residential television, FM radio, telecommunication, communication or microwave transmissions, that is verified by radio interference testing, the owner or operator shall take reasonable steps in response to minimize the complaint. Failure to remedy the problem within thirty (30) days may result in requiring the WES to become inactive, notification to the Federal Communications Commission, or other actions as specified in Article 10 of the DeKalb County Unified Development Ordinance.
 - b. If, after construction, the WES creates any interference with any Federal, State, or Local navigational aids (radar, ADS-B, etc) or with weather radar, the operator shall take all necessary steps to immediately correct the interference issue. Applicable steps may include upgrading or replacing the equipment of the affected navigational aid or weather radar, with permission of the equipment owner. Failure to remedy the problem within thirty (30) days may result in requiring the WES to become inactive, notification to the Federal Aviation Administration, notification to the National Weather Service, or other actions as specified in Article 10 of the DeKalb County Unified Development Ordinance.
3. Coordination with Local Fire Department and Emergency Services
 - a. The applicant, owner or operator shall submit to the local fire department and relevant emergency services, a copy of the site plan with each tower or substation located and numbered corresponding to the address of the tower or substation.
 - b. Upon request by the local fire department, the owner or operator shall cooperate with the local fire department to develop the fire department's emergency response plan.
 - c. Nothing in this section shall alleviate the need to comply with other applicable fire laws and regulations.
4. Materials Handling, Storage and Disposal
 - a. All wastes related to the construction, operation and maintenance of the WES shall be removed from the site promptly and disposed of in accordance with all Federal, State and Local laws.
 - b. All hazardous materials, oils, or other waste related to the construction, operation and maintenance of the WES shall be handled, stored, transported and disposed of in accordance with all applicable Federal, State and Local laws.
 - c. Any spills or leaking of hazardous materials must be cleaned up and properly disposed of within ten (10) days of the incident. Any spill or leak that is not removed within ten (10) days shall be a violation of the Special Exception.

K. Liability Insurance

The owner or operator of a commercial WES shall maintain a current general liability policy covering bodily injury and property damage and name DeKalb County as an additional insured with limits of at least two million dollars per occurrence and five million dollars in the aggregate with a deductible of no more than five thousand dollars or as required as a condition of the approval by the BZA.

L. Decommissioning Plan

Prior to receiving location approval under this Ordinance, the County and the applicant, owner, and or operator must formulate a Decommissioning Plan to ensure that the WES project is properly decommissioned. The Decommissioning Plan must be approved by the DeKalb County Board of Zoning Appeals. Further, the applicant must comply with all of the requirements or conditions imposed by the BZA. Failure to do so may be grounds for revocation of the Special Exception.

The Decommissioning Plan shall include:

1. Assurance that the facilities are properly decommissioned upon the end of the project life or facility abandonment. Applicant's obligations with respect to decommissioning shall include removal of all physical material pertaining to the project improvements to a depth of forty-eight (48) inches beneath the soil surface, and restoration of the area occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements. Prior to issuance of an Improvement Location Permit, the applicant shall provide a contractor cost estimation for demolition and removal of the WES facility and will provide financial assurance in an amount at least equal to said demolition and removal contractor cost estimate, through the use of a bond, letter of credit or other security acceptable to the County Commissioners, for the cost of decommissioning each tower, or other necessary structure that is part of the overall WES project to be constructed under any and all WES building permits, which security shall be released when such tower or other structures are properly decommissioned as determined by the DeKalb County Zoning Administrator. In the event of abandonment by the owner or operator, the applicant will provide an affidavit to the DeKalb County Zoning Administrator representing that all easements for wind turbines and all other necessary parts of the WES shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the property owners to ensure that facilities are properly decommissioned within twelve (12) months of expiration or earlier termination of the project.
2. The applicants, owners, or operators failure to materially comply with any of the above provisions shall constitute a default under this ordinance.
3. Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the owner and operator, setting forth the alleged default(s). Such written notice shall provide the owner and operator a reasonable time period, not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default(s).
4. If the County determines in its discretion, that the parties cannot resolve the alleged default(s) within the good faith negotiation period, in accordance with Article 10 of the UDO, provisions addressing the resolution of such default(s) shall govern. Further, to comply with all the requirements of the BZA or conditions imposed by the BZA may be grounds for revocation of the Special Exception.

M. Waiving Requirements

Requirements of this ordinance may be waived by action of the DeKalb County Board of Zoning Appeals, upon application and after public hearings, however any waiver issued by the Board of Zoning Appeals does not relieve the applicant, owner, or operator from their obligation to comply with the requirements of any other applicable Federal, State or Local laws.