

Town of Middlesex

1216 Route 245
Middlesex, New York 14507

ZONING BOARD OF APPEALS **Thursday, April 2, 2026 • 7:00 p.m.**

The following minutes are the official and permanent record of the actions taken by the Town of Middlesex Zoning Board of Appeals, as recorded by the Zoning Board of Appeals Clerk.

Meeting called by: Edward Carman, *ZBA Chairperson*

Board members present: Richard DeMallie
David Wilson
Patricia Stringer
Devin Colbert

Alternate: Position vacant

Staff present: Beth Altemus, *Zoning Board of Appeals Clerk*

Mr. Carman called the meeting to order at 7:01 p.m.

Mr. DeMallie made a motion to accept the minutes of the February 26, 2026, ZBA Public Hearing. Ms. Stringer seconded. All Board members voted in favor, none opposed, and the motion passed.

App# 2026-01-ZBA

Jim Spelman and Spelman Family Limited Partnership are seeking an Administrative Review of the Code Enforcement Officer's determination, made on 1/12/26, not to revoke Building Permit #2018-0450 and not to issue a Stop Work Order for a structure at 766 Newago Avenue, Middlesex, NY, 14507 (Tax Map ID# 11.74-1-1). This application has been consolidated with Application #2025-09-ZBA and incorporates the record of that proceeding.

Mr. Carman explained that all ZBA members had an opportunity to review and give input on a draft decision (see below) in this matter, which will be provided to all parties following the meeting, and the Administrative Review file is open to inspection in the Code Office.

Mr. Carman summarized the decision, which concludes that the property owner of 766 Newago Avenue did not follow proper procedures prior to and after permits were issued, and as all

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residents and contractors shall be required to follow proper procedures set forth in Town zoning code, the Code Enforcement Officer's decision not to revoke the building permit and issue a Stop Work Order is reversed and the second story of the structure at 766 Newago Avenue shall be removed.

Mr. Carman stated that prior to the February 26, 2026, ZBA Public Hearing, the property owner of 766 Newago Avenue made allegations that Mr. Carman was biased, but Mr. Carman stated that these allegations are unfounded, and he remained impartial and did and would not prejudge this determination, and therefore feels he is qualified to participate in the vote.

Mr. DeMallie made a motion to accept the decision. Mr. Wilson seconded.

Roll Call Vote

Richard DeMallie: aye	Dave Wilson: aye	Patricia Stringer: aye
Edward Carman: aye	Devin Colbert: abstain	

Jim Spelman, appellant, was given a hard copy of the determination.

Mr. Wilson made a motion to adjourn the Public Meeting. Ms. Stringer seconded. All ZBA members voted in favor, none opposed, and the meeting was adjourned at 7:15 p.m.

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Middlesex Zoning Board of Appeals
ZBA 2026-01 (consolidated with ZBA 2025-09)

A. Preliminary Statement.

It is essential that the Town's Zoning Laws are applied consistently and impartially with the Code Enforcement Office acting in the interests of all residents. In this instance, it appears that the Town's Code Enforcement Officers failed to require the property owner to comply with the Zoning Law and ignored its violations, to the detriment of the neighbors.

Specifically, Indian Village Holdings, LLC ("Property Owner") was permitted to tear down a pre-existing, nonconforming one-story lakefront structure at 766 Newago Cove ("Property") and replace it with a larger, two-story building that impairs the lake views of neighboring property owners, including James Spelman and the Spelman Family Limited Partnership ("Spelmans"). Notably, the Building Permits appear to have been issued without building plans and, most significantly, without public review. The Property Owner was allowed to circumvent the Site Plan Approval process, denying the Planning Board and the public the opportunity to evaluate the project, impose necessary conditions, and ensure compliance with the Town's planning objectives. This represented an impermissible end-run around the Town's established land use review process.

B. Facts.

On October 4, 2023, the Property Owner appeared before the Town's Planning Board for a Conceptual Site Plan Review for the proposed tear down of a pre-existing, non-conforming building and construction of a replacement building at the Property. The Planning Board inquired about the property lines, the proposed use, and the need for septic and water plans to be included in the final Site Plan. Although the Property Owner agreed to make additional submissions, no information was ever submitted to the Planning Board, and the Property Owner did not return to the Planning Board to obtain Site Plan Approval.

Less than two months later the Town's former Code Enforcement Officer, Dawn Kane, ("Former CEO") granted the Property Owner the original Building Permit ("Original Permit") authorizing the Property Owner to "remodel" the existing structure, requiring it to remain on the "footprint" of the original structure.

Exceeding the authorization in the Original Permit, the Property Owner proceeded to tear down, not remodel, the existing one-story building (which the Town's assessment records indicate was 620 square feet)¹ and replace it with a one-story building that was not on the same footprint and increased the non-conformity. The new replacement building was 20% larger,² which resulted

¹ The 1992 Wilson Survey establishes that the building had the same footprint in 1992, and no records were submitted indicating that a Building Permit was ever issued to increase the size of the non-conforming building.

² Although none of the surveys submitted calculate the exact square footage, the measurements indicate the replacement building is more than 20% larger than the pre-existing non-conforming building. See, Venezia 2025 Survey (indicating that the footprint of the new "Two Story Frame Cottage" measures approximately 751 square feet which is 21% larger than the pre-existing Non-Conforming Building) and Freeland-Parinello 2026 Survey (indicating

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in reduced setbacks³ and increased lot coverage.⁴ The one story building was started in the Spring of 2024, but not completed. There were no objections from the neighbors as to the construction of this one-story building. The Original Building Permit expired on December 8, 2024. There was no additional activity at the Property until April of 2025.

On April 9, 2025, the Former CEO was terminated for cause, and a new interim Code Enforcement Officer was hired and ultimately became the permanent CEO (“Current CEO”). The record reflects that the Property Owner, who had a prior relationship with the Current CEO, discussed the second story addition with him and on April 10, 2025, the CEO allegedly approved the construction of a second story. On April 19, 2025, the Property Owner called Jim Spelman to state he had approval to build a second story. This came as a surprise as the Spelmans who had been told three times by the Former CEO that a second story could not be added without Zoning Board of Appeals (“ZBA”) approval. The Record reflects that the Former CEO had also told the Planning Board Chair that such approval would be necessary.

On April 23, 2025, the Current CEO’s first day as the permanent CEO, he issued an Extended Building Permit to the Property Owner with nearly the same language as the Original Permit, authorizing only the “remodel” of the building within the “footprint,” with no mention of a second story. It is the construction of this second story that is the subject of this review and the ZBA.

C. Findings.

1. The Appeal to the ZBA was timely.

Section 904.2 of the Zoning Law authorizes the ZBA to hear appeals from determinations of the Code Enforcement Officer filed within sixty (60) days from the date that any decision, interpretation, or determination has been made by the Code Enforcement Officer. When an individual seeks revocation of a Building Permit issued to another, they are not required to pursue an appeal until their request for revocation has been rejected with some formality and finality. The 60-day limitations period does not begin to run until the Code Enforcement Officer has overruled the objections in a decision of which the individual has received notice.

On October 3, 2025, the attorney for the Spelmans formally requested that the Code Enforcement Officer issue a Stop Work Order and Revoke Building Permit #2018-0450 (“Demand”). In response, the Current CEO sent an email the same day to the Spelmans’ attorney stating that he would “verify the footprint,” indicating that the Code Enforcement Officer had not

that the footprint of the new “2 story frame building under construction” measures 762.25 square feet which is 22.9% larger than the original building).

³ In the Lake Residential District, the side setbacks are 15 feet. The assessor’s records indicate that at its widest point, the pre-existing building was 22’ and the as-built survey indicates that the width of the new structure is 24.2’. The wider building results in a further reduction in the side setbacks.

⁴ The maximum lot coverage in the Lake District is 20%. If the lot is roughly 30 x 70.87, the square footage of the lot would be approximately 2,126. A 620-square-foot building would alone result in a 29% lot coverage, and a 750-square-foot building would increase the lot coverage to approximately 35%.

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yet made a final determination. On October 22, 2025, receiving no response from the CEO, the Spelmans filed a notice of appeal and thereafter filed an Application for Administrative Review with the ZBA dated October 29, 2025. The ZBA proceeded to hold a Public Hearing on December 4, 2025. The CEO subsequently issued and then filed a formal denial of the Spelmans' Demand on January 13, 2026, which was also appealed by the Spelmans on the same date. The matters were consolidated, the Public Hearing was re-noticed and re-opened, a site visit was conducted, and the ZBA conducted an extensive review of the record. The appeals are deemed timely as they were filed within 60 days after the Code Enforcement Officer rejected the Spelmans' Demand with finality.

It is true that months passed between when the Spelmans first became aware of the second story and their formal demand for revocation of the Permit, but the Record indicates that the Spelmans' delay in filing a formal request was not unreasonable and is partly, if not wholly, attributable to the Town.

When Mr. Spelman questioned the construction of the second story, he claimed that the Property Owner was aggressive and that the CEO told him that the Original Building Permit issued by the Former CEO was valid and that there was nothing that Spelman could do about the Property Owner's actions.

It does not appear that the Current CEO's statement was true. At the time the CEO made this statement, the Original Building Permit issued by former CEO Kane was not valid and had expired, the Permit had not even mentioned a second story, and the Property Owner himself stated at the Public Hearing that he had no intention of constructing a second story at the time the original Building Permit was issued. Also, when the CEO made this statement, he would not have been able to review the Original Permit; the Town did not have a copy of it. The Original Permit was apparently located on the personal device of the Former CEO and removed from the Town's office when she was terminated for cause before the Current CEO was hired.⁵

The Current CEO should have told the Spelmans the truth, that the Original Building Permit had expired and that he had relied on the Property Owner's representations regarding the Original Permit and issued a new Permit that he intended to authorize the construction of a second story, even though it was not mentioned in the Permit. The Spelmans should have been able to trust the statements of the Current CEO, not been told that there was nothing they could do.

The CEO's statement that the second story work was allegedly authorized by the Original Building Permit, not the Building Permit issued on April 23, 2025, explains why the Spelmans agreed to cooperate with the Current CEO's requests that he provide "compromises he could live with" and justifies Spelmans' delay. There would have been no sense of urgency to file a demand for revocation of a Building Permit issued years ago and, if there was nothing he could do, he would feel pressure to engage in negotiations initiated by the Code Enforcement Officer. As part

⁵ The CEO also initially stated that the Property Owner asked to extend the Building Permit "to put a roof on the structure," so he reissued the Building Permit "to allow him to enclose the structure." No mention was made of an authorization for a second story so, either the CEO did not authorize it or wrongly determined that the addition of a second story doubling the size of the building was allowed without requiring Planning Board approval.

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of the negotiations, the Property Owner made a promise to Spelmans regarding the height and stated that there would be a deck, not a second story, on the south side of the building, nearest to the Spelmans' property. According to the Spelmans, these promises were not kept and when he reached out to the Current CEO, he was told only that the Current CEO "would look into it." Notably, the Record also reflects that the Building Permit was not on display at the Property.

Importantly, the Property Owner also suffered no prejudice as a result of the delay. Reliance on these permits to in effect double the size of the structure was not reasonable as the Permit itself did not authorize enlargement of the building and, even if it had, it was issued without the necessary Planning Board review for the issuance of a permit to enlarge a non-conforming building.

2. The Property Owner's construction of a second story was in violation of the Zoning Law.

The Town's Zoning Law expressly provides that "[n]o non-conforming building shall be enlarged, extended, expanded, replaced, or moved unless such alteration would tend to reduce or not increase the degree of nonconformance." *See*, Town Zoning Law §302(a). The addition of the second floor constitutes an enlargement that was not authorized or improperly authorized without the necessary review. The ZBA determines that based on the broad language in §302, adding a second story to a non-conforming building would increase the degree non-conformity.

The Original Permit and the Extended Permit authorized only the "remodel" of the building on the Property on the "same footprint" and did not authorize the building to be enlarged, extended, expanded or replaced. The CEOs were not authorized to issue building permits without Site Plan Approval, rendering such permits void. *See*, Town Zoning Law §402(a)(2), §700.4 and §700.3.4. A Building Permit cannot confer rights in contravention of the zoning laws, and the Town cannot be prevented from enforcing its zoning laws.

The ZBA is also cognizant of provisions of the Town's 1992 Master Plan that seek to protect lakefront scenic views.

The ZBA does not find credible the Property Owner's statement that the Planning Board Chair said that Planning Board review would not be necessary if the building was not moved. Such a statement would contradict the clear requirements of Zoning Law §302, of which the Planning Board Chair is well aware, and contradict the Planning Board Chair's statement in this Record.

D. Determination.

The CEO's refusal to revoke the Building Permit and issue a Stop Work Order is reversed, and the second floor of the non-compliant building is ordered to be removed.

This result, although harsh, is the result of the Property Owner's decision to circumvent both the Planning Board (for Site Plan Approval and Resubdivision Approval) and the ZBA (for necessary variances). Any other result would enable the Property Owner to benefit from violating the Town's Zoning Law and further destroy public confidence in the Town's review process.