

# CAPIZZI LAW OFFICES

MATTHEW G. CAPIZZI, ESQ.  
N.J., N.Y., & D.C. Bars

11 Hillside Ave., Second Floor  
Tenafly, NJ 07670  
201 266 8300 (o)  
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Capizzilaw.com

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New York Office:  
1 Blue Hill Plaza,  
Lobby Level, #1509  
Pearl River, NY 10965  
Reply to New Jersey Office

July 6, 2020

## **Request for Interpretation** **Pursuant to N.J.S.A. 40:55D-70(b) of Ordinance 34-32.5**

### *Via Overnight Mail*

Mr. William McGuire  
Borough of Rockleigh  
26 Rockleigh Road  
Rockleigh, New Jersey 07647

Re: Ogden – Rockleigh Planning Board (the “Applicant”)

Mr. McGuire:

As you know, this office represents the above Applicant regarding its application before the Rockleigh Planning Board seeking an interpretation of Ordinance 34-32.5. To that end, enclosed please find the following:

1. Application for Variance Application. No variance is sought. Your application does not provide for relief under NJSA 40:55D-70(b). Therefore, the Applicant modified the Variance Application to speak to the relief sought here, an interpretation of Ordinance 34-32.5 (18 copies)<sup>1</sup>;
2. Letter to the Chairman and Members of the Board dated July 6, 2020 (18 copies);
3. As Built Survey prepared by Hubschman Engineering dated June 4, 2019. This is provided to assist the Board in referencing the structure which is sought to be razed pursuant to the Ordinance (18 copies); and
4. Applicant’s Checks:
  - Check # 2284 in the amount of \$250.00, which represents the application fee as required by Section 30-1.10(a)(1);
  - Check # 2285 in the amount of \$2,000.00, which represents the escrow fee as required by Section 30-1.10(b)(1)(a).

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<sup>1</sup> Number of copies obtained from Ordinance 30-1.6(i)(2).

Mr. William McGuire  
July 6, 2020  
Page 2 of 2

Please be advised the checklist is not being provided as there are no plans for review before the Board. Kindly review the above materials and advise when this matter will be assigned a hearing date before the Rockleigh Planning Board.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MGC', is written over the typed name 'Matthew G. Capizzi'.

Matthew G. Capizzi

MGC/gd  
Enclosures

ALFRED OGDEN  
NEETA S. OGDEN  
9 WILLOW AVENUE  
ROCKLEIGH, NJ 07647

Morgan Stanley  
PREMIER

2285  
25-80/440

6/23/20  
Date

Pay to the Order of Borough of Rockleigh \$ 2,000<sup>00/100</sup>  
Two thousand Dollars

UMB Bank, N.A.  
Kansas City, MO 64106  
1-800-688-3462



Expense  
Analyzer

For Escrow Fee

[Signature] MP

⑆044000804⑆8902054491215⑆ 2285

ALFRED OGDEN  
NEETA S. OGDEN  
9 WILLOW AVENUE  
ROCKLEIGH, NJ 07647

Morgan Stanley

2284  
25-80/440

PREMIER  
6/23/20  
Date

Pay to the Order of Borough of Rockleigh \$ 250<sup>00/100</sup>  
Two hundred + fifty Dollars

UMB Bank, N.A.  
Kansas City, MO 64106  
1-800-688-3462



Expense  
Analyzer

For Application Fee

[Signature] MP

⑆044000804⑆8902054491215⑆ 2284

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Pearl River, NY 10965

Reply to New Jersey Office

July 6, 2020

## **Request for Interpretation Pursuant to N.J.S.A. 40:55D-70(b) of Ordinance 34-32.5**

Chairman Layne and Members of the Board  
Rockleigh Planning Board  
26 Rockleigh Road  
Rockleigh, New Jersey 07647

Re: Ogden – Rockleigh Planning Board  
9 Willow Avenue (the “Property”)

Dear Chairman Layne and Members of the Board:

This office represents Drs. Fred and Neeta Ogden regarding their request to raze a structure located on the easterly section of their Property (the “Structure”). The Structure has been damaged by severe mold infestation, the cost of which to remediate is in excess of 50% of the value of the Structure. In accordance with Borough Ordinance 34-39, the Structure is totally damaged<sup>1</sup>. Over the last year, we have sought guidance from the Construction/Zoning Official, William McGuire (the “Construction Official”), on obtaining a permit to demolish the Structure. To date, we have not received any formal direction.

Now, therefore, the Ogden’s are before the Rockleigh Planning Board (the “Board”), sitting as a Board of Adjustment, seeking an interpretation of Borough Ordinance 34-32.5 (the “Ordinance”), which provides:

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<sup>1</sup> These facts are provided merely for background and are not pertinent to the Board’s evaluation of the Ogden’s request that the Board interpret Borough Ordinance 34-32.5.

**34-32.5 Destruction of Buildings or Structures.**

Destruction of historic and architecturally significant buildings and structures shall be discouraged. Demolition or removal may be forbidden or postponed for a period of six (6) months, after a public hearing granted to the applicant, if requested, and the Planning Board shall consult civic groups and public agencies to ascertain how the Borough may preserve the building or structure. The Planning Board is empowered to work out with the owner feasible plans for the preservation of buildings and structures, including purchase by the Borough of Rockleigh, where destruction or removal thereof would cause notable historic loss to the public and to the Borough. Moving of such buildings or structures shall be encouraged as an alternative to destruction. **If no feasible alternative is reached, demolition or removal shall be permitted.** (1973 Code § 88-12E). **Emphasis added.**

The Ordinance provides a property owner the right to remove a historic structure, without the need to establish a basis for seeking removal. The Ordinance further provides the Borough with a limited six (6) month period to delay demolition for the sole purpose of seeking preservation of the structure through the Borough or a civic organization taking the structure and locating it elsewhere. The Ordinance **does not** permit the Borough to delay demolition for any other reason.

On January 30, 2019, the Ogden's began their pursuit of a permit to raze the Structure, via letter to the Borough's Historic Preservation Commission (the "HPC"), advising of their intention to raze the Structure and offering to meet with the HPC to discuss the Borough's interest in accepting a donation of the Structure for purposes of relocating elsewhere in the Borough or donation to a civic organization. On July 15, 2019, the Ogden's had a brief hearing before the HPC that unfortunately did not focus on the rights and requirements stated in the Ordinance. Nonetheless, during the July 15, 2019 HPC hearing, the Ogden's, on the record, advised the HPC and the Construction Official, who was also in attendance, that the Ogden's sought to raze the Structure in accordance with the Ordinance and therefore the six month stay provision in the Ordinance began to run. On October 7, 2019, the Ogden's wrote to the Mayor and Council again advising of their intention to raze the Structure. Most recently, on April 27, 2020, the Ogden's, via email to Construction Official, once again reiterated their request for a permit to remove the Structure.

As stated earlier, we have not heard from the Borough about the procedure for razing a Structure in accordance with the Ordinance. The Ordinance is clear on its face; the Borough cannot prohibit the razing of a Structure, but can merely delay removal for a period of six (6) months. Clearly, more than six (6) months have passed since the Ogden's January 30, 2019 letter to the HPC. Therefore, the Borough is required to issue a permit to raze the Structure, predicated upon providing the Borough with the necessary utility cut-off letters, which the Ogden's have obtained.

Chairman Layne and Members of the Board  
July 6, 2020  
Page 3 of 3

We ask the Board review this matter and render a decision directing the Construction Code Official to issue a permit to raze the Structure.

Respectfully Submitted,



Matthew G. Capizzi, Esq.

MGC/hs  
Enclosures

## PART B – VARIANCE APPLICATION

ANY DEVELOPMENT, OR CONSTRUCTION, LOCATED ON PROPERTY IN ANY ZONE OF THE BOROUGH NOT IN CONFORMANCE WITH THE ZONING ORDINANCES OF THE BOROUGH REQUIRES A VARIANCE OR VARIANCES IN THE FORM OF APPROVAL FROM THE PLANNING BOARD IN ORDER FOR THE DEVELOPMENT TO PROCEED, NOTWITHSTANDING SUCH NON-CONFORMANCE WITH THE ZONING ORDINANCES.

PLEASE SUBMIT TWENTY-FOUR (24) TYPEWRITTEN COPIES OF THE APPLICATION, ONLY FOUR (4) OF WHICH MUST BE ORIGINALLY SIGNED AND DATED. THE REMAINING TWENTY (20) COPIES DO NOT NEED TO BE SIGNED AND DATED.

1. Application is hereby made for (check where appropriate/all that apply):

- (     ) Bulk Variance  
 (     ) Use Variance  
 (     ) xxx Other Interpretation under N.J.S.A. 40:55D-70(b)

2. Use:

Existing use(s) Single Family Residence and Carriage House

Proposed use(s) Single Family Residence

Principal Use(s) Existing Single Family Residence to remain without alteration.

Accessory Use(s) Existing pool and patio area to remain without alteration

Is proposed principal use permitted?                    (xxx ) Yes        (     ) No

Conditional:    (     ) Yes        (     ) No        Prohibited:    (     ) Yes        (     ) No

Is proposed accessory use(s) permitted?                    (     ) Yes        (     ) No

Conditional:    (     ) Yes        (     ) No        Prohibited:    (     ) Yes        (     ) No

3. Type of Variance for which application is being made:

N.J.S. 40:55D-70(c)(1)                    (     )                    N.J.S. 40:55D-70(c)(2)                    (     )  
 N.J.S. 40:55D-70(d)                    (     )                    Interpretation under N.J.S.A. 40:55D-70(b)

Cite Zoning Ordinance Section

Provide Zoning Ordinance Requirement

A. Ordinance 34-32.5. Destruction of Buildings or Structures

B. \_\_\_\_\_

C. \_\_\_\_\_

D. \_\_\_\_\_

E. \_\_\_\_\_

4. For each Variance listed under item #3 above, provide what is proposed:

- A. No variances requested.
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_

5. For each Variance listed under item #3, state in detail why the proposed relief should be granted by the Planning Board.

- A. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- B. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- C. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- D. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- E. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Have there been any previous requests for relief from the Planning Board or the former Board of Adjustment involving these premises?

Check one:            Yes    (  )            No    (  )



If yes, for each such request, provide the following information: (i) Date of Hearing;; (ii) Description of Relief Requested; (iii) Relief Granted:

- A. Approval Resolution dated 10/26/2015, use variance to allow two principal structures on one lot, height variance as to principal dwelling, variances as to
- B. driveway piers, setback variances as to carriage house and other relief
- C. enumerated in the aforesaid approval resolution

7. Are there any existing non-conformities with the Zoning Ordinance?

Check one:                    Yes    (    )                    No    (xxx    )

If the answer to this question is "yes", provide the following information:

	Cite Zoning Ordinance Section	Provide Zoning Ordinance Requirement
A.	_____	_____
B.	_____	_____
C.	_____	_____
D.	_____	_____
E.	_____	_____

I certify that all statements and information contained in this and all documents submitted as part of this application are true and accurate.

Signature of Applicant: \_\_\_\_\_

Date: \_\_\_\_\_

**IF THE APPLICANT IS OTHER THAN THE OWNER SET FORTH IN QUESTION #3, THE FOLLOWING MUST BE COMPLETED:**

The undersigned owner of the subject property herewith grants permission to the applicant set forth above to execute and process this application before the Planning Board of the Borough of Rockleigh.

Signature of Owner: \_\_\_\_\_

Date: \_\_\_\_\_

**VARIANCE APPLICATION CHECKLIST**

Use this checklist as a guide for the procedural requirements that must be met by the applicant before the Planning Board will review a Variance Application. Below are listed the submissions that constitute a complete Variance Application.

- |   | <u>Yes</u> | <u>N/A</u> |
|---|------------|------------|
| A: Twenty-four (24) copies of typed Variance Application, only four (4) of which must be originally signed and dated. The remaining twenty (20) copies do not need to be signed and dated.  | ( )        |            |
| B: Fees:           Variance Application   | ( )        |            |
| Engineering, Legal, & Planning Escrow   | ( )        |            |
| C: Twenty-four (24) completed and clear copies of this checklist  | ( )        |            |
| D: Twenty-four (24) copies of Certified Survey, only four (4) of which are required to be signed and sealed, with the remaining twenty (20) acceptable to be submitted unsigned and unsealed, drafted to the specifications listed below, and folded separately to a size no larger than 10" x 14" with the title block showing, if required. See instructions on page 7. | ( )        |            |

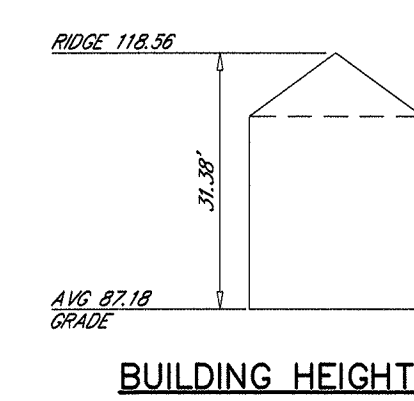
	<u>Yes</u>	<u>No</u>	<u>Waiver</u>
<b>SURVEY, CERTIFIED BY LICENSED SURVEYOR</b>	( )	( )	

- |   |     |     |     |
|---|-----|-----|-----|
| A. Has a Survey been prepared and submitted, setting forth all of the information required for a Survey as set forth under the Historic Review Application Checklist, with the exception of any Waivers being requested                   | ( ) | ( ) |     |
| B. In addition to all of the information required for a Survey pursuant to the Historic Review Application Checklist, does the Survey also include the following:   |     |     |     |
| (i) Key map, containing:  |     |     |     |
| Use borough tax map   | ( ) | ( ) | ( ) |
| Scale, not smaller than 1"-100'   | ( ) | ( ) | ( ) |
| North arrow with same orientation as survey   | ( ) | ( ) | ( ) |
| Property in question  | ( ) | ( ) | ( ) |
| All properties within 200' identified by tax lot and block number   | ( ) | ( ) | ( ) |
| The zoning districts applicable to subject property and those properties within 200'  | ( ) | ( ) | ( ) |
| (ii) Tabular presentation: of names and address of all property owners of all properties within 200', keyed to key map  | ( ) | ( ) | ( ) |
| C. Has a Zoning Analysis been prepared and submitted, setting forth all of the information required for a Zoning Analysis as set forth under the Historic Review Application Checklist, with the exception of any Waivers being requested | ( ) | ( ) |     |

Waivers Requested:

The following Waivers are being requested. Each Waiver shall be identified by the specific information requested in either the Historic Review Application Checklist or the within Variance Application Checklist:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_



**SEPTIC TIES**

A-C	45.2'	B-C	58.3'
A-D	39.9'	B-D	53.9'
A-E	33.0'	B-E	48.4'
A-F	61.1'	B-F	74.2'
A-G	30.2'	B-G	40.4'
A-H	27.2'	B-H	36.5'
A-I	101.7'	B-I	108.7'
A-J	86.3'	B-J	88.5'
A-K	82.8'	B-K	83.1'

**AS-BUILT AGGREGATE GROUND AREA**  
**MAIN BUILDING**

MAIN RESIDENCE	=	3,945 S.F.
COVERED PORCH	=	126 S.F.
COVERED TERRACE	=	349 S.F.
<b>TOTAL</b>	=	<b>4,420 S.F./115,453 S.F. = 3.83%</b>

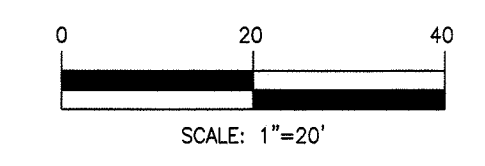
**AS-BUILT AGGREGATE GROUND AREA**  
**ALL STRUCTURES**

MAIN BUILDING	=	4,420 S.F.
CARRIAGE HOUSE	=	1,001 S.F.
DRIVEWAY AREA IN EXCESS 15'	=	853 S.F.
POOL	=	N/A S.F.
PATIO	=	N/A S.F.
WALKWAY & STEPS	=	N/A S.F.
BBQ	=	26 S.F.
GENERATOR	=	N/A S.F.
POOL EQUIP	=	28 S.F.
A/C UNITS	=	17 S.F.
<b>TOTAL LOT COVERAGE</b>	=	<b>6,345 S.F./115,453 S.F. = 5.49%</b>

**CERTIFIED TO:** • MR & MRS OGDEN  
• BOROUGH OF ROCKLEIGH

- REFERENCES**
- 1) SITE PLAN PREPARED BY McNALLY ENGINEERING DATED 2-17-15, REV. DATE 1-24-17.
  - 2) BOROUGH OF ROCKLEIGH TAX MAPS.

INDICATES OVER 15' IN WIDTH



TAX LOT 21.01 IN BLOCK 203

**FINAL AS-BUILT SURVEY**

BOROUGH OF ROCKLEIGH  
BERGEN COUNTY, NEW JERSEY

**HUBSCHMAN ENGINEERING**  
ENGINEERS LAND SURVEYORS PLANNERS  
263A S WASHINGTON AVE., BERGENFIELD  
NEW JERSEY 07621 (201) 384-5666

**ROBERT J. MUELLER, P.L.S.**  
PROFESSIONAL LAND SURVEYOR  
N.J. LIC. 37206

REV.	DWN. MZ	06-04-19	JOB No.
	CHK'D. RJM	SCALE: 1"=20'	<b>3542</b>

© COPYRIGHT 2018 HUBSCHMAN ENGINEERING, P.A.

"A WRITTEN WAIVER AND DECLARATION NOT TO SET CORNER MARKERS HAS BEEN OBTAINED FROM THE ULTIMATE USES PURSUANT TO P.L.2003, c.14(CASB-36.3) AND N.J.A.C. 13:40-5.1(g). THE INFORMATION SHOWN HEREON CORRECTLY REPRESENTS THE CONDITION FOUND AT, AND AS OF DATE OF THE FIELD SURVEY, EXCEPT SUCH IMPROVEMENTS OR EASEMENTS, IF ANY, BELOW THE SURFACE AND NOT VISIBLE. SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT EXAMINED OR CONSIDERED AS A PART OF THIS SURVEY. NO STATEMENT IS MADE CONCERNING THE EXISTENCE OF UNDERGROUND OR OVERHEAD FACILITIES, WETLANDS OR ENVIRONMENTAL RESTRICTIONS OTHER THAN THAT WHICH IS SHOWN. "SURVEY INSPECTIONS" OR "UPDATES" OF THIS MAP ARE PROHIBITED. THIS MAP MAY NOT BE COPIED IN WHOLE OR IN PART. THIS MAP MAY NOT BE USED FOR OTHER PURPOSES OR TRANSACTIONS. THIS MAP WAS PREPARED FOR A SPECIFIC TRANSACTION INVOLVING ONLY THE PARTIES "CERTIFIED TO" ON THIS MAP. ONLY COPIES OF THIS MAP BEARING THE EMBOSSED SEAL OF ROBERT J. MUELLER ARE VALID. CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.