

**BOROUGH OF ROSELLE
PLANNING BOARD
MEETING AGENDA
SEPTEMBER 6, 2023 – 7:00 P.M.**

MEETING CALLED TO ORDER

The requirements of N.J.S.A. 10:4-6 et seq., the “Sunshine Law” has been met. A notice of this meeting was sent to the Star Ledger, published in the Home News Tribune on May 3, 2023, posted on the Bulletin Board in Borough Hall and on the Borough’s website and filed in the Office of the Municipal Clerk.

ROLL CALL

Mayor Donald Shaw, Mayor, Class I Member
Council President Brandon Bernier, Class III Member
Commissioner Marjorie Bozeman, Class IV Member
Commissioner David Goyco, Alternate 2
Commissioner James Lavin, Class IV Member
Commissioner Marthelly Luc Jr., Class IV Member
Commissioner Sylvia Turnage, Class IV Member
Commissioner Eric Walker, Class II Member
Commissioner Vice Chairwoman Olivia Smith, Class IV Member
Commissioner Chairwoman Janna Williams, Class IV Member/Chairwoman

COMMUNICATIONS, REPORTS, AND ADMINISTRATIVE MATTERS

APPROVAL OF MINUTES

Minutes of the Planning Board Meeting - July 5, 2023
Minutes of the Planning Board Meeting - August 2, 2023

Motion to Adopt: Second:

OLD BUSINESS

NEW BUSINESS

- A. **APPLICATION #2023-2** – 732 EAST 1ST AVENUE, BLOCK 204, LOT 4 – APPLICATION FOR A VARIANCE RELIEF BY TILO SALAMANCA
- B. **APPLICATION #2022-14** – 1201 EAST SAINT GEORGE AVENUE, BLOCK 1301, LOT 5.01 – APPLICATION FOR SIGNAGE WITH WAIVER RELIEF BY LAWRENCE WAINSTEIN D/B/A SUPERWASH OF ROSELLE, LLC
- C. **APPLICATION#2023-5** – 120 ALDENE ROAD, BLOCK 6501, LOT 3 – PRELIMINARY AND FINAL MAJOR SITE PLAN APPLICATION WITH “C” VARIANCE AND WAIVE RELIEF BY CRP/SG ROSELLE INDUSTRIAL OWNER, LLC

RESOLUTIONS

PB2023-12 RESOLUTION OF APPROVAL PRELIMINARY AND FINAL SITE PLAN WITH ASSOCIATED BULK VARIANCE AND WAIVER RELIEF (APPLICANT: FUSE BRANDS, INC., 115 EAST 11TH AVENUE, BLOCK 3501, LOT 19.02)

PB2023-13 RESOLUTION OF APPROVAL PRELIMINARY AND FINAL SITE PLAN WITH ASSOCIATED BULK VARIANCE AND WAIVER RELIEF (APPLICANT: ELISA KONADU-NKATIA D/B/A LITTLE EINSTEIN'S ACADEMY, 526-530 EAST 2ND AVENUE, BLOCK 803, LOT 5)

ANNOUNCEMENTS/OPEN TO THE PUBLIC FOR COMMENT

MOTION TO ADJOURN

BOROUGH OF ROSELLE PLANNING BOARD
Borough of Roselle, County of Union, State of New Jersey



RESOLUTION NUMBER PB2023-12

Resolution of Approval
Preliminary and Final Site Plan with Associated Bulk Variance and Waiver Relief

Applicant: Fuse Brands, Inc.
115 East 11th Avenue, Block 3501, Lot 19.02
Borough of Roselle

WHEREAS, the Applicant, Fuse Brands, Inc. (hereinafter referred to as the “Applicant”), has applied to the Planning Board of the Borough of Roselle (hereinafter referred to as the “Board”) for Preliminary and Final Site Plan Approval along with “c” bulk variance relief for the following pre-existing non-conforming conditions: the Central Roselle Revitalization Plan (“CRRP”) requires thirty-five (35) foot front yard setback where existing building has nine (9) foot front yard setback; the Central Roselle Revitalization Plan (“CRRP”) requires ten (10) foot side yard setbacks on each side where existing building has eight (8) foot six (6) inch side yard setback to the eastern side lot line and a one (1) foot side yard setback to the western side lot line the Central Roselle Revitalization Plan (“CRRP”) limits impervious coverage to ninety-five (95%) percent of the lot area, the subject property is currently one hundred (100%) percent, and waiver relief for off street loading berth, parking and the landscaping for the parking area to reuse the existing building on the subject property for a cannabis cultivation and manufacturing facility, both of which are permitted conditional uses in the Flex Industrial Sub-Zone of the CRRP, at the premises located at 115 East 11th Avenue, designated on the Borough’s Tax Maps as Block 3501, Lot 19.02, in the

Borough of Roselle, County of Union and State of New Jersey (hereinafter referred to as the “Property”); and,

WHEREAS, public hearings were held on the Application on July 5, 203 and August 2, 2023; and,

WHEREAS, the proof of notice of the hearing was verified; and,

WHEREAS, the jurisdictional requirements of the Application under the Municipal Land Use Law (MULA), N.J.S.A. 40:55D-12, have been met as the Applicant has produced proof of notice of the public hearing in the official newspaper of the Borough of Roselle, as well as produced proof of notice of the hearing on the adjoining Property owners within two hundred (200’) feet of the Property, as well as other parties required by law to be served with notice of the public hearing; and,

WHEREAS, in order for the Board to grant the requested “c” variances (bulk relief), it requires that the Applicant demonstrates that, due to unique circumstances affecting its Property, it would suffer some hardship without the variance or that the variance would benefit the community and advance the purposes of the Municipal Land Use Law. In addition, the Applicant must demonstrate that the granting of the application would not impose a substantial detriment to the public good or substantially impair the intent and purpose of the municipal master plan and/or Borough Code; and,

WHEREAS, .to satisfy the criteria for a design waiver/exception, if applicable, the Applicant must demonstrate that the waiver or exception is reasonable and within the general purpose and intent of the standards and that the literal enforcement of one or more provisions of the particular standard is impracticable or will exact undue hardship because of peculiar conditions pertaining to the development in question; and,

WHEREAS, on July 5, 2023, the Applicant, through its attorney, Brian Miranda, Esq. presented the professional testimony of James Vash, P.E. of VanCleaf Engineering, as well as the lay testimony of Alan Paton, the Applicant; and,

WHEREAS, on August 2 2023, the Applicant, through its attorney, Sandip Pandya, Esq. presented the professional testimony of James Vash, P.E. of VanCleaf Engineering, John Zhan, the Applicant's professional regarding HVAC (which includes odor mitigation), as well as the lay testimony of Alan Paton, the Applicant; and,

WHEREAS, Mr. Vash and Mr. Zhan were accepted by the Board as an expert in their respective fields; and,

WHEREAS, Board Attorney Dominic P. DiYanni, Esq., of Eric M. Bernstein & Associates, LLC, was also present at the hearings; and,

WHEREAS, the hearings were opened to the public on both July 5, 2023 and August 2, 2023; and,

WHEREAS, the Board, after having conducted hearings held pursuant to law and having reviewed the plans, application and testimony presented on behalf of the Applicant and reviewed the various reports and opinions from the Board and the Borough officials and professionals and based on the evidence presented at the hearings, makes the following findings of fact and conclusions of law:

1. The Board has jurisdiction over the matter and proper proof of service has been made.
2. The Applicant is requesting approval for preliminary and final site approval, along with "c" bulk variance relief for the following pre-existing non-conforming conditions: the Central Roselle Revitalization Plan ("CRRP") requires thirty-five (35) foot front yard setback where existing building has nine (9) foot front yard setback; the Central Roselle

Revitalization Plan (“CRRP”) requires ten (10) foot side yard setbacks on each side where existing building has eight (8) foot six (6) inch side yard setback to the eastern side lot line and a one (1) foot side yard setback to the western side lot line the Central Roselle Revitalization Plan (“CRRP”) limits impervious coverage to ninety-five (95%) percent of the lot area, the subject property is currently one hundred (100%) percent, and waiver relief for off street loading berth, parking and the landscaping for the parking area for the premises located at 115 East 11th Avenue (Block 3501, Lot 19.02) in the Borough of Roselle (hereinafter referred to as “Application”).

3. The Applicant is seeking preliminary and final site plan approval along with the aforementioned variance and waiver relief to reuse the existing building on the subject Property for a cannabis cultivation and manufacturing facility, both of which are permitted conditional uses in the Flex Industrial Sub-Zone of the CRRP where the subject Property is located.
4. The proposed total square footage of the existing facility where the proposed cannabis cultivation and manufacturing business will be located at the subject Property is approximately four thousand (4,000 s/f) square feet.
5. The Board received and considered the following evidence from the Applicant, as well as other items, including the identified exhibits utilized at the time of the July 5, 2023 and August 2, 2023 hearings, as follows:
 - a. Application for Development with attachments, dated March 1, 2023, signed by Allan Paton;
 - b. Preliminary and Final Site Plan titled “Preliminary & Final Site Plan Prepared For Fuse Brands, Inc. Block 3501, Lot 19.02 115 East Eleventh Ave.”, prepared by

James Vash, P.E. of VanCleaf Engineering, Hamilton, New Jersey, dated February 1, 2023, last revised June 9, 2023, consisting of six (6) sheets;

- c. State of New Jersey Cannabis Regulatory Commission Approval for License, signed by Dianna Houenou, dated October 31, 2022;
- d. Drainage Statement, prepared by James A. Bash, PE, of Van Cleaf Engineering Associates, date February 2023;
- e. Development Review Committee Memorandum, prepared by Darlene A. Green, PP, AICP, dated May 9, 2023;
- f. Development Review Committee Meeting Minutes, dated May 23, 2023;
- g. Request for Taxpayer Identification Number and Certification, signed by Allan Paton, dated March 2, 2023;
- h. Letter, prepared by Matthew Bottoms, of Hance Construction, dated April 10, 2023;
- i. State of New Jersey Business Registration Certificate, effective May 11, 2021;
- j. Email correspondence with Chief Helder Frieire, dated May 3, 2023;
- k. Borough of Roselle Preliminary Site Plan Checklist, dated February 24, 2023;
- l. Life Safety Plan, consisting of one (1) sheet, unsigned, dated July 23, 2014;
- m. Schematic Plan, unsigned, dated March 9, 2023;
- n. Security Detail Plan, unsigned, dated March 14, 2023;
- o. Security Detail Letter, prepared by Urban-Gro Design & Build & Build Security Chief, unsigned, dated April 10, 2023;
- p. Borough of Roselle Final Site Plan Checklist, dated February 24, 2023;
- q. Survey, prepared by Joseph Canada, N.J.P.L.S., dated January 31, 2023;
- r. Borough of Roselle Completeness Checklist, dated April 11, 2023;

- s. Technical Completeness Review, prepared by Kevin Boyer, P.E., C.F.M.; dated May 15, 2023.
 - t. Correspondence from Kevin Boyer, P.E., C.F.M., regarding Engineering review dated June 28, 2023, consisting of four (4) pages;
 - u. Correspondence from Lyndsay Knight, P.P., A.I.C.P., regarding Planning review, dated June 27, 2023, consisting of seven (7) pages; and,
 - v. Odor Mitigation Plan, undated, consisting of seventeen (17) pages.
6. The first witness on behalf of the Applicant to testify was James Vash, P.E., of VanCleeef Engineering, the Applicant's Engineer. Mr. Vash was accepted by the Board as an expert in the field of engineering and planning.
 7. Mr. Vash first testified on behalf of the Applicant. Mr. Vash testified as to the Site Plan he had prepared and which was submitted as part of the underlying Application.
 8. Mr. Vash testified concerning the subject Property and its current condition. Mr. Vash testified that there is currently 100% impervious coverage and that there is parking in both in the front and rear of the Property.
 9. Mr. Vash next testified concerning the pre-existing non-conforming conditions regarding the front yard setback, side yard setback, the impervious coverage, as well as the requesting waivers for parking and landscaping.
 10. Mr. Vash then testified that all of these pre-existing non-conforming conditions will remain and the Applicant is not proposing to exacerbate any of the said conditions as part of the subject Application. In fact, there are no proposed exterior improvements for the existing structure on the subject Property.

11. Mr. Vash testified as to the proposed side improvements including the ADA ramp to be installed on the East side of the building.
12. Mr. Vash testified that the loading will all take place within the garage as the van to be utilized for the delivery of the product will be small enough to fit entirely within the garage area and that no loading and/or unloading will occur outside the garage in the open.
13. Next, Mr. Vash testified as to the installation of security lighting which will run on sensors during non-business hours and will be connected to video surveillance which will be able to be viewed both on and off the subject premises.
14. Mr. Vash then testified as to the parking where eight (8) spaces are required and four (4) are being proposed. Mr. Vash provided additional testimony that four (4) proposed spaces would be sufficient since there will be no expected visitors to the Property and there are only three (3) proposed employees.
15. In addition, Mr. Vash testified that one (1) of the proposed four (4) parking spaces will be make ready to fulfill the EV requirement(s) and that the four (4) parking spaces would be located on the Jasper Street side of the Property.
16. Mr. Vash testified that the trash will be stored internally and will be moved out curbside the evening before for pick up as arranged with a private hauler.
17. Mr. Vash confirmed that no exterior signate was proposed as part of the subject Application.
18. Next, Mr. Vash testified that the only exterior improvements consisted of the ADA ramp and the mounted lighting for security.
19. Mr. Vash then testified that the security plan had been submitted and that the Applicant would address the odor control measures.

20. The Applicant, Allan Paton next testified and confirmed to the Board that the Applicant would be in compliance with the State of New Jersey standards as it related to odor control and that the Applicant would be utilizing a carbon filtration system.
21. In terms of the volume of expected deliveries at the subject Property, Mr. Paton testified that there would be shipping out and receiving approximately two (2) deliveries per week.
22. Mr. Paton also testified that there would be three (3) total employees, consisting of one (1) manufacturer, one (1) cultivator and himself to run the business operations. Mr. Paton also testified that the hours of operation would be twenty-four (24) hours per day, seven (7) days per week. The business is not a retail establishment and would not be open to the public for any reason whatsoever according to Mr. Paton and the subject Application before the Board.
23. Mr. Paton confirmed that he had received the conditional license(s) for cannabis manufacturing and cannabis cultivation from the State of New Jersey and would make sure the Board had received a copy of both.
24. Next, the Applicant brought forward Devin Liles, cannabis consultant from Boulder Colorado. Mr. Liles provided testimony to the Board concerning the general carbon filtration process in terms of odor mitigation and control system to be installed as part of the underlying Application.
25. The Applicant also testified that the cultivation activities of the establishment would be conducted entirely indoors.
26. The hearing was then opened to the public to which three (3) member of the public spoke as to their concerns with the subject Application with odor and security issues being the primary issues and concerns expressed.

27. After the Board heard the testimony and evidence and heard from the members of the public there were additional concerns raised as to the odor mitigation control measures being provided as part of the subject Application and the Applicant was requested and required to provide the Board with additional information concerning the odor mitigation control measures to be instituted as the subject Property. At that time, the July 5, 2023 hearing was adjourned and continued to August 2, 2023 without further notice of the Applicant and with the waiving of the time frames associated with the time to make a decision by the Board under the applicable provision of the New Jersey Municipal Land Use Law.
28. The Application was heard again by the Board at the August 2, 2023 meeting. At such time the Applicant provided additional lay testimony along with his professionals, Mr. Vash and Mr. Zhan.
29. Additionally, the Applicant's attorney advised the Board that since the July 5, 2023 hearing, the Applicant had provided the Board with the requested Odor Mitigation Control Plan, in a form consistent with what the Board's professionals had supplied the Applicant.
30. Mr. Zhan testified as to the Odor Mitigation Plan provided to the Board and, more specifically, as to the mechanical components of same.
31. Mr. Zhan testified as to the process to mitigate the odors through the proposed filtration systems and fans. Mr. Zhan was well aware and informed of the overall concept and provided same to the Board along with the proposed mechanism and parts to achieve said concept but no true details as to specific quantities and types were provided to the Board.
32. However, as part of a condition of approval, the Applicant agreed to provide the Board through its professionals and to their satisfaction, standard operating procedures ("SOP")

along with the quantities, types and specifications of the actual mechanisms systems and parts used for the odor mitigation system that will be installed at the subject Property prior to the issuance of any C.O. This will also include the provision of a more detailed maintenance and replacement schedule for the parts and systems associated with the perfect working order of the odor mitigation filtrations systems.

33. Next Mr. Zhan testified as to the proposed complaints procedure and the maintenance procedures as set forth in the proposed Odor Mitigation Plan.

34. Next to testify at the August 2, 2023 hearing was Allan Paton, the Applicant. Mr. Paton testified further about the Odor Mitigation Plan and answered any of the Board members questions concerning same.

35. Finally, the Applicant's Engineer, James Vash, P.E., provided the Board with the overview of the proposed requested variances, all of which were pre-existing, non-conforming in nature, as well as the requested waivers concerning the parking and landscaping.

36. Mr. Vash testified in support of the c(1) variances. Mr. Vash testified concerning the hardship of the subject Property being that the conditions are all pre-existing in nature. Mr. Vash also testified as to the negative criteria in that there is no substantial detriment to the public good and that the proposed use variance will not substantially impair the intent or purpose of the Borough's zoning plan or zoning ordinance.

37. The August 2, 2023 hearing was then opened to the public to which one (1) member of the public spoke and expressed some additional concerns as it related to the enforcement of the odor mitigation and security measures.

38. The Board found that the subject Application of the Property along with "c" bulk variance relief for the following pre-existing non-conforming conditions: the Central Roselle

Revitalization Plan (“CRRP”) requires thirty-five (35) foot front yard setback where existing building has nine (9) foot front yard setback; the Central Roselle Revitalization Plan (“CRRP”) requires ten (10) foot side yard setbacks on each side where existing building has eight (8) foot six (6) inch side yard setback to the eastern side lot line and a one (1) foot side yard setback to the western side lot line the Central Roselle Revitalization Plan (“CRRP”) limits impervious coverage to ninety-five (95%) percent of the lot area, the subject property is currently one hundred (100%) percent, and waiver relief for off street loading berth, parking and the landscaping for the parking area to reuse the existing building on the subject property for a cannabis cultivation and manufacturing facility, both of which are permitted conditional uses in the Flex Industrial Sub-Zone of the CRRP, can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the master plan and ordinances of the Borough of Roselle.

39. The Applicant has represented, and the Planning Board has relied upon the representations, that the Applicant will obtain any and all other governmental approvals, permits, letters, waivers and exemptions and will comply with the conditions of all other governmental entities, including all local licenses and approval(s).
40. The Applicant agrees to comply with all terms, conditions, and recommendations contained in all of the reports of the Borough’s officials and professionals, as if they were set forth at length herein.
41. The Applicant agrees to comply with all requirements and conditions set by Borough and/or Board officials to the extent deemed necessary in the field, as well as with all requirements and conditions imposed in any governmental approval.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Roselle that, based on all of the materials reviewed and the testimony adduced as set forth above, the Application of Fuse Brands, Inc. for Preliminary and Final Site Plan Approval with “c” bulk variance relief for the following pre-existing non-conforming conditions: the Central Roselle Revitalization Plan (“CRRP”) requires thirty-five (35) foot front yard setback where existing building has nine (9) foot front yard setback; the Central Roselle Revitalization Plan (“CRRP”) requires ten (10) foot side yard setbacks on each side where existing building has eight (8) foot six (6) inch side yard setback to the eastern side lot line and a one (1) foot side yard setback to the western side lot line the Central Roselle Revitalization Plan (“CRRP”) limits impervious coverage to ninety-five (95%) percent of the lot area, the subject property is currently one hundred (100%) percent, and waiver relief for off street loading berth, parking and the landscaping for the parking area to reuse the existing building on the subject property for a cannabis cultivation and manufacturing facility, both of which are permitted conditional uses in the Flex Industrial Sub-Zone of the CRRP for the property designated as 115 East 11th Avenue (Block 3501, Lot 19.02) in the Borough of Roselle, County of Union and State of New Jersey, be and is hereby further APPROVED, subject to the following Conditions of Approval:

- A. The introductory clauses and the findings of fact set forth above are incorporated herein as if set forth at length, as Conditions of Approval, where applicable.
- B. The Applicant shall comply with all of the terms, conditions and recommendations contained in all of the reports of Borough officials and professionals, including, but not limited to, any and all reports of the Board Planner, Borough Engineer, and the Borough’s Department of Public Safety. The reports are made a part of this Resolution as if set forth in their entirety.
- C. The Applicant shall comply with all directions of Borough officials and professionals with respect to any changes made in the field during construction and shall amend its plans to reflect such compliance.

- D. The Applicant shall amend all necessary plans pursuant to this approval to depict compliance with any and all existing plans, reports, permits and waivers and the conditions contained in each of them, including but not limited to the location of the garbage/refuse area(s) and the adequate screening thereof, to the satisfaction of the Borough professionals.
- E. The Applicant agrees to work with the Borough professionals as to the sidewalk area to be located in the front of the subject Property.
- F. The Applicant shall provide standard operating procedure(s) (SOP) to the Borough professionals satisfaction concerning the odor mitigation plan, including the provision of a detailed maintenance and replacement schedule(s).
- G. The Applicant shall obtain and comply with all necessary local, State, and/or Federal permits and/or licensing procedure(s). The Applicant shall file with the Board and the Borough copies of all transmittals to and from all government agencies.
- H. The Applicant shall obtain all necessary and/or applicable exemptions from all applicable governmental agencies. The Applicant shall file with the Board copies of all transmittals to and from all applicable government agencies.
- I. Subject to *N.J.S.A. 40:55D-52*, the Applicant shall comply with any and all requirements of Borough Ordinances and all applicable Federal, State and local laws, rules and/or regulations.

So resolved on this 6th day of September, 2023.

PLANNING BOARD OF
BOROUGH OF ROSELLE

Date signed: _____ 2023

By: _____
Janna Williams, Chairwoman

A Motion to Approve the Application was made by Mayor Shaw and seconded by Councilman Bernier at the Hearing held on August 2, 2023:

Roll Call: Voting “yes” in favor of approval: (5)

Board Member Goyco, Councilman Bernier, Board Member Luc, Mayor Shaw,
Chairwoman Williams

Voting “no” in favor of approval: (0)

Motion to Approve Resolution of Approval taken on September 6, 2023 made by _____ and seconded by _____:

Roll call vote to approve Resolution of Approval:

	<u>Motion</u>	<u>Second</u>	<u>Ayes</u>	<u>Nays</u>	<u>Abstain</u>	<u>Absent</u>
Mayor Shaw						
Council President Bernier						
Commissioner Bozeman						
Commissioner Goyco						
Commissioner Lavin						
Commissioner Luc Jr.						
Commissioner Smith						
Commissioner Turnage						
Commissioner Walker						
Chairwoman Williams						

I certify that the above Resolution is a true copy of the Resolution passed by the Borough of Roselle Planning Board on September 6, 2023.

Lisette Sanchez, Secretary
Roselle Borough Planning Board

Date signed: _____, 2023

BOROUGH OF ROSELLE PLANNING BOARD
Borough of Roselle, County of Union, State of New Jersey



RESOLUTION NUMBER PB2023-13

Resolution of Approval
Preliminary and Final Site Plan with Associated Bulk Variance and Waiver Relief

Applicant: Elisa Konadu-Nkatia d/b/a Little Einstein's Academy
526-530 East 2nd Avenue, Block 803, Lot 5
Borough of Roselle

WHEREAS, the Applicant, Elisa Konadu-Nkatia d/b/a Little Einstein's Academy (hereinafter referred to as the "Applicant"), has applied to the Planning Board of the Borough of Roselle (hereinafter referred to as the "Board") for Preliminary and Final Site Plan Approval along with "c" bulk variance relief for maximum fence height (4 feet maximum in the front yard, 6 foot fence(s) proposed), maximum building coverage (80% permitted, 100% proposed, existing non-conforming), minimum front yard setback (10 feet required, 0.06 feet proposed, existing non-conforming), minimum side yard setback (15 feet required, 0.06 feet proposed, existing non-conforming), minimum rear yard setback (30 feet required, 3.25 feet proposed, existing non-conforming), maximum sign area (90% of the linear business frontage with a maximum area of 40 square feet permitted, 189.17 square feet proposed), and waiver relief for parking area landscaping and screening to permit the construction of a second (2nd) story addition to the existing single story building used as a day care facility (known as Little Einstein's Academy) for the premises located at 526-530 East 2nd Avenue, designated on the Borough's Tax Maps as Block 803, Lot 5, in the

Borough of Roselle, County of Union and State of New Jersey (hereinafter referred to as the “Property”); and,

WHEREAS, the subject Property is located in the Borough’s Business/Commercial Zone where the existing day care center facility is a permitted use within that Zone; and,

WHEREAS, public hearings were held on the Application on April 5, 2023 and August 2, 2023; and,

WHEREAS, the proof of notice of the hearing was verified; and,

WHEREAS, the jurisdictional requirements of the Application under the Municipal Land Use Law (MULA), N.J.S.A. 40:55D-12, have been met as the Applicant has produced proof of notice of the public hearing in the official newspaper of the Borough of Roselle, as well as produced proof of notice of the hearing on the adjoining Property owners within two hundred (200’) feet of the Property, as well as other parties required by law to be served with notice of the public hearing; and,

WHEREAS, in order for the Board to grant the requested “c” variances (bulk relief), it requires that the Applicant demonstrates that, due to unique circumstances affecting its Property, it would suffer some hardship without the variance or that the variance would benefit the community and advance the purposes of the Municipal Land Use Law. In addition, the Applicant must demonstrate that the granting of the application would not impose a substantial detriment to the public good or substantially impair the intent and purpose of the municipal master plan and/or Borough Code; and,

WHEREAS, in order to satisfy the criteria for a design waiver/exception, if applicable, the Applicant must demonstrate that the waiver or exception is reasonable and within the general purpose and intent of the standards and that the literal enforcement of one or more provisions of

the particular standard is impracticable or will exact undue hardship because of peculiar conditions pertaining to the development in question; and,

WHEREAS, on the first (1st) hearing date of April 5, 2023, the Applicant, through its attorney, Dennis Francis, Esq., presented the professional testimony of Steven Considine, R.A., the Applicant's Architect and the lay testimony of Elise Ainsworth, the Owner and Director of the existing daycare facility; and,

WHEREAS, Mr. Considine was accepted by the Board as an expert in his respective field; and,

WHEREAS, Board Attorney Dominic P. DiYanni, Esq., of Eric M. Bernstein & Associates, LLC, was also present at the hearings; and,

WHEREAS, the hearings on April 5, 2023 and August 2, 2023 were opened to the public; and,

WHEREAS, after some testimony was provided by the aforementioned witnesses on behalf of the Applicant, and some concerns were raised by members of the Board, it was determined by the Board, upon the request of the Applicant, to postpone the hearing to a future date as the Applicant would be substantially revising its plans for submission and consideration by the Board; and,

WHEREAS, the Applicant subsequently substantially revised its plans and provided applicable and requisite notice under the MLUL for the continuation of the hearing for the Application at the Planning Board's August 2, 2023 meeting; and,

WHEREAS, at the August 2, 2023 meeting, the Applicant, through its attorney, Dennis Francis, Esq., presented the professional testimony of Jose Izquierdo, A.I.A., P.P., the Applicant's Architect and Planner and the lay testimony of Elisa Konadu-Nkatia, the Applicant; and,

WHEREAS, Mr. Izquierdo was accepted by the Board as an expert in his respective fields;
and,

WHEREAS, the Board, after having conducted a hearing held pursuant to law and having reviewed the plans, including the revised plans, application and testimony presented on behalf of the Applicant and reviewed the various reports and opinions from the Board and the Borough officials and professionals and based on the evidence presented at the hearings, makes the following findings of fact and conclusions of law:

1. The Board has jurisdiction over the matter and proper proof of service has been made.
2. The Applicant is requesting approval for preliminary and final site plan approval along with “c” bulk variance relief for maximum fence height (4 feet maximum in the front yard, 6 foot fence(s) proposed), maximum building coverage (80% permitted, 100% proposed, existing non-conforming), minimum front yard setback (10 feet required, 0.06 feet proposed, existing non-conforming), minimum side yard setback (15 feet required, 0.06 feet proposed, existing non-conforming), minimum rear yard setback (30 feet required, 3.25 feet proposed, existing non-conforming), maximum sign area (90% of the linear business frontage with a maximum area of 40 square feet permitted, 189.17 square feet proposed), and waiver relief for parking area landscaping and screening to permit the construction of a second (2nd) story addition to the existing single story building used as a day care facility (known as Little Einstein’s Academy) for the premises located at 526-530 East 2nd Avenue (Block 803, Lot 5) in the Borough of Roselle (hereinafter referred to as “Application”).
3. The Property is located on the southwest corner of East 2nd Avenue and Sheridan Avenue intersection in the Business/Commercial Zone of the Borough of Roselle.

4. The Property is currently improved with a one-story frame building known as the Little Einstein's Academy. The Applicant is proposing to construct a second-floor addition and the total area of the Property is 0.17 acres (7,814 s/f). The proposed use is a permitted use with the Business/Commercial Zone where the subject Property is located.
5. The Board received and considered the following evidence from the Applicant, as well as other items, including the identified exhibits utilized at the time of the April 5, 2023 and August 2, 2023 hearings, as follows:
 - a. Architectural Plans consisting of five (5) sheets entitled, "Proposed New Second Floor Addition Variance Approval" prepared by Steven Considine, dated May 3, 2022;
 - b. Survey, consisting of one (1) sheet, prepared by Vincent Manno, PLS, of Manno Surveying Inc., dated November 6, 2022;
 - c. Site Plan, consisting of one (1) sheet, entitled, "New Second Flr Addition, 526-530 E. Second Ave., Roselle, NJ", prepared by Steven Considine, dated May 3, 2022, last revised February 24, 2023;
 - d. Site Plan consisting of five (5) sheets, entitled "526-530 Second Ave., Roselle, New Jersey Proposed Second Floor Addition to Existing Child Day Care Center Little Einstein's Academy", prepared by Jose Izquierdo, A.I.A. of JAI Architect, LLC and Rudy Vazquez, P.E. of Flex Engineering, dated July 5, 2023;
 - e. Development Review Committee Memorandum, consisting of eight (8) sheets, prepared by Darlene A. Green, PP, AICP of Colliers Engineering & Design, dated February 16, 2023;

- f. Development Review Committee Memorandum, consisting of two (2) sheets, prepared by Carl O'Brien, P.E., P.P., C.M.E., C.P.W.M. of Colliers Engineering & Design, dated March 13, 2023;
 - g. Borough of Roselle, Planning Board/Zoning Board of Adjustment Application, undated;
 - h. Borough of Roselle Final Site Plan Checklist, dated January 5, 2023;
 - i. Borough of Roselle Preliminary Site Plan Checklist, January 5, 2023;
 - j. W-9 Request for Taxpayer Identification Number and Certification, dated September 28, 2022; and
 - k. Meeting minutes, consisting of two (2) sheets, prepared by Darlene A. Green, PP, AICP of Colliers Engineering & Design, dated December 9, 2022;
 - l. Correspondence from Kevin Boyer, P.E., C.F.M., regarding Engineering review dated March 29, 2023, consisting of four (4) pages;
 - m. Correspondence from Kevin Boyer, P.E., C.F.M., regarding Engineering review dated August 2, 2023, consisting of five (5) pages;
 - n. Correspondence from Lyndsay Knight, P.P., A.I.C.P., regarding Planning review, dated March 30, 2023, consisting of six (6) pages; and,
 - o. Exhibit A-1 consisting of two (2) sheets demonstrating three (3) dimensional renderings of the proposed second (2nd) floor addition, last revised July 5, 2023.
6. The first witness to testify before the Board at the August 2, 2023 hearing was the Applicant's architect and professional planer, Jose Izquierdo.

7. Mr. Izquierdo testified as to the subject Property and the current status of the site. He testified that the site is just under 8,000 square feet. He testified as to the Site Plan prepared, which was provided to the Board as part of the underlying Application.
8. Before reviewing the site plan and architectural drawings, Mr. Izquierdo provided an initial summary regarding the variances being sought and that the subject Property would qualify for the requested variances due to the hardship created by the Property's shape and location.
9. Next, Mr. Izquierdo testified as to Exhibit A-1 he had prepared, which consisted of two (2) sheets and illustrated a three (3) dimensional rendering of the proposed second (2nd) floor addition so the Board had a good visual idea of what the proposed Property would look like, should the Board approve the subject Application.
10. Mr. Izquierdo then testified as to the site plan which depicted the proposed drop off and pick up plan for the children and the circulation plan of the vehicles entering the parking area of the Property.
11. Mr. Izquierdo testified that the Application sought to stripe a total of five (5) parking spaces with an ADA compliant space. He testified that he believed the five (5) total spaces as existing were sufficient for the Property given that most of the employees do utilize public transportation or walk to work.
12. Mr. Izquierdo testified that most of the variances being sought were existing conditions which were pre-existing non-conforming and that the subject Application was not exacerbating any of those pre-existing conditions. He did testify that the Application also sought a parking variance and a variance for the fence height.

13. Mr. Izquierdo next testified as to the issues raised by the Planning Board Engineer. Mr. Izquierdo confirmed in his testimony that the parking area would be repaved and striped and that no changes in elevations would be made to the parking area so as to not affect the existing drainage and/or drainage patterns in any manner.
14. Finally, Mr. Izquierdo testified as to the architectural drawings and the layout of the existing first floor and the proposed second floor addition.
15. Mr. Izquierdo testified that the second floor addition would provide an additional five (5) classrooms, an upper outdoor playground area, office space, bathroom facilities and a kitchenette area. Mr. Izquierdo testified that with the proposed addition of five (5) classrooms the center would have a total of nine (9) classrooms.
16. Mr. Izquierdo provided testimony regarding the proposed outdoor area on the second floor addition and the benefits of having same. Questions were posed by the members of the Board regarding the safety of the area and mechanisms to be put in place to ensure the safety of the children. It was ultimately agreed that as a condition of approval the outdoor playground area on the second floor would be enclosed by six foot (6') curved fencing with the appropriate alarm systems installed subject to the satisfaction of the Board's professionals.
17. Next to testify on behalf of the Application was Elisa Konadu-Nkatia the Applicant who is the owner of Little Einstein's Academy and, therefore, very familiar with the day-to-day operations conducted at the subject Property.
18. Ms. Konadu-Nkatia testified as to the general operations of the subject business at the Property. She testified that the day care center currently has eight (8) full time

employees and that most of those employees are local as not one employee is located more than one (1) mile from the Property.

19. Ms. Konadu-Nkatia testified that she has been in the day care business for the past twenty (20) years and has been operating the business at the subject Property for the past ten (10) years.

20. When questioned asked about the additional anticipated employees, Ms. Konadu-Nkatia testified that if the second story addition were approved she would need approximately an additional eight (8) employees. When further questioned by members of the Board as to the proposed parking and the additional employees, Ms. Konadu-Nkatia testified that she would do everything she could to work with adjacent property owners to possibly lease some additional spaces. However, she continued to testify that she felt the five (5) parking spaces would still be sufficient.

21. The Board Planner advised the Board that the MLUL and the New Jersey Administrative Code do not require childcare centers to provide any parking so there is no actual requirement which must be met.

22. Finally, Ms. Konadu-Nkatia testified that as to the Board professionals' reports submitted as part of the review of the Application, the Applicant would agree to comply with all conditions contained in those reports, which are part of the record and part of the conditions of approval as if fully set forth herein.

23. Next to testify on behalf of the Applicant was the Applicant's Planner, Jose Izquierdo, P.P. Mr. Izquierdo testified to the "c" variances and waiver relief being requested and that the subject Application is consistent with the intent and purposes of the Borough Code and the master plan.

24. Mr. Izquierdo testified that the requested “c” variances can be granted under the c(1) hardship standard based upon the existing nature of the subject Property and that most of the requested “c” variances sought are pre-existing non-conforming in nature which would meet the requirements.
25. In addition, Mr. Izquierdo further testified to the positive criteria that would be required should the Board approve the Application, including: (a) the benefits the community would receive as a whole in the additional day care space should the variances be approved; (b) that the variance(s) can be granted without substantial detriment to the public good; and, (c) that the benefits of the deviation would substantially outweigh any detriment, which he could not find any detriments in the granting of the requested variances.
26. Mr. Izquierdo further testified as to the negative criteria, including: (a) that relief can be granted without substantial detriment to the public good; and, (b) the Application will not substantially impair the intent and purpose of the master plan and zoning ordinance.
27. The hearing was then opened to the public, to which one (1) individual spoke regarding their support of the Application.
28. The Board found the testimony of Mr. Izquierdo and Ms. Konadu-Nkatia to be credible.
29. The Board ultimately found after further deliberation that the subject preliminary and final site plan application of the Property along with “c” bulk variance relief for maximum fence height (4 feet maximum in the front yard, 6 foot fence(s) proposed), maximum building coverage (80% permitted, 100% proposed, existing non-conforming), minimum front yard setback (10 feet required, 0.06 feet proposed,

existing non-conforming), minimum side yard setback (15 feet required, 0.06 feet proposed, existing non-conforming), minimum rear yard setback (30 feet required, 3.25 feet proposed, existing non-conforming), maximum sign area (90% of the linear business frontage with a maximum area of 40 square feet permitted, 189.17 square feet proposed), and waiver relief for parking area landscaping and screening to permit the construction of a second (2nd) story addition to the existing single story building used as a day care facility (known as Little Einstein's Academy) can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the master plan and ordinances of the Borough of Roselle.

30. The Board further finds that the Applicant has represented, and the Planning Board has relied upon the representations, that the Applicant will obtain any and all other governmental approvals, permits, letters, waivers and exemptions and will comply with the conditions of all other governmental entities.
31. The Board finds that the Applicant agrees to comply with all terms, conditions, and recommendations contained in all of the reports of the Borough's officials and professionals, as if they were set forth at length herein.
32. The Board finds that the Applicant agrees to comply with all requirements and conditions set by Borough and/or Board officials to the extent deemed necessary in the field, as well as with all requirements and conditions imposed in any governmental approval.
33. The Board finds and agrees that the Application shall improve the area for the general welfare of the community at large and demonstrates that the Applicant will continue to contribute towards the well-being of the surrounding citizens and communities.

34. The Board finds in favor of approving the subject Application based upon the Applicant satisfying the necessary criteria for site plan approval along with c variance relief and design waiver relief.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Roselle that, based on all of the materials reviewed and the testimony adduced as set forth above, the Application of Elisa Konadu-Nkatia d/b/a Little Einstein's Academy for preliminary and final site plan approval with "c" bulk variance relief for maximum fence height (4 feet maximum in the front yard, 6 foot fence(s) proposed), maximum building coverage (80% permitted, 100% proposed, existing non-conforming), minimum front yard setback (10 feet required, 0.06 feet proposed, existing non-conforming), minimum side yard setback (15 feet required, 0.06 feet proposed, existing non-conforming), minimum rear yard setback (30 feet required, 3.25 feet proposed, existing non-conforming), maximum sign area (90% of the linear business frontage with a maximum area of 40 square feet permitted, 189.17 square feet proposed), and waiver relief for parking area landscaping and screening to permit the construction of a second (2nd) story addition to the existing single story building used as a day care facility (known as Little Einstein's Academy) for the property designated as 526-530 East 2nd Avenue (Block 803, Lot 5) in the Borough of Roselle, County of Union and State of New Jersey, be and is hereby further APPROVED, subject to the following Conditions of Approval:

- A. The introductory clauses and the findings of fact set forth above are incorporated herein as if set forth at length, as Conditions of Approval, where applicable.
- B. The Applicant shall comply with all of the terms, conditions and recommendations contained in all of the reports of Borough officials and professionals, including, but not limited to, any and all reports of the Board Planner, Borough Engineer, and the Borough's Police and Fire Departments. The reports are made a part of this Resolution as if set forth in their entirety.

- C. The Applicant shall comply with all directions of Borough officials and professionals with respect to any changes made in the field during construction and shall amend its plans to reflect such compliance.
- D. The Applicant shall amend all necessary plans pursuant to this approval to depict compliance with any and all existing plans, reports, permits and waivers and the conditions contained in each of them, including but not limited to the location of the garbage/refuse area(s) and the adequate screening thereof, to the satisfaction of the Borough professionals.
- E. The Applicant agrees to install bollard protection near the outdoor play area.
- F. The Applicant agrees to work with the Board Engineer regarding the paving and striping of the parking area to the Board Engineer's satisfaction. Specifically, the Applicant shall work with the Board professional so that there is a continuation of the sidewalk all the way through and that the asphalt entrance/exit areas will be replaced by an agreed upon concrete apron between the roadway and the sidewalk area, including appropriate markings identifying same.
- G. The Applicant agrees to amend the existing plans to demonstrate a signage table to demonstrate compliance with the Borough Ordinance(s) and to the satisfaction of the Board professionals.
- H. The Applicant agrees that the second story outdoor playground area shall be closed with an agreed upon curved fencing and alarm system to the satisfaction of the Board professionals.
- I. The Applicant shall obtain and comply with all necessary local, State, and/or Federal permits. The Applicant shall file with the Board and the Borough copies of all transmittals to and from all government agencies.
- J. The Applicant shall obtain all necessary and/or applicable exemptions from all applicable governmental agencies. The Applicant shall file with the Board copies of all transmittals to and from all applicable government agencies.
- K. Subject to *N.J.S.A. 40:55D-52*, the Applicant shall comply with any and all requirements of Borough Ordinances and all applicable Federal, State and local laws, rules and/or regulations.

So resolved on this 6th day of September, 2023.

PLANNING BOARD OF
BOROUGH OF ROSELLE

Date signed: _____ 2023

By: _____
Janna Williams, Chairwoman

A Motion to Approve the Application was made by Councilman Bernier and seconded by Mayor Shaw at the Hearing held on August 2, 2023:

Roll Call: Voting “yes” in favor of approval: (5)

Councilman Bernier, Board Member Goyco, Board Member Bozeman, Mayor Shaw,
Chairwoman Williams

Voting “no” in favor of approval: (0)

Motion to Approve Resolution of Approval taken on September 6, 2023 made by _____
and seconded by _____:

Roll call vote to approve Resolution of Approval:

	<u>Motion</u>	<u>Second</u>	<u>Ayes</u>	<u>Nays</u>	<u>Abstain</u>	<u>Absent</u>
Mayor Shaw						
Council President Bernier						
Commissioner Bozeman						
Commissioner Goyco						
Commissioner Lavin						
Commissioner Luc Jr.						
Commissioner Smith						
Commissioner Turnage						
Commissioner Walker						
Chairwoman Williams						

I certify that the above Resolution is a true copy of the Resolution passed by the Borough of Roselle Planning Board on September 6, 2023.

Lisette Sanchez, Secretary
Roselle Borough Planning Board

Date signed: _____, 2023