Mark J. Stempler
Office Managing Shareholder
Board Certified Construction Lawyer
AAA Arbitrator
Phone: 561.820.2884 Fax: 561.832.8987
mstempler@beckerlawyers.com

625 N. Flagler Drive
7th Floor
West Palm Beach, FL 33401

December 3, 2025

VIA EMAIL:

City Clerk
City of Fort Lauderdale
1 E. Broward Blvd., Suite 444
Fort Lauderdale, FL 33301

Re: Appeal of Variance Denial by Mario Tacher and Yelena Tacher

City Clerk:

On November 3, 2025, Mario Tacher and Yelena Tacher (the "Tachers"), by and through their undersigned attorneys, filed their Appeal of the City of Fort Lauderdale's ("City") Final Order of the Board of Adjustment Regarding Case # PLN-BOA-24040001 issued on December 11, 2024, by the City of Fort Lauderdale's Board of Adjustment ("Final Order"). The appeal is pursuant to the newly adopted Ordinance No. C-25-40, and Section 47-26B of the City's Code. The Final Order denied Petitioners' application for four (4) variances.

The Tachers seek a de novo hearing concerning review their variance application and review of the Final Order of the Board of Adjustment denying the Tachers' Variance Application. In conjunction with the Appeal, the Tachers submit this supplement to concerning the issues on Appeal, request the City vacate the Final Order, grant the variances, and grant any other relief deemed just and proper.

I. BACKGROUND

The Tachers are residents of the City of Fort Lauderdale, Florida. On July 10, 2024, the City's Board of Adjustment held a meeting to consider the Tachers' Variance Application. At that time, the Board moved on a motion to approve each one of the variances in the application at one time. After the Board's motion had been moved and the period for discussion ended, during the roll call for the vote, the City's Clerk interjected and provided her own interpretation on what the Board's motion would be. The City Clerk stated, "Now, this is just a motion to hear them altogether, not to actually approve them all at once." There was clearly confusion as to what the

motion was and what the Commissioners were voting for. Based on the record, it appeared the Board was voting to approve all four (4) variances.

The Board voted on the Variance Application and moved to approve the Board's motion unanimously. After the Board's motion passed, the Board proceeded onto the next matter on the agenda. The Clerk, however, declined to do so and insisted the Board's vote was merely to, "hear the four variances together."

The Board member who moved the motion instead clarified that, "the motion was to approve all four of them," referring to the four (4) variances sought by the Tachers. Again, the Clerk claimed the motion was limited to, "just to combine." The Board then proceeded to move and vote on the motion to approve the Tachers' Variance Application, which was denied.

The Tachers subsequently requested a rehearing of the Variance Application, pursuant to the City's Code, Section 47-24.12.A.7, and were granted a hearing date of November 13, 2024. At the November Board Meeting, the Tachers presented their Variance Application again. The Board heard the Tachers' Variance Application. A motion to approve the Variance Application was moved and seconded, and a vote of four (4) votes to three (3) votes against granting the Tachers' Variance Application was cast, resulting in a denial of the Tachers' Variance Application. On December 11, 2024, the City issued a Final Order of The Board of Adjustment Regarding Case # PLN-BOA-24040001, denying the Tachers' Variance Application.

The Tachers had exhausted all administrative remedies. Thus, pursuant to the City's Code they filed a Petition for Writ of Certorari in the Court of the 17th Judicial Circuit in and form Broward County. That action is pending, and has been stayed until January. Following the approval of Ordinance No. C-25-40, the Tachers now seek to appeal the City's decision in hopes of avoiding continued legal action in the pending Court case.

II. ARGUMENT

First, a permit for the shed was issued on August 20, 2013. It was installed and there is no evidence that the permit was not closed out. Notably, the shed was originally listed as 10 x 20 in size, but the City's records reflect the 10 x 20 dimension was crossed out, and a 10 x 10 dimension was handwritten in its place. Relying on the City's records, the Tachers, as the current owners, had no notice any issues or problems when conducting their due diligence during their purchase of the home. The additional value of the shed was included in the purchase price and because of the size of the home and lot, it is a valuable component to the Tachers.

Additionally, the Tachers admittedly did not pull a permit when they enclosed the carport. As soon as they realized their error, they applied for a permit after-the-fact. That permit request was denied because the existing structure did not meet the City's setback requirements. The Tachers, however, did not alter the footprint of the home (carport) or shed.

The request for the four (4) variances were made by the Tachers. During deliberations in the appeal to the Board, it was stated on the record by the member who made the motion that the

hardship was in fact met as these requests were unique to the circumstances of the home. Here, the unique hardship was not created by the Tachers, as the permit was issued for the shed and its installation was approved by the City. Although the carport was enclosed, importantly the footprint was not altered. Removal of both would grossly compromise the owners' ability to use and store their belongings, and result in significant expense both in the removal of the structure, and in the homes' loss of value.

The Tachers are not asking to add anything to their lot or encroach on a setback that has not existed for years. No one in the neighborhood will be impacted by these variances. There have been no complaints since the shed was installed in 2013.

Second, procedurally the Board's Final Order departed from the essential requirement of law causing material injury to the Tachers and the City should quash the Final Order and grant the Tachers' Variance Application.

The Final Order which denied the Tachers' Variance Application should be quashed because City's Code, Section 47-24.12.A.8, requires the Board to enter a final order if the variance is granted. The pending appeal seeks a review of the order of the Board, which ignores the Board's unanimous vote approving the Tachers' Variance Application taken at the July Board Meeting; and which ignores the duty of the Board, pursuant to the City's Code, Section 47-24.12.A.7, to "correct an error" made by the Board.

The Florida Supreme Court, in *Mills v. Laris Painting Co.*, 125 So. 2d 745 (Fla. 1960), stated the general rule regarding reconsideration of prior administrative orders:

> [A]dministrative agencies have inherent or implied power, comparable to that possessed by courts, to rehear or reopen a cause and reconsider its action or determination therein, where the proceeding is in essence a judicial one. It is also generally recognized that the power to rehear or reconsider must be exercised before an appeal from the original order of the administrative body has been lodged or before such order has become final by lapse of time without a timely appeal.

Id. at 748. (Emphasis added). *Accord, Vey v. Bradford Union Guidance Clinic, Inc.*, 399 So. 2d 1137 (Fla. 1st DCA 1981); *see also* 1985 Op. Atty. Gen 27.

A unanimous vote of the Board at the July Board Meeting granting the Tachers' Variance Application was taken before the subsequent votes of the Board denying the Variance Application. The City's Clerk lacked the authority to reframe the scope the motion of the Board. If the Board's intention was to merely "hear all four variances together" rather than to "vote approve all four" variances, a new motion needed to be proposed by a member of the Board.

The Board did not put forth a motion before the unanimous vote approving the Variance Application was completed. The effect of the Board's vote was an approval of the Tachers'

Variance Application. The Clerk's refusal to acknowledge the Board's vote is an essential departure of the law.

The standard of review of the Board's rehearing of the Tachers' Variance Application is governed by the City's Code, Section 47-24.12.A.7, which provides in part, "[t]he board shall consider the request for a rehearing at a public hearing. At the hearing the board shall only consider reasons why a rehearing should be granted, which reasons shall be limited to the following…that a rehearing is necessary in order to correct an error." The Code required that the Board correct its error at the November Board Meeting by recognizing its unanimous approval of the Tachers' Variance Application and granting the Variance Application.

By failing to apply the correct standard of review, the City failed to apply the correct law. *Skaggs–Albertson's v. ABC Liquors, Inc.*, 363 So. 2d 1082 (Fla. 1978); *City of West Palm Beach Zoning Board v. Education Development Center, Inc.*, 504 So. 2d 1385 (Fla. 4th DCA 1987); *Ford Motor Co. v. Kikis*, 401 So. 2d 1341 (Fla. 1981). As the Florida Supreme Court has noted, applying the correct law is synonymous with observing the essential requirements of law. *Heggs*, 658 So. 2d at 530. The City's Clerk unilaterally and impermissibly attempted to expand the limited scope of the Board's motion that was clearly defined by the Board. It voted to unanimously approve its motion, approving all four variances sought by the Tachers in the Variance Application. After approving the variances, pursuant to the Clerk's interjection, the Board then put forth a subsequent motion to approve the variances, which failed, leading to the denial of the Tachers' application.

All motions made by the Board at the July Board Meeting following the unanimous approval granting the Tachers' Variance Application were made in violation of the law and are a failure to apply the correct law. Further, the Code expressly required the Board at the November Board Hearing to review errors made at the July Board Hearing. The Board ignored its duty under the City of Fort Lauderdale Code, Section 47-24.12.A.7; this resulted in a miscarriage of justice and the Final Order issued December 11, 2024 should be quashed. *Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So. 3d 1086 (Fla. 2010) (Certiorari is proper when the lower tribunal has violated a clearly established principle of law resulting in a miscarriage of justice).

III. CONCLUSION

The Final Order must be quashed because, The Tachers' property meets the City's hardship requirements, and the City issued the Final Order of The Board of Adjustment Regarding Case # PLN-BOA-24040001 in violation of the law.

The Tachers respectfully request the City vacate the Final Order, and grant the four variances requested by the Tachers.

Sincerely,

Ellyn Bogdanoff
Mark J. Stempler
For the Firm

MJS2/lb
cc: Client
D'Wayne M. Spence, Esq.
Chakila Crawford (via email: chcrawford@fortlauderdale.gov)

30184080.v1