

PALM BEACH THEATER GUILD, INC.  
P.O. Box 667  
Palm Beach, Florida 33480

February 26, 2022

To: Town Clerk and  
Town of Palm Beach

To: Deputy Town Clerk  
Town of Palm Beach

Subject: Appeal of Landmarks Preservation Commission Rulings and Actions  
(Landmarks Case Number COA-22-003 and Zoning Case Number ZON-22-018)

The Palm Beach Theater Guild, Inc. hereby appeals to the Town Council and Town of Palm Beach on rulings, actions, approvals and votes of the Town Landmarks Preservation Commission (LPC) in connection with the LPC meeting on February 16, 2022 and in connection with Landmarks Case Number COA-22-003 and Zoning Case Number ZON-22-018 (each a "Case"), 340 Royal Poinciana Way and the Poinciana Playhouse (such rulings, actions, approvals, cases, records, locales and other matters in the record and other matters referred to in this letter, the "Appeal Matters") (this appeal, the "Appeal"). Pursuant to Chapter 54 of the Palm Beach Code of Ordinances (the "Code"), this appeal by the Palm Beach Theater Guild, Inc. (the "Theater Guild") is based on the record and on the record of proceedings below, including the record of the February 16, 2022 LPC meeting (the "LPC Meeting") and the rulings, actions, approvals, votes, statements, presentations, records and statements of the Landmarks Preservation Commission, the LPC Commissioners and others in connection with that meeting or the Appeal Matters.

The record on which this Appeal is based includes (a) the Memorandum of February 15, 2022 from the Theater Guild to the Town of Palm Beach, the Landmarks Preservation Commission and the Palm Beach Planning, Zoning & Building Department ("PZ&B") (the "Guild Memorandum"), a copy of which is annexed to this appeal letter; (b) the six sets of exhibits submitted by the Theater Guild to accompany the Guild Memorandum (the "Guild Exhibits"); and (c) the Appeal Matters contained or referred to in the Guild Memorandum and Guild Exhibits.

The Appeal by the Palm Beach Theater Guild, Inc. made under this letter of appeal includes inconsistencies and nonconformities with procedures and criteria in Chapter 54 of the Town Code and in applicable law (the foregoing collectively, "Nonconformities", and each a "Nonconformity"), including the Nonconformities contained, reflected and referred to in the

Appeal matters and the record thereof. The Nonconformities include the following failures, inconsistencies and nonconformities on the part of the Landmarks Preservation Commission:

(1) failure to consider, apply and conform and be consistent with criteria and procedures for landmarks and landmark sites under Chapter 54 (Historical Preservation), including Sections 54-71 and 54-161 of the Code and applicable law;

(2) failure to consider, apply and conform and be consistent with criteria relating to the scale, general design, general arrangement and architectural style of the Poinciana Playhouse in accordance with Section 54-71 of the Code;

(3) failure to consider, apply and conform and be consistent with the 2007 Designation Report for the Landmarks Preservation Commission relating to the Poinciana Playhouse and the Poinciana Plaza (the "Designation Report"), including

(a) contravention of the vision, intention and work of the Poinciana Playhouse architect John Volk as landmarked in the Designation Report; and

(b) admitted violation and failure to conform and be consistent with the landmarking of the Poinciana Playhouse, as shown by the substitution by the applicants in the Cases, the LPC Meeting and the Appeal Matters of prior drawings, sketches and other materials of John Volk, which were not the features, architecture, elements, building or Playhouse that were included in the landmark approved in accordance with the Designation Report;

(4) failure properly to review, consider and rule and act upon the applications under the Cases for alteration or restoration of the Poinciana Playhouse or erection or moving of any part thereof;

(5) failure properly to consider, issue or rule or act upon any certificate of appropriateness under the Cases;

(6) failure to consider, apply and conform and be consistent with the policy purposes set forth in Chapter 54 (Historic Preservation), including the policy "that the protection, enhancement and perpetuation of properties of special, notable, aesthetic or architectural character or historic interest or value is a public purpose and necessity and is required in the interest of health, prosperity, safety and general welfare of the people residing within and without the town";

(7) failure to consider, apply and conform and be consistent with the purpose of Chapter 54 of the Town Code, including the purpose under Section 54-1(1) to "effect and accomplish the protection, enhancement and perpetuation of such properties and of districts that represent or reflect elements of the town's cultural, social, economic, political and architectural history";



(8) failure to consider, apply and conform and be consistent with the purpose of Chapter 54 of the Town Code, including the purpose under Section 54-1(2) to “safeguard the town’s historic and cultural heritage, as embodied in such landmarks and historic districts”;

(9) failure properly to apply and conform and be consistent with procedures under Chapter 54, including requirements to disclose adequately the authority to make the application in each Case and the identity of the alleged property owner and also including the following:

(a) procedures pursuant to Sections 54-91 and 54-93 of the Code for making application for a certificate of appropriateness, including requirements that the application be complete; and

(b) requirements in the Town of Palm Beach “Application for Project Review by the Landmarks Preservation Commission” that the property owner’s name be disclosed accurately and in good faith and that the Description of Project “give a comprehensive description of the project, which fully describes the changes to the landmarked building and/or landmarked property”;

(10) failure of proper and required legal notice to Town residents, interested parties and others, including failure to disclose and give notice of a proper description of the project, pursuant to Section 54-93 of the Code;

(11) failure to consider, apply and conform and be consistent with criteria for issuance of a certificate of appropriateness, including the provisions under Section 54-123(b) of the Code that “exterior alterations shall not affect the architectural quality or historical character of the building”, a requirement violated by, among other things, alterations and dismantling of the west (back) wall and other walls and exterior openings of the landmarked Poinciana Playhouse in a manner affecting the historical character of the building as a “theater”, in particular a “theater” of the scale, general design, general arrangement and architectural style of the Poinciana Playhouse (see Section 54-71 of the Code) and a “theater” designated as a landmark and theater of historic interest and character pursuant to the Designation Report for the Poinciana Plaza and Poinciana Playhouse;

(12) failure to consider, apply and conform and be consistent with criteria and procedures applicable to demolition under Chapter 54, including the following:

(a) pursuant to the provisions regarding partial demolition in Section 54-125(b), that, in addition to the criteria in Section 54-125(a), “the commission shall consider the impact of the proposed demolition on the architectural and historical integrity of the remaining structure” of the Poinciana Playhouse; and

(b) failure to consider, apply and conform and be consistent with the demolition requirements under Section 54-125(a) that are incorporated by the partial demolition provisions of Section 54-125(b), including:

(i) “the historic or architectural significance of the building”;

(ii) “the difficulty or impossibility of reproducing such a building because of its design, texture, material, detail, or uniqueness of location”;

(iii) “the future utilization of the site and the effect those plans for the site will have on the architectural, historical, archaeological, social, aesthetic or environmental character of the surrounding area and district”;

(13) failure to consider, apply and conform and be consistent with the architect John Volk’s intended scale, utilization and historic significance of the Poinciana Playhouse, pursuant to Chapter 54 of the Town Code, and the impact of the proposed alterations on the architectural and historical integrity of the structure, particularly in light of the demolition of walls and other features proposed under the Cases and Appeal Matters, including proposed alterations of the west wall and other walls of the building, the size and appearance of the façade and the extension and addition of features and removal of architectural details that will threaten the scale of the building, which must remain a “theater” and only be used as a “theater”;

(14) the consideration of the Cases and Appeal Matters by the Landmarks Preservation Commission and the proceedings, rulings, actions, approvals, votes and LPC Meeting of the Commission and the Commissioners were illegal, unlawful and improper and violated applicable law and departed from essential requirements of law, including the Town Code, the Town’s Comprehensive Plan, a 2007 court order and a March 6, 1979 Agreement between the Town and entities claiming rights to the Poinciana Plaza and Poinciana Playhouse (the “1979 Agreement”);

(15) the Landmarks Preservation Commission and LPC Commissioners lacked the power or authority to consider the Cases and Appeal Matters or to rule, act, approve or vote upon the Cases and Appeal Matters, including due to their violation of applicable law and the Town Code, the Town’s Comprehensive Plan, a 2007 court order and the 1979 Agreement;

(16) the Town’s Planning, Zoning & Building Department submitted a PZ&B Staff Memorandum dated February 16, 2022 to the Landmarks Commission in regard to the Cases and the Appeal Matters; (the “Staff Memorandum”); the Staff Memorandum was unlawful and improper and violated applicable law, including the Town Code, the Town’s Comprehensive Plan, a 2007 court order and the 1979 Agreement and attempted to coach and prompt the Landmarks Preservation Commission and Commissioners to ignore and violate the law; as a consequence the proceedings, rulings, actions, approvals, votes and LPC Meeting of the Commission and the Commissioners were illegal, unlawful and improper and violated applicable law and the Landmarks Preservation Commission failed to consider, apply and conform and be consistent with criteria and procedures for landmarks and landmark sites under Chapter 54 of the Town Code and under applicable law;

(17) the PZ&B Staff Memorandum contains misleading and false statements and misinformation, and as a consequence the proceedings, rulings, actions, approvals, votes and LPC Meeting of the Commission and the Commissioners were unlawful and improper and violated applicable law, and the Landmarks Preservation Commission failed to consider, apply



and conform and be consistent with criteria and procedures for landmarks and landmark sites under Chapter 54 of the Town Code and under applicable law;

(18) the Cases, Appeal Matters and proceedings, rulings, actions, approvals, votes and LPC Meeting of the Landmarks Preservation Commission were materially affected by omissions, misleading and misrepresentations and as a consequence were improper and failed to consider, apply and conform and be consistent with criteria and procedures for landmarks and landmark sites under Chapter 54 and applicable law and violated the Town Code, the Town's Comprehensive Plan, a 2007 court order, the 1979 Agreement and applicable law;

(19) the Appeal Matters and proceedings, rulings, actions, approvals, votes and LPC Meeting of the Landmarks Preservation Commission were illegal, illegally granted approvals and were not supported by or in accordance with sufficient evidence, including expert evidence regarding the scale, general design, general arrangement and architectural style of the Poinciana Playhouse and its historical and architectural significance as a theater and building and regarding other matters required to be considered by the LPC under Chapter 54 of the Code, and as a consequence the Appeal Matters and the proceedings, rulings, actions, approvals, votes and LPC Meeting of the Landmarks Preservation Commission must be quashed and set aside and constitute a failure to consider, apply and conform and be consistent with criteria and procedures for landmarks and landmark sites under Chapter 54 and applicable law; and the proceedings, rulings, actions, approvals, votes and LPC Meeting of the Landmarks Preservation Commission were not supported by or in accordance with competent substantial evidence;

(20) the Appeal Matters and the proceedings, rulings, actions, approvals, votes and LPC Meeting of the Landmarks Preservation Commission were illegal and departed from essential requirements of law and requirements for proper governmental proceedings, rulings, approvals and actions;

(21) the Appeal Matters and the proceedings, rulings, actions, approvals, votes and LPC Meeting of the Landmarks Preservation Commission were arbitrary and capricious, violated due process of law and denied opportunity to be heard and due process for the Palm Beach Theater Guild, Inc.

References and incorporation of the record and exhibits in this letter and the Guild Memorandum refer to and incorporate all of the documents submitted in the Cases and Appeal Matters and the record thereof, as well as the public record of the Town Code, Comprehensive Plan and minutes, proceedings and other records of the Town of Palm Beach, the Town Council and the judicial and adjudicative authorities that have considered the Poinciana Playhouse and Poinciana Plaza. The words "include" and "including," when used in this letter, shall be deemed to mean "including without limitation".

In light of the foregoing, the Palm Beach Theater Guild, Inc. makes this appeal and requests and demands that the Town Council and Town quash, set aside, reverse and render of no

force or effect the rulings, actions, approvals and votes of the Palm Beach Landmarks Preservation Commission in connection with the Cases, the Appeal Matters and the session at the LPC Meeting in connection with the Poinciana Playhouse.

Sincerely,

PALM BEACH THEATER GUILD, INC.

By:   
Simon Taylor  
President