LANDMARK WEST!

THE COMMITTEE TO PRESERVE THE UPPER WEST SIDE

Testimony of LANDMARK WEST!
Certificate of Appropriateness Committee
Before the Landmarks Preservation Commission
12-14 West 68th Street
April 14, 2009

LANDMARK WEST! is a not-for-profit community organization committed to the preservation of the architectural heritage of the Upper West Side.

The Certificate of Appropriateness Committee opposes the application to legalize the construction of a rooftop addition and the replacement of iron work at 12-14 West 68th Street, a Queen Anne-style house designed by Louis Thouvard and built in 1895, with an attached studio building designed by Edwin C. Georgi and built in 1925.

Legalizations: Wrong on Principle

Whether or not to legalize work that violates the Landmarks Law should not be a decision driven by sympathy of any kind, especially in view of the circumstances surrounding the illegal addition at issue here. It must be driven only by a clear and objective application of the Landmarks Law, which among other things sets out to: "safeguard the city's historic, aesthetic and cultural heritage," "stabilize and improve property values," "foster civic pride in the beauty and noble accomplishments of the past," and to "promote the use of historic districts, [and] landmarks."

This illegal addition accomplishes none of the above. It is an inappropriate intrusion on a lovely and unique historic ensemble in the Upper West Side/Central Park West Historic District; it undercuts the public faith in the legitimate public review process for work to landmark buildings; it implies that historic district designation lacks value and meaning.

All legalizations, and especially one as egregious as this, send the message: why bother? Why bother with mock-ups, sightlines, staff consultations, public hearings or talking to your neighbors when you can take your better-than-even chances with a legalization? *If* you get caught.

If this legalization is approved, we will all be right back here, in this room, having the same conversation next month and next year, about the Upper West Side, Greenwich Village, Brooklyn Heights, you name it. However, if this legalization is denied, we just might be able to change the nature of the game.

Misinformation from the Applicant

And apparently it is a game to the applicant. He states that he has owned 12-14 West 68th Street since 1965, long before the designation of the historic district in 1990. Yet, records show that the property is actually owned by a limited liability corporation, putting a dent in the picture of this applicant as a hapless casualty of a complicated land-use labyrinth. He is evidently savvy in the ways of New York City real estate, and his cavalier attitude to the city's land-use regulation process is evident from start to finish.

The applicant clearly knew this building was a landmark, as evidenced by his previous applications to the Landmarks Commission—for example, in 1991, the Commission issued permits for work at 14 West 68th Street. The widely recognized terra-cotta-colored street sign, introduced by former

Landmarks Commissioner and Landmarks Preservation Foundation chair Barbaralee Diamonstein-Spielvogel to mark the boundaries and signify the special status of historic districts, is a few paces away on the corner of Central Park West. A second terra-cotta-colored street sign bookends 68th Street at Columbus Avenue.

In a written statement provided to LW's Certificate of Appropriateness Committee when the applicant appeared before LW! on March 10, 2009, he claimed,

> When we designed the additional floor on building 12 we set it back from both the street and from the nearest building to create light and air for our neighbors thinking that this would be what the landmarks commission would want.

But he failed to get his story straight. In speaking to our committee, the applicant disingenuously stated that he *did not know* his building was a landmark. Subsequently, we discovered that the DOB record of the application submitted by this owner or his representative in 2005 also indicates that 12-14 West 68th Street is *not* a landmark, despite notices on DOB forms warning applicants and owners that false statements may subject both the applicant and the owner to fines or more serious penalties.

Now, after the fact, the applicant claims that he believed it was the DOB's responsibility to file with the Landmarks Commission. But any experienced owner or architect would know that obtaining Landmarks Commission approval is the responsibility of the applicant, not the agency. And even if they didn't, DOB instructions for filing applications clearly explain the correct procedure.

In his self-certified application, the applicant also failed to disclose to DOB the existence of certain restrictive covenants that may limit the overall height of the building at 12 West 68th Street to no taller than the adjacent building at 14 West 68th Street, or 50 feet. The illegal addition increases the height of the building to nearly 65 feet. In the Landmarks Commission's own Upper West Side/Central Park West Historic District designation report, a footnote alludes to the possible existence of restrictive covenants:

> It has been suggested that restrictive covenants initially governed the development of 68th Street and the side streets further north, allowing only single-family rowhouses to be built, conversation with architectural historian Andrew Scott Dolkart, March 22, 1990.

However no substantiating documents were procured at the time of the report's completion.

Misstatements by the applicant enabled the DOB to improperly issue the permit. Therefore, the permit should be treated as void *ab initio*—or, illegal from its inception by an error that cannot be retroactively cured. The applicant's present attempt to legalize the addition presumes that the Landmarks Commission would have voted to approve the currently proposed design if it had seen it before the permit was issued—that is, it tries to tie the Commission's hands in ways that a properly reviewed application would not.

This is obviously not a case of ignorance of the law; this is, at very best, an egregious failure of due diligence and, at worst, a case of willful neglect.

Impact on the Hotel des Artistes

Legalization is no remedy for the neighbors and others who care about the Upper West Side/Central Park West Historic District and the West 67th Street Artists' Colony Historic District, listed on the

State and National Register since 1985. The applicant informed LW's committee and Community Board 7 that owners at the Hotel des Artistes, immediately adjacent to the rear of 12-14 West 68th Street, approved of the illegal rooftop addition. This, too, is a misstatement of the facts. No real notification effort was made. Letters from des Artistes residents show that they are indeed very concerned about the impact that the illegal addition has on their historic property.

One of the most significant architectural features of the des Artistes and other West 67th Street studio buildings are the double-height, north-facing windows. The 1990 Upper West Side/Central Park West Historic District designation report states,

> To obtain adequate light of the right exposure, most studio buildings in New York were built on the south sides of the street. The first of these in the area of the [UWS/CPW] district and the largest concentration of them, on the north side of West 67th Street, are an exception, ensuring northern light to studio units at the rear of the buildings by virtue of the low-rise rowhouses on West 68th Street.

This relationship between the rear façades of the 67th Street studio buildings and the rowhouses of 68th Street is essential to the integrity of the historic district.

Inappropriate in Relation to Landmark Ensemble

Furthermore, the design of the illegal addition relates poorly to the landmark to which it is attached. Number 12 is an understated addition to Number 14, a Queen-Anne-style brownstone built in 1895. For a few years, before the construction of the then-Second, now-First Church of Christ, Scientist, at the turn of the century, Number 14 enjoyed an unobstructed view of Central Park. A lasting vestige of this history, the garden is a pleasant and unexpected break in the brownstone streetwall. This unique configuration makes Number 12—and the illegal addition—fully and clearly visible from West 68th Street. The addition not only blocks public views of the double-height artists-studio windows of the Hotel des Artistes, but, with its irrelevant Classical flourishes, draws attention to Number 12 and thrusts this typical background building into visual competition with Number 14. Compounding the inappropriateness of this design are the apparently new, white, faux-divide windows throughout Number 12. (We also question whether these windows were installed with proper permits from the Commission.)

This one-and-a-half-story illegal addition atop the 1925 building also raises a red flag in terms of height. Not only does the addition appear to violate restrictive covenants that were not disclosed to DOB, but it may also run afoul of Section 23-692 of the Zoning Resolution, also known as the "Sliver Law." You will remember that the Board of Standards and Appeals recently determined that rooftop additions are subject to "Sliver Law." This ruling affected a recent application for a rooftop addition at 161 West 78th Street, in the historic district, compelling the owner to seek the Commission's support for a 74-711 special permit. The illegal rooftop addition at 12 West 68th Street brings the total height of the 1925 building enlargement—and an "enlarged portion of an existing building" less than 45 feet wide *is* noted in the zoning text as subject to the Sliver Law—to nearly 65 feet, out of compliance with the Sliver Law, we believe.

If this is indeed the case, and were the Commission to legalize the addition, it would trigger a 74-711 application. And for what legitimate preservation purpose?

Iron Fence
Finally, we also urge you to deny the legalization of the iron fence, which is too tall and not in character with a building of this type. The applicant's references to incongruous examples of fences on West 67th Street are misdirected.

You must not allow yourselves to be cast in the role of "enablers" for those who choose consciously to ignore the Commission, ignore the law, alter landmark-protected buildings and then come hat-in-hand asking you to "legalize" their illegal alterations. It is unconscionable, and more so because it mocks those who conscientiously come before you in conformity with the law, subjecting themselves to your process and your judgment.

In good conscience, how could you possibly justify your after-the-fact legalization to all of those who follow the rules? Today's application is a classic example of why legalization should only be the very rare exception, never the rule.