



THE COMMITTEE TO PRESERVE THE UPPER WEST SIDE

**Testimony of LANDMARK WEST!
Certificate of Appropriateness Committee
Before the Landmarks Preservation Commission
381 West End Avenue
August 7, 2018**

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 wishes to comment on 381 West End Avenue, a Flemish Renaissance Revival apartment house designed by Frederick B. White and built in 1885-86. The application is to restore the façade, modify windows, and construct a rooftop addition.

The LANDMARK WEST! Certificate of Appropriateness Committee wishes to expand upon our prior testimony, with specific regards to the restrictive covenant. That covenant, recorded, and effective since May 15th, 1886 notes that no party:

or his heirs or assigns shall or will at any time hereafter erect or cause to permit to be erected any extension structure or building of any kind whatsoever on any portion of said premises which is now unoccupied by said buildings, but that such unoccupied portions of said premises shall forever remain open and unoccupied for the purposes of light and air

The right to build a larger building either by extension or rooftop addition was sold and memorialized in the restrictive covenant that runs with the land and was made available during the base title and lien search. There are no surprises, the law is clear, this rooftop violates the covenant.

Citing case law such as *Chambers v. Old Stone Hill Road Associates* is a disingenuous parallel as there is no public good offered that would supersede the covenant. Construction of a rooftop addition would constitute a taking of value from one intact landmark 383, and grant it to the altered landmark at 381. For these reasons, we offer *Irving Trust Co. v. Anahma Realty Corp.* where the interpretation of the language of the agreement is in line with the intention and purpose of the parties and of the conditions existing when it was first written.

132 years of shared intent among six neighbors should not be ignored due to the interests of one who was informed of this pre-existing covenant at time of acquisition.

As things currently stand, permission to construct the mock up for the LPC application is already in violation of this covenant.

The LANDMARK WEST! Certificate of Appropriateness Committee recommends the Commission remove consideration of the proposed rooftop addition.