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## City: Take Off Top Floor of Townhouse

*Landmark Commission Rules 68th Street Building Lacked Permit for Addition*

By CRAIG KARMIN

A Manhattan townhouse owner is being forced to do something few, if any, New York homeowners have ever done before: tear down a top-floor addition to a building to comply with city landmark regulations.

The Landmark Preservation Commission decided in March that a sixth-floor addition to the building at 12-13 West 68th St. was in violation of landmark rules. The building's owner has begun taking steps to remove the entire floor, according to a commission official.

How that new floor ever got approved and constructed in the first place is just one of the many disputes surrounding this \$10 million property that is causing a ruckus on the West Side by the neighborhood's preservation advocates.

The demolition of the townhouse's sixth-floor addition could be the first time the city forced a building owner to destroy part of the property for what amounts primarily to aesthetic considerations.

"This is the biggest nightmare for a homeowner," says Ross Sandler, a professor at New York Law School. "An addition is built without the proper authority. The owner has a big headache."

Arthur Minerof, the building's owner, declined to comment.

The case offers a revealing look inside the preservation movement, which began to become better organized and more aggressive during the property-market boom.

Between July 2006 and the end of April, the preservation commission says it designated 2,924 buildings as landmarks, nearly tripling the number of buildings that it had given the designation between July 2000 and June 2006.

The 19th-century Queen Anne-style mansion on 68th Street is located in a district that received landmark status in 1990. That means any work on the exterior of buildings in the district requires commission approval.

The previous owners of the townhouse received a permit from the Buildings Department to construct an addition on the roof in 2005, according to Polly Cleveland, one of the owners at the time.

She and her husband added a sixth floor to create a new rental duplex apartment with the fifth floor. The addition has windows facing the street, a kitchen and dining area, and a terrace with a glass door. It was completed in 2007.

Ms. Cleveland, an adjunct professor at Columbia University, says she knew she lived in a landmark district but assumed the requirements had been fulfilled when she received the Building Department permit. "People have accused us of trying to sneak something by the commission," she says, "but we didn't know."

Buildings Department spokesman Tony Sclafani says, "Licensed professionals are required to notify the department about a building's landmark status when submitting construction plans. It appears that did not happen in this case."

The project's architect, Lester Evan Tour, declined to comment. But at a commission hearing last year, he blamed the Buildings Department, saying its database failed to list the townhouse as being a landmark building.

The Landmark Preservation Commission sent a notice of violation at the end of 2008, citing an installation without permit. The violation followed a complaint from a nearby resident, who said the addition blocked his light. Neighborhood groups also criticized the architectural style.

Arlene Simon, president of the preservation group Landmark West!, demanded the new floor be demolished. She says that anything less would have set a precedent that an owner could build in defiance of landmark rules.

"I organized in all five boroughs to protest this," says Ms. Simon, who helped to pack a commission hearing with like-minded people. "I told neighbors if it can happen here it can happen anywhere."

In fact, something like this may never have happened anywhere in New York. The closest parallel is probably a 1986 case, when the Buildings Department told the developer of an Upper East Side residential building to remove the top 12 floors of a 31-floor high-rise determined to be in violation of zoning rules.

Albert Ginsberg, the developer, said the mistake lay in a faulty map that indicated the building was outside the restricted zone. But he still had to remove the floors, brick by brick.

Mark Silberman, the landmark commission's general counsel, said officials there don't recall any previous instance when a building owner had

to remove an addition after it has been built.

"I can't think of another case where an owner added a full story to the building," he says. "This is unusual because the addition was put on the face of the building."

Complicating the matter was the sale of the building in the middle of the dispute. Ms. Cleveland's husband, Thomas Haines, bought the townhouse in 1965 for \$140,000 and put it on the market in 2008 for \$20 million. When market prices plunged, the couple accepted an offer of \$10.6 million, including assumption of debt, from Mr. Minerof in early 2009, Ms. Cleveland says.

The sellers agreed to refund Mr. Minerof \$500,000 if his efforts to modify the new floor didn't win the landmark commission's approval.

In March, the commission said the plan didn't resolve the issues.

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