

Rich Guy Fight at the Essex House!

Battle over solarium high above Central Park could impact apartment buildings citywide

BY DANA RUBINSTEIN

It was startling, that day when Munich-based businessman Ernst Georg Hartner looked out the north-facing window of his condo at the lavish Jumeirah Essex House and found his Central Park view corrupted by a greenhouse-like structure perched on the ledge abutting his next-door neighbor's apartment.

Perplexed, Mr. Hartner contacted the neighbor. And the Essex House condo board. What was this? No good response. So, in 2007, he approached an attorney—he wanted his neighbor to tear the solarium down.

On a recent Wednesday morning—in 2010—Mr. Hartner's daughter, who is staying at her dad's *pied-à-terre* while studying abroad, welcomed a reporter and an attorney inside. From the windows of the apartment, the solarium could still be seen clinging tightly to the ledge of the condo-hotel's 19th floor—directly in that Central Park sightline.

Some fear that, should the city and condo board allow the solarium to remain, it could set a precedent that would thunder like a storm across New York City's roofscape, depositing greenhouses and gazebos and outside apartment additions in its wake. "[Y]ou have vast potential for barnacle-like accretions springing from the brows of historic buildings," wrote the Historic Districts Council's Simeon Bankoff in an angry letter to the city's Board of Standards and Appeals.

The barnacle at the center of this kerfuffle is a nice-sized, glass-walled living space that, in recent photos, is furnished with a modern off-white couch; a small, mahogany-colored kitchen table and coffee table; and on the yellowish wall that abuts the historic tower, a poster from the production of Eric Bogosian's play *Talk Radio*, starring Liev Schreiber.

Banker Ira Saferstein, president of Titan Capital, owns the solarium, and the apartment to which it connects. He didn't build the offending architecture. Rather, he bought it in 2008 for \$3 million from a disreputable fellow named Steven Green. When, in 2008, *The Observer's* Max Abelson asked Mr. Saferstein if he knew Mr. Green—whom *The Village Voice* named one

of New York's 10 worst landlords in 1990, and who was later sentenced to three months in prison for fraud—Mr. Saferstein responded: "If you mention I'm the buyer,

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you will have a problem, sir. Is that clear?" Then he hung up.

Mr. Saferstein wouldn't comment for this article, either. But his unit's outdoor living area has prompted Mr. Hartner, who was educated at Haverford College and who visits the New York apartment only occasionally, to sue him and to try to tear down the structure using the levers of city government. One problem. The Department of Buildings is arguing before the final arbiter—the Board of Standards and Appeals—that for all manner of arcane reasons, the solarium should stand.

On Jan. 30, 2009, the Department of Buildings, which enforces zoning rules, seemingly sprung to action, issuing a violation for erecting a "steel frame & glass structure" without a permit and increasing the degree of the building's noncompliance with existing zoning regulations.

The citation for violating zoning rules was later withdrawn. The city's reasoning was complicated, but logical, in a loopholey, bureaucratic sort of way.

If you live in a building built before 1961, and your building has setbacks or rooftops, surrounded by walls of at least 3 feet, 8 inches high, and those walls surround at least 50 percent of the space's perimeter, then the setback or rooftop's square footage has already been included in the building's overall bulk. A building that bulky

wouldn't be allowed now. But since the Essex House was built before the new zoning rules of 1961, its bulkiness had been grandfathered in. The argument goes that building a structure that merely encloses already existent floor area does not increase the building's bulk.

It's not an entirely unheard-of argument.

"It's a little known trick," said real estate attorney Steven Wagner, of Wagner Davis P.C. "Many older buildings are overbuilt and do not comply with the Building Code under the rules imposed in 1961. You cannot increase the degree of noncompliance. If, for example, you wanted to put a structure on the roof, and that structure would use floor-area ratio [FAR] that is not available for that building, you can't do it. The people who are at Essex House are not increasing the degree of noncompliance; they're only changing the structure to better use FAR, which is already included.

"When this comes up in discussions with architects, they either will know about it and say, 'It's a good idea and let's look at that,' or they will say, 'Wow, I never thought about that; that's really cool,'" Mr. Wagner said.

The preservationist, Mr. Bankoff, doesn't think it's cool. Nor does Norman Resnicow, the attorney representing Mr. Hartner, the aggrieved neighbor. (Essex House condo board chair and Stroock partner Richard Siegler didn't respond to two requests for comment.)

In a brief Mr. Resnicow submitted to the Board of Standards and Appeals, which will soon rule on the Department of Buildings' determination, Mr. Resnicow wrote that nothing less is at stake than the New York City skyline. "Now is the time to nip this in the bud," he wrote. "[Otherwise] the rooftop construction goldrush will be unleashed; building owners who qualify will not want to wait and risk missing out on this undeserved gift from DOB."

Mr. Wagner was less apocalyptic, but did acknowledge that the little known loophole could impact the profile of residential buildings.

"Wider knowledge of this technique would open possibilities for co-ops and condos, ranging from the co-op or condo building

an apartment on the roof for sale or selling the development rights to someone who will develop and build on the roof or simply building something on the roof that all of the shareholders or unit owners may use and enjoy," he wrote in an email. "The point is that it could produce an unanticipated windfall or revenue stream for a co-op or condo."

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