You Can’t Tear it Down: the Origins of the D.C. Historic Preservation Act

Jeremy W. Dutra
Georgetown University Law Center

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Enacted in 1978, the District of Columbia’s Historic Landmark and Historic District Preservation Act is often described as one of the strongest preservation laws in the country. This paper will explore the origins of this important piece of legislation from a political, legal, and social perspective. In some respects these perspectives are distinct, yet they often overlap. The paper will begin by providing a brief survey of the initial efforts made by the federal government to preserve historically significant sites. This section will also look at two early preservation laws in Washington, D.C. Next, the paper will trace the history of the District’s political development, and will explore how the District’s lack of self-determination for nearly 100 years impacted the historic preservation movement in the city. The paper will then move on to discuss the development of the preservation movement in D.C. By looking at several of the more significant battles waged by local preservationists, this section will also show how defeat and frustration led to the development of D.C. preservation law. The paper will conclude by looking at the D.C. Preservation Act. This final section will explore the impact Penn Central v. New York City had on the D.C. law, as well as how the law expressed the concerns raised by those who were wary of such a sweeping piece of legislation.

II. EARLY FEDERAL PRESERVATION EFFORTS
A.  *The Federal Program*

The first general historic preservation legislation came in 1906 with passage of the Antiquities Act.\(^1\) This act authorized the President to set aside historic landmarks, structures, and other objects located on lands controlled by the United States. Nearly thirty years later, the Historic Sites Act of 1935 declared it the national policy “to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States.”\(^2\) This act further enhanced the protection of national historic sites by empowering the Secretary of Interior through the National Park Service to survey, document, evaluate, acquire, and preserve both publicly and privately owned historic sites.\(^3\) In 1937, the Blair-Lee House became the first historic resource within nation’s capital to receive landmark status under this legislation.\(^4\)

In 1966, Congress took a giant leap forward by passing the National Historic Preservation Act. A landmark in historic preservation law, the Act ensures that as a matter of public policy, federal planners must consider the significance of historic properties in all undertakings.\(^5\) In addition, the Act establishes a National Register of Historic Places to include districts, sites, buildings, structures, and objects significant in not only national, but also state and local history.\(^6\) To encourage historic preservation initiatives by state and local governments, the Act provides funding to states to conduct surveys and comprehensive preservation planning, establishes standards for state programs, and enables local governments to participate in the National

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\(^3\) *Id.*, § 462.
\(^6\) *Id.*, § 470a(a)(1)(A).
Register nomination and funding programs. The National Historic Preservation Act stimulated nationwide efforts to preserve historic landmarks, and remains the cornerstone of preservation efforts nationwide.

B. Early Historic Preservation Measures in Washington, DC

While the Congress recognized the need to preserve the national heritage as early as 1906, it was not until 1930 that Congress began laying the groundwork to preserve the historic fabric of Washington, D.C. Recognizing the importance of many buildings within the District of Columbia, Congress enacted the Shipstead-Luce Act to ensure that development “proceeds along lines of good order, good taste, and with due regard to the public interests involved.” To that end, the Act empowered the Commission on Fine Arts (CFA) to exercise control over the design of private and semiprivate buildings adjacent to public buildings and other grounds of great importance in Washington. Although not a preservation statute per se, the Act enabled the CFA “to preserve many of the most important federal buildings in Washington by protecting their immediate environment.”

The next major step came in 1950 when, after lobbying by organized citizens in Georgetown, Congress passed the Old Georgetown Act. The Act established the Georgetown Historic District, an area encompassing approximately one square mile, and authorized the District of Columbia, with the assistance of the National Park Service, to conduct a survey of the

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7 Id., § 470a(b)-(c).
10 Id. The Act authorizes the CFA to review building plans, in the specified areas, “as they relate to height and appearance, color and texture of materials of exterior construction”.
area. More importantly, the Act required the District government to obtain the advice of the Commission of Fine Arts “before issuing any permit for the construction, alteration, reconstruction, or razing of any building within” the Georgetown Historic District that is “subject to public view from a public highway.”

While recognizing the need “to preserve and protect the places and areas of historic interest . . . and examples of the type of architecture used in the National Capital in its initial years,” Congress did not extend the protections of the Old Georgetown Act to other, historically significant areas in the District. A comprehensive historic preservation program would not be enacted until the City Council enacted the Historic Landmark & Historic District Protection Act of 1978.

III. THE POLITICAL OBSTACLE TO PRESERVATION IN WASHINGTON, DC

While there were undoubtedly many obstacles confronting Washington, D.C. in the development of an effective historic preservation program, the primary challenge likely came from its complex political nature. As a federal district, the District is unique in that the Constitution grants Congress exclusive but delegable powers over the nation’s capital. Beginning in 1802 Congress granted the District a limited right of self-governance, allowing residents to elect a Council. Eventually Congress permitted the popular election of a Mayor. Home rule in the District, however, was not to last.

14 Id. § 2.
15 Id. § 1.
16 U.S. CONST., art. I, § 8, cl. 17 (Congress has the power to “exercise exclusive Legislation in all Cases, whatsoever, over such District as may . . . become the Seat of the Government).  
18 Id.
In 1871, Congress abolished the locally elected governments of Washington and Georgetown, and established a territorial government with jurisdiction over the entire District of Columbia.\textsuperscript{19} Although there was a popularly elected house of the legislature, “the upper house, the Governor, and a Board of Public Works . . . were appointed by the President.”\textsuperscript{20} Responding to allegations of malfeasance on the part of District officials, Congress held a series of hearings between 1872 and 1874 that resulted in the abolition of the territorial government established only three years earlier.\textsuperscript{21} In reaching the conclusion “that limited self-government for the District had been a mistake,” Congress decided not to return power to a popularly elected mayor, but rather turned the District into a ward of the federal government.\textsuperscript{22}

For nearly 100 years, a board of three commissioners, appointed by the President, and “subject to the direct influence and control of Congress,” governed the District.\textsuperscript{23} During this time, “the House and Senate District Committees . . . became the District’s \textit{de facto} City Council.”\textsuperscript{24} Members of Congress are responsible to voters in other areas of the country, and without a voice in Congress, the residents of the District had virtually no input into the handling of local affairs. This inability to control local affairs was further exacerbated by the fact that the appointed commissioners were typically not residents of the District.\textsuperscript{25} Through the architectural controls wielded by Commission of Fine Arts under the Shipstead-Luce Act, and comprehensive planning carried on by the National Capital Planning Commission, greatest priority was given to

\textsuperscript{19} NELSON F. RIMENSNYDER, CONG. RESEARCH SERV., THE POLITICAL EVOLUTION OF THE DISTRICT OF COLUMBIA: CURRENT STATUS & PROPOSED ALTERNATIVES 5 (1975). Historians point to several factors that led Congress to establish a territorial form of government, including “rapid population growth . . . need for improved and expanded public works and services, racial problems, [and] political differences.” \textit{Id}. at 6.

\textsuperscript{20} PHILIP G. SCHRAG, BEHIND THE SCENES: THE POLITICS OF A CONSTITUTIONAL CONVENTION 10 (Georgetown Univ. Press 1985).

\textsuperscript{21} RIMENSNYDER, \textit{supra} note 19, at 8-11.

\textsuperscript{22} SCHRAG, \textit{supra} note 20, at 11.

\textsuperscript{23} RIMENSNYDER, \textit{supra} note 19, at 11-12.

\textsuperscript{24} SCHRAG, \textit{supra} note 20, at 11.

\textsuperscript{25} RIMENSNYDER, \textit{supra} note 19, at 12.
protecting federal interests in Washington’s monumental core. Unfortunately, except for Georgetown, no other sites of local historical or cultural significance received protection. Preservationists in Washington generally realized that so long as Congress wielded legal and financial control over the District, residents remained largely powerless to enact a comprehensive program to preserve the historical resources located in the District.\(^\text{26}\)

With the fight to regain home rule coming to a head in the 1970s, hope grew for those fighting for a more comprehensive approach to historic preservation in the District. Aided by the increasing “national consciousness about civil rights,”\(^\text{27}\) the home-rule movement in Washington took on dramatic momentum in the late 1960s and early 1970s. Although President Johnson failed to gain passage of a home rule bill in 1966, efforts to obtain home rule for the District persisted.\(^\text{28}\) Finally, in 1974, Congress passed the District of Columbia Self-Government & Reorganization Act (Home Rule Act), which conferred a significant degree of political self-determination upon the District of Columbia outside the federal enclave.\(^\text{29}\) For the first time in nearly 100 years, residents were able to elect a mayor and a city council.\(^\text{30}\) Although the National Capital Planning Commission (NCPC) continues to serve as the central planning agency for the Federal government,\(^\text{31}\) the Home Rule Act made the Mayor the chief municipal planner, and delegated significant control over land use decisions to the District government.\(^\text{32}\) The power to

\(^{26}\) Dowling, supra note 11, at 115.
\(^{27}\) Schrag, supra note 20, at 12.
\(^{28}\) Hamilton, supra note 17, at B3. In 1967, Congress reorganized the government of the District of Columbia. The three commissioners were replaced by a single appointed commissioner (the mayor) and a nine-member appointed city council. As under the 1874 commissioner form of government, appointments continued to be made by the President. Martha M. Hamilton, Past Government Efforts Failed, WASH. POST, Dec. 26, 1974, at C12.
\(^{29}\) Rimensnyder, supra note 19, at 15.
\(^{30}\) Id. Although the Act vested all legislative powers in the Council, Congress severely limited that legislative authority in some areas. Id. at 18.
\(^{32}\) Id. § 71a(a)(2). Before passage of the D.C. Home Rule Act, the National Capital Planning Commission served as both the federal and local planning authority. Office of Planning, District of Columbia, Agency History (2002), available at http://planning.dc.gov/about/history.shtml. While the District government is responsible for developing the District elements of the Comprehensive Plan for the National Capital, which may include land use, urban
engage in planning activities, so long as such activities do not impact Federal interests,33 provided the District with the legal authority necessary to enact a comprehensive historic preservation program for the nation’s capital.

IV. PRESSURE FOR PRESERVATION IN WASHINGTON, D.C. GROWS

Despite legal constraints under the pre-home rule, proponents of preserving the historic fabric of the District continued to press forward, fighting for landmark designation and increasing awareness of the city’s rich cultural heritage.

A. Early Efforts at Designation and Preservation

The post-war expansion of the U.S. economy had sometimes devastating effects on the nation’s historic resources. During the construction boom following World War II, many historically significant landmarks and sites were lost.34 Through the federal government’s interstate highway and urban renewal programs, many areas of the country witnessed the mass destruction of historic sites in the name of progress.35 In Washington D.C., the Committee of 100, with the support of other citizens groups, defeated an elaborate freeway plan for the District, which included a bridge across the Potomac River near the Three Sisters Islands.36 One of the reasons for fighting construction of the Three Sisters Bridge was the negative impact construction

renewal and redevelopment elements, the NCPC reviews District projects in the monumental core of the city, as well as amendments to city zoning regulations to potential impact on federal interests. 40 U.S.C. § 71a(a)(2).

33 Id.


would have had on the Georgetown Historic District. However, from 1954 to 1960, the federal government’s massive urban renewal program resulted in the razing of residential Southwest, in which only a few historic sites were spared.

With the widespread destruction of culturally significant sites came an increased awareness of the need to protect the remainder of those sites “representing bygone American periods.” In 1971, The National Trust for Historic Preservation reported that over the prior three years, its membership roles had doubled to 29,000. During the 1960’s, the National Trust conducted a survey “of the changes in America’s cities and landscapes,” cataloguing the loss the nation’s historical sites. This survey was one of the reasons Congress took action in 1966 and passed the National Historic Preservation Act.

While the National Historic Preservation Act provided states incentives to conduct surveys of historic properties within their respective jurisdictions, the first systematic effort to identify and document historic resources in Washington, D.C. came in 1964. The National Capital Planning Commission, in cooperation with the Commission of Fine Arts established the Joint Committee on Landmarks to prepare “an inventory of significant structures and places” in the nation’s capital. Later that year, the Joint Committee published a preliminary list of Landmarks of the National Capital. Following passage of the National Historic Preservation Act in 1966, the Joint Committee on Landmarks became the “state” historic preservation review

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37 See District of Columbia Federation of Civic Ass’ns v. Volpe, 459 F.2d 1231, 1236 (D.C. Cir.).
38 Linda Wheeler, Broken Ground, Broken Hearts; In ’50s, Many Lost SW Homes to Urban Renewal, WASH. POST, June 21, 1999, at A1.
39 Curry, supra note 34, at B1.
40 Id. at B2. The National Trust also reported receiving hundreds of letters “in response to a one minute television commercial showing the demolition of old buildings.” Id.
41 Id.
42 Id.
44 NATIONAL CAPITAL PLANNING COMM’N, supra note 8, at introduction.
board, responsible for recommending landmarks within the District for inclusion on the National Register of Historic Places.\textsuperscript{45} Despite its lack of enforcement power, the Joint Committee continued to evaluate and designate properties of historic significance, stressing the importance of landmark listing “in encouraging public support for preservation and in speeding efforts to develop effective protection mechanisms.”\textsuperscript{46}

Despite efforts to catalogue the District’ historic sites, in 1971, one resident lamented that the city’s “inventory of outstanding historic landmarks is becoming a casualty list.”\textsuperscript{47} The Washington Post noted that a “little bronze plaque is as easily bulldozed as granite columns or marble entablatures.”\textsuperscript{48} Recognizing that landmark designation does not always deter demolition, the Joint Committee proposed several ways in which to increase preservation and protection of the District’s historic sites.\textsuperscript{49} These legislative proposals included the power to delay demolition of landmarks, tax incentives for preservation, and special zoning for historic districts.\textsuperscript{50} In 1973, after lobbying efforts by local preservationists, the City Council implemented one of the measures suggested by the Joint Committee, delay in demolition.\textsuperscript{51}

B. The Old Post Office Brings the City Together, Preservation Gains Momentum

Although groups in neighborhoods like Georgetown, Dupont Circle, and Capital Hill had actively worked to protect the interests of their respective communities,\textsuperscript{52} due to Washington’s


\textsuperscript{46} \textit{Historic Pres. Div.}, \textit{supra} note 4, at 5.

\textsuperscript{47} \textit{A New Way to Save Old Buildings}, \textit{Wash. Post}, May 10, 1971, at A18.


\textsuperscript{49} Sarah Booth Conroy, \textit{Keeping the Landmarks Alive: “There is a Little List,” Wash. Post, Apr. 9, 1972, at F1}.

\textsuperscript{50} Id.


\textsuperscript{52} The Citizens Association of Georgetown traces its roots to 1878. Since that time the group has fought to preserve the historic fabric of the neighborhood, scoring a major victory in 1950 with the passage of the Old Georgetown Act. Citizens Ass’n of Georgetown, \textit{supra} note 12. In 1922, residents of Dupont Circle formed the Dupont Circle Citizens Association to promote and protect the interests of the Dupont Circle community, and to work towards preserving “the historic, architectural, and aesthetic value of property and objects within [the neighborhood].” Dupont Circle Citizens Ass’n, \textit{Overview} (2002), \textit{available at} http://www.dupont-circle.com/overview.htm; \textit{see also}
high transient population, before the 1970s, there had “been little citywide effort to preserve” the District’s historic resources.\(^{53}\) However, plans by the federal government to demolish the Old Post Office on Pennsylvania Avenue became the catalyst for the creation of the first citywide preservation group. In 1971, outraged over the possible demise of the Old Post Office, and determined to do “something about the demolition of the [District’s] graceful older buildings,” a group of Washington residents rallied to save the landmark.\(^{54}\) Carrying placards with the slogan “Don’t Tear It Down!” and reflecting the general frustration residents had over the lack of voice in local affairs, organizers insisted that it’s “about time the people of [Washington] have some say about what happens to its buildings.”\(^{55}\)

Local activists succeeded in focusing attention on the plight of the Old Post Office, and raising awareness about its historical significance. Saving the building became one of the primary concerns for Joint Committee on Landmarks chairman Francis Lethbridge, who noted that there are “an awful lot of academic classicism . . . but damn few Romanesque revival buildings like the Post Office.”\(^{56}\) In 1973, the U.S. National Park Service added the Old Post Office to the National Register of Historic Places, easing the danger of imminent demolition and making the Old Post Office subject to the procedures of the National Historic Preservation Act of

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\(^{54}\) Levy, supra note 53, at C1. For the most part, early support came predominantly from white residents in neighborhoods containing the first historic districts — Georgetown, Capitol Hill, Dupont Circle, and Foggy Bottom. Email Interview with Karen Gordon, Historic Preservation Officer, City of Seattle, Washington (Mar. 15, 2002). Karen Gordon, an undergraduate at The George Washington University from 1973-77, became interested in historic preservation when the University announced plans to demolish a block of historic townhouses along the 1900 block of F Street to make way for the construction of an office building for the World Bank. She formed the Committee for the Campus, a student organization that addressed historic preservation and the need of a Master Plan for the University. Through her work on the GW campus, Karen became involved with Don’t Tear It Down. *Id.*

\(^{55}\) Levy, supra note 53, at C1.

In 1975, influenced by the intense campaigning by preservationists, the National Capital Planning Commission, rejecting its earlier position, voted to remove the demolition of the Old Post Office from its plan for Pennsylvania Avenue “because of its historic significance to the avenue’s grand design.” Nancy Hanks, chairperson of the National Endowment for the Arts, also joined the effort to save the historic structure. Advocating restoration of the building, Chairwoman Hanks presented Congress with “a plan for adapting the Old Post Office for joint use by both government and private businesses.” In 1976, Congress passed the Public Buildings Cooperative Use Act, which required the General Services Administrator “to encourage the location of commercial, cultural, educational, and recreational facilities and activities in public buildings.” In 1977, preservationists achieved final victory in the long battle to save the Old Post Office when Congress approved the rehabilitation of the landmark and authorized $18 million for renovations.

Publicity of the plight of the Old Post Office resulted in a great amount of support “from all sectors of the Washington community,” and resulted in a growing support for preservation

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57 U.S. National Park Service, National Register Information System (2002), available at http://www.nr.nps.gov. The National Historic Preservation Act of 1966 provides that any Federal project shall be begun only after taking into account the effect of such project on any property, site, structure or object which is listed on the National Register of Historic Places, and also provides that the Advisory Council on Historic Preservation shall be afforded the opportunity of commenting on such projects. 16 U.S.C. § 470f.


59 Barker, supra note 58, at B1. In 1974, Bill Lacy, then head of the National Endowment for the Arts’ architectural section, proposed to Chairwoman Nancy Hanks that the Old Post Office be saved as a visual and performing arts center. Sarah Booth Conroy, Going for Broke; Bush Helps Ring In The New Old Post Office, WASH. POST, Apr. 20, 1983, at B1.

60 Barker, supra note 58, at B1. During testimony, Ms. Hanks noted that “old buildings are like old friends . . . they reassure us in times of constant change.” Id. She also testified that she saw the Old Post Office as an opportunity “to encourage people to dream about their cities, to consider the alternatives before they tear them down.” Id.


efforts in the District. The Old Post Office, however, was not the only landmark in the District with an uncertain future. Seeking to channel the outrage expressed by residents over the slated demolition of the Old Post Office, Don’t Tear It Down decided to also publicize the potential destruction of two other significant D.C. landmarks, the Willard Hotel, and Franklin School.

The Willard Hotel had been closed in 1968 because of financial difficulties, and a development plan prepared by the Pennsylvania Avenue Development Corporation called for the Hotel to be demolished. The rich historic associations of the Willard made it the focal point of the growing opposition in the District “to the destruction of historic landmarks.” Under growing pressure from citizens groups, the Pennsylvania Avenue Development Corporation scrapped its plans to raze the structure. In fact, the 1974 plan for Pennsylvania Avenue, developed by the Pennsylvania Avenue Development Corporation and approved by Congress, called for the restoration of the hotel.

Efforts to preserve the Willard, however, continued to face challenges when the owners of the site sought a permit that would allow them to strip the building’s façade. Based on a recommendation from the Commission of Fine Arts, the District refused to issue the permit,
which prompted the owners to file suit in D.C. Superior Court. The court ordered District officials to issue the permit to the owners, finding that under the Shipstead-Luce Act, the Fine Arts Commission cannot prevent an owner from demolishing a building, and that stripping the Willard’s façade “amounted to a demolition.” The District of Columbia Court of Appeals unanimously affirmed the decision of the Superior Court, agreeing that the proposed removal of the Willard façade is a demolition rather than an alteration, and therefore falls outside the scope of the Shipstead-Luce Act.

In response to this setback, Don’t Tear It Down immediately filed suit in U.S. District Court “seeking to prevent the D.C. government from issuing the permit sought by the Willard Hotel owners.” The plaintiffs claimed that the reenacted moratorium provision of Pennsylvania Avenue Development Corporation Act, which prohibited new construction within the development area, prohibited the District from issuing the permit requested by the Willard owners without prior approval from the Pennsylvania Avenue Development Corporation. The District Court agreed, and based on the reenactment of the moratorium provision, enjoined the owners “from demolishing, converting, removing, or altering the exterior facade of the Willard

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73 Id.
74 Owners Ask Right to Strip Willard Hotel, supra note 71, at C5.
75 The appellate court agreed with the trial court that “alteration” in the Shipstead-Luce Act “means change in the sense of adding to, remodeling, or reconstruction.” Benenson, 329 A.2d at 440.
76 Id. The appellate court also noted that because the Shipstead-Luce Act limits the governmental control to only “the exterior appearance of buildings,” and since in this case “the exterior appearance would be removed, not altered, by demolition,” the result would be no different than if the owner sought a permit to completely demolish the Willard. Id.
78 Don’t Tear It Down v. Washington, 399 F. Supp. 153, 153 (D.D.C. 1975). The original moratorium on new construction expired in 1973, before the owners of the Willard filed for the permit to remove the façade. However, Congress reenacted the moratorium provision between the time the D.C. Superior Court entered its order and the time the D.C. Court of Appeals affirmed that ruling. Consequently, “even assuming that the [owners] obtained some type of vested right [in obtaining a permit to remove the façade] when the moratorium provision was not in effect, they must now comply with the Pennsylvania Avenue Development Corporation Act.” According to the court, “it is clear that federal legislation can regulate future action in a way that interferes with rights previously acquired.” Id. at 156-57.
without prior certification from the Pennsylvania Avenue Development Corporation that such work was consistent with its development plan for the area.”

When Congress adopted the Pennsylvania Avenue Development Plan in 1975, the moratorium provision became permanent, and the Pennsylvania Avenue Development Corporation formally rejected the request for a permit to remove the façade of the Willard. In 1976, the owners brought suit in the Federal Claims Court for just compensation, claiming “that the actions of the United States have so interfered with the use and enjoyment of their property as to constitute a complete taking” under the Fifth Amendment. The Court of Claims agreed that the United States was in effect the owner of the Willard because it had “so impeded and restrained the owners as to deprive them of any reasonable use of their property,” and ordered the U.S. government to pay the owners just compensation. On January 12, 1978, title to the Willard officially passed to the U.S. government and Pennsylvania Avenue Development Corporation. Through the long legal battle, Don’t Tear It Down eventually succeeded in its efforts to prevent the destruction of the Willard Hotel.

In 1972, Don’t Tear It Down held a rally to voice support for preserving historic landmarks in downtown Washington. Those who gathered in Franklin Square Park also “signed petitions endorsing the preservation of Franklin School. The Franklin School, built in 1869, became a “symbol of the city’s dedication to its new public school system,” and was widely

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79 Id. at 157 (D.D.C. 1975).
80 Benenson v. United States, 212 Ct. Cl. 375, 386-87 (Ct. Cl. 1977).
81 Id. at 375.
82 Id. at 390.
84 Ronald Taylor, 120 Attend Rally to Save Landmarks, WASH. POST, Apr. 17, 1972, at C1.
85 Id.
celebrated as one of the finest buildings in Washington, D.C. In 1876, Alexander Graham Bell used the school to experiment with his “photo phone” invention, which involved transmitting “sound on a light beam between the school and his laboratory on L Street, NW.” Although the Joint Committee had nominated the Franklin School to be included on the National Register, the D.C. government refused to forward the nomination to the Department of Interior. This refusal was largely based on the fact that the school is located next to the site of metro station and the District government estimated it could receive $3 million for the property. Preservationists largely feared that such a sale would lead to the destruction of this landmark. By 1973, District officials eventually bowed to the pressure from citizens, and placed the Franklin School building on the National Register of Historic Places. Although designation did not guarantee salvation, listing on the National Register imposed “stringent and lengthy administrative procedures for anybody wanting to destroy” the Franklin School, and also made the building eligible for federal restoration aid.

Through its efforts to save the Old Post Office, the Willard Hotel, and Franklin School, Don’t Tear It Down made “it socially acceptable to save” historic landmarks and also continued to raise awareness about the need to preserve historic resources in the District. This increased awareness led to Washington playing host to the 1972 Preservation Conference sponsored by the National Trust for Historic Preservation. This was the first major preservation conference to

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86 Benjamin Forgey, Lessons From Washington’s Jewel of a School, WASH. POST, May 9, 1992, at B1. The Franklin School building was considered so advanced for its time that residents showcased a scale model of the building at the 1876 world’s fair in Philadelphia. Id.; see also The Franklin School, WASH. POST, Mar. 20, 1972, at A20.
88 Taylor, supra note 84, at C1.
89 Id.
90 Id.
92 Id.; see also Wolf Von Eckardt, ‘Don’t Tear It Down,’ WASH. POST, Nov. 30, 1974, at C1.
93 Oman, supra note 65, at DC4.
94 ‘People Speak’ on Preservation, WASH. POST, Apr. 9, 1972, at F1.
focus exclusively on issues facing the District of Columbia, and provided an opportunity for those involved with historic preservation to come together to share experiences and make recommendations on what measures are needed to preserve the District’s historical resources.  

C.  Frustration Leads to Delay in Demolition Provision

Despite increasing public participation and awareness, preservationists were not always victorious. In 1973, developers demolished the McGill Building located in downtown Washington.  

One resident criticized the ease with which developers could obtain demolition permits, and called on the city council to “design regulations that provide a measure of oversight by the municipal government . . . [over] the proposed destruction of buildings in any of the city’s neighborhoods.”  

Along these same lines, editors at the Washington Post commented that developers often obtained demolition permits “with the speed and ease with which you can buy a postage stamp.”  

The demolition of the McGill Building, while disappointing, did finally prompt the D.C. City Council to pass “for the first time, legislation designed to forestall the . . . demolition of historic buildings.”

The delay in demolition provision, an amendment to the city’s building code, received unanimous support from the City Council.  

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96 Oman, supra note 65, at DC1. Leila Smith, then president of Don’t Tear It Down, initially thwarted the developer’s attempt to demolish the McGill Building when she realized no demolition permit had been issued. Von Eckardt, supra note 92, at C1. Because of this incident, demolition permits were “no longer issued over the counter.”  


100 Kirk Scharfenberg, Council Moves to Save Key Buildings, WASH. POST, Sep. 14, 1973, at C2. The delay in demolition regulation, D.C. Regulation 73-25, read in pertinent part as follows:
historic landmarks had to come from Congress,\textsuperscript{101} preservationists at the time believed “passage of the [delay in demolition regulation] would aid in an effort to get stronger rules.”\textsuperscript{102} Seen as merely “the first step toward protecting [the District’s] historically . . . important buildings,” the move to delay demolition of historic landmarks was heralded as a way to control speculative demolition.\textsuperscript{103} Leila Smith, then president of Don’t Tear It Down, commented that this legislation is “the most satisfying thing [she’s] seen come out of the city,” and that the new provision “will give an enormous shot in the arm to [Don’t Tear It Down’s] efforts.”\textsuperscript{104}

The new regulation called on the Joint Committee to review applications for demolition or alteration permits for property listed on the National Register.\textsuperscript{105} If the Committee found alteration or demolition ‘contrary to the public interest,’ the state historic preservation officer

\begin{verbatim}
Before the Director may issue a permit to demolish or alter the exterior of . . . a building or structure listed on the city's inventory of historic sites . . . the Director shall submit the application for a permit to the Commissioner of the District of Columbia and shall place notice of the application for a permit in the District of Columbia Register. The Commissioner, or his designated agent, acting with the advice of the District of Columbia Professional Review Committee for nominations to the National Register of Historic Places . . . shall within sixty (60) days determine whether the alteration or demolition of the building, structure or place is contrary to the public interest and should be delayed for a designated period of up to 180 days following such determination to permit the District of Columbia's State Historic Preservation Officer and the Professional Review Committee to negotiate with the owner or owners of the building, structure or place and civic groups, public agencies, and interested citizens to find a means of preserving the building, structure or place. Before issuing any order delaying such demolition or alteration, the Commissioner or his designated agent shall afford the applicant and any interested parties an opportunity to offer any evidence they may desire to present concerning the proposed order. Title 5A-1, § 109.10, D. C. Building Code.
\end{verbatim}

\textsuperscript{101} The delay in demolition regulation, passed in 1973, predated D.C. Home Rule. The 1973 regulation was merely an amendment to the D.C. Building Code that delayed, but did not prohibit demolition. Lacking home rule, a more comprehensive program for historic preservation, one that would \textit{inter alia} permit the District to prohibit demolition, required general enabling legislation from Congress. \textit{See} Scharfenberg, \textit{supra} note99, at C1 (“Stronger preservation legislation . . . would have to come from Congress); \textit{see also} Dowling, \textit{supra} note 11, AT 115; Smith, A \textit{supra} note 64, at 74; Westbrook, \textit{supra} note 45, at 20.

\textsuperscript{102} Scharfenberg, \textit{supra} note 99, at C1.

\textsuperscript{103} Wolf Von Eckardt, \textit{Conservation Quandary: Not Every Old Building Should Be Saved}, WASH. POST, Aug. 5, 1978, at D1. Speculative demolition, refers to the practice of developers in which they “acquire whole rows of nice old buildings and tear them down just to have a nice piece of vacant land to play Monopoly with.” \textit{Id}. Developers often employed this strategy “when a building . . . [was] being considered for nomination as a landmark.” \textit{Id}.

\textsuperscript{104} Scharfenberg, \textit{supra} note 99, at C1. Smith noted that such a delay “could be invaluable in working out plans to preserve valuable structures.” Scharfenberg, \textit{supra} note 100, at C2.

could delay issuing the permit for 180-days.\textsuperscript{106} The Washington Post hailed the new law as enabling preservationists “to defend the building [slated for destruction] and negotiate with the owner about . . . economically feasible ways of ‘recycling’ an irreplaceable cultural resource.”\textsuperscript{107} Although optimistic about the future, members of Don’t Tear It Down realized “that the organization will have to continue its ‘brush fire stuff’.”\textsuperscript{108}

D. \textit{Frustration Sets In}

Enthusiasm for the District’s new delay in demolition provision, however, quickly turned into frustration as preservationists realized that after the 180 day “cooling-off” period expired, owners were free to demolish the building.\textsuperscript{109} In 1977 the Dunbar High School Alumni Association fought to save the historic Dunbar High School from being destroyed to make room for a stadium.\textsuperscript{110} As the oldest black secondary school in the District, the school attained prominence during segregation, achieving “a nationwide reputation for academic excellence,”\textsuperscript{111} and “has a distinguished list of black graduates.”\textsuperscript{112} Because the school had “been designated a historical landmark and placed on the [D.C.] Inventory of Historic Sites,” the delay in demolition provision applied to the District’s plans to raze the building.\textsuperscript{113} However, during the 180-day reprieve, the Alumni Association was unable to convince the District to reconsider plans to demolish Dunbar High School. On March 16, the Alumni Association went to D.C. Superior Court to prevent the District from carrying out its plans to tear down the building on April 1, claiming that the District denied it “the right to participate in an orderly and fair process of

\begin{itemize}
  \item \textsuperscript{106} \textit{Id.}
  \item \textsuperscript{107} \textit{A Brake on the Bulldozers, supra note 98, at A26; see also Scharfenberg, supra note 100, at C2.}
  \item \textsuperscript{108} Oman, \textit{supra} note 65, at DC1.
  \item \textsuperscript{109} Anne H. Oman, \textit{Residents of the Area Around Dupont Circle Clash Over Whether to Become a Historic District, Scharfenberg, supra} note 100, at DC4.
  \item \textsuperscript{110} Martin Weil, \textit{Dunbar High Demolition Bar Is Lifted, WASH. POST}, June 3, 1977, at C5.
  \item \textsuperscript{111} \textit{Id.}
  \item \textsuperscript{112} \textit{Judge Delays Planned Demolition of Historic Dunbar High School, WASH. POST}, Mar. 17, 1977, at E4.
  \item \textsuperscript{113} \textit{Id.}
\end{itemize}
decision-making.”\textsuperscript{114} After reviewing the transcript of the public hearing on Dunbar High School, and other materials, the court issued a preliminary injunction preventing the destruction of the school. In announcing the ruling, the court noted that under the delay in demolition regulation, “the city is required to make a good faith effort to hear and consider views of civic groups, public agencies and interested citizens on possible alternatives to demolition.” Although the delay in demolition provision merely provides for a 180 day delay period “to permit . . . negotiat[ions] with the owner . . . and interested citizens to find a means of preserving the building,” the court ruled that the provision required “meaningful negotiations.”\textsuperscript{115}

On June 2, the court lifted the ban on demolition, satisfied “that ‘meaningful negotiations,’ as [judicially] required by the delay in demolition provision [had] been held.”\textsuperscript{116} The court noted three public negotiating sessions held after issuing the preliminary injunction, at which officials “genuinely heard, considered and ultimately rejected alternatives to demolition.”\textsuperscript{117} Although preservationists did not succeed in preventing the demolition of Dunbar High School, the fight over the landmark resulted in a strengthening of the delay in demolition provision. Construing the delay in demolition regulation to require “meaningful negotiations” during the 180-day delay period,\textsuperscript{118} the Dunbar court continued to extend the “delay period” until the city satisfied him “that all alternatives to demolition had received a fair hearing.”\textsuperscript{119}

Preservationists eventually seized on the “meaningful negotiations” language during their protracted battles with a developer to prevent the destruction of the townhouses along Red Lion

\textsuperscript{114} Id.
\textsuperscript{115} Weil, supra note 110, at C5.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Don’t Tear It Down, Inc. v. District of Columbia, 395 A.2d 388, 390 (D.C. Ct. App. 1978); see also Weil, supra note 115, at C5; Oman, supra note 65, at DC1.
\textsuperscript{119} Anne H. Oman, Injunction Bars Foley Company From Razing Building, WASH. POST, Oct. 13, 1977, at DC3.
The battle over Red Lion Row began in October 1976, when a developer, who owned several townhouses along the block, began tearing down the townhouse located at 2022 I Street, a house built by former D.C. territorial governor, Alexander R. Shepherd. Don’t Tear It Down, convinced a judge to issue a temporary restraining order halting demolition, because an application to declare the entire block a historic landmark was pending before the Joint Committee.

In November 1976, the developer began efforts to demolish the townhouse located at 2030 I Street. Because the building was already listed on the National Register, the state historic preservation officer invoked the 180 day delay. Discussions between the developer and community did not occur until the 179th day, so the moratorium was extended for an additional thirty days. When the thirty day moratorium ended, the developer began demolishing the townhouse, however, preservationists were able to get a temporary restraining order and prevent the demolition of the front half of the structure. Don’t Tear It Down argued that the developer did not engage in “meaningful discussion” as required by the Dunbar case, and

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121 Wentworth, supra note 120, at C2.
122 Eric Wentworth, Razing Halted of NW Building Pending Bond, WASH. POST, Oct. 8, 1976, at C6. As a note, it is unclear on what legal grounds Don’t Tear It Down asked for and the court granted the temporary order. In 1977, Dupont Circle residents also convinced a judge to grant a temporary restraining order on demolition while applications for landmark status were pending before the Joint Committee. Anne H. Oman, Try to Save Houses Near Dupont Circle Fails, WASH. POST, Feb. 17, 1977, at DC4 (preservationists ultimately were unable to secure the restraining order because they could not post the required bond). These may be instances in which the court is attempting to fix a loophole in the law, whereby owners could demolish buildings even while applications for their landmark status are pending with the Joint Committee. Such an action by the court seems consistent with the apparent intent of the regulation, albeit not necessarily consistent with the actual text. This a loophole that preservationists would remedy in the 1978 Historic Preservation legislation.
123 Gorney, supra note 120, at C1.
124 Anne H. Oman, Red Lion Demolition Permit Revoked, WASH. POST, Sep. 8, 1977, at DC1.
125 Id.
126 Gorney, supra note 120, at C1.
therefore, they were unable to adequately present their alternative plan.\textsuperscript{127} At the injunction hearing in October, the judge noted that there had been meetings, and insisted that what is meant by ‘meaningful discussion’ “is beyond the court’s comprehension;” however, agreed to grant an injunction until the D.C. Court of Appeals ruled on the issue.\textsuperscript{128} Fortunately for preservationists, the 1978 law came into effect while the case was still before the courts.\textsuperscript{129}

Battles like the ones over Red Lion Row show that the delay in demolition regulation did prove useful on some occasions.\textsuperscript{130} However, such battles often became very costly, as preservationists were required to run to court to seek injunctions and post ever increasing bonds. Furthermore, protracted legal battles did not always end in success, there was always a tremendous amount of uncertainty each time preservationists went to court.\textsuperscript{131} Unfortunately, the end result was often like what happened in the Dunbar case. Indeed, there was widespread understanding among preservationists that the delay in demolition law “was useless, kind of a joke.”\textsuperscript{132} While the law required developers to have meaningful discussions with the city and community on alternatives to demolition, much of the burden was on the community to come up with alternatives that would entice a developer to not demolish the landmarks. Ultimately there

\textsuperscript{127} \textit{Id.} The D.C. government revoked the demolition permit because the wrecker used a bulldozer to begin the demolition, and the permit “specified that the building was to be taken down piece by piece.” Oman, \textit{supra} note 129, at DC1.
\textsuperscript{128} Oman, \textit{supra} note 119, at DC3.
\textsuperscript{129} Anne H. Oman, \textit{Historic Red Lion Row Gets Six-Month Reprieve}, WASH. POST, Sep. 7, 1978, at DC6. In September 1978 the developer resumed efforts to demolish what remained of the house at 2022 I Street, however, the D.C. historic preservation officer invoked the 180 day delay. \textit{Id.}
\textsuperscript{130} Other successes under the delay in demolition provision included the following: (1) persuading Howard University “to preserve three Victorian houses in LeDroit Park;” (2) a developer agreeing “to include two Capitol Hill row houses” in a new education building; (3) an agreement by the developer of a condominium “to save three of six Victorian homes on Maryland Avenue, NE; and (4) a compromise between Mount Pleasant residents and a developer to save the Adams House.” Anne H. Oman, \textit{New Law Protects District Landmarks}, WASH. POST, Mar. 8, 1979, at DC1.
\textsuperscript{131} Email Interview with Karen Gordon, \textit{supra} note 54 (expressing the view that community members, largely because of the expense, grew tired of having to continually go to court). Some community groups began pursuing other means of discouraging developers from purchasing and razing residential properties. The Capitol Hill Restoration Society, for example, requested the Zoning Commission to rezone areas of the historic district to make it “less attractive to builders interested in high density development.” Anne H. Oman, \textit{Historic Homes Get Reprieve}, WASH. POST, Sep. 29, 1977, at DC1.
\textsuperscript{132} Email Interview with David Bonderman (Mar. 15, 2002).
were no incentives for an owner to search for alternatives, and in fact there were essentially no legal consequences should the developer, in the end, decide to go through with the initial demolition plans.\textsuperscript{133}

During the years the delay in demolition provision was in effect, the Joint Committee reviewed over 1,200 demolition and alteration applications, and the D.C. historic preservation officer only invoked the 180 day moratorium in twenty five of those cases.\textsuperscript{134} One D.C. official commented “that most delays were merely that – after six months most of the buildings in question were torn down.”\textsuperscript{135} Preservationists largely realized that delay in demolition was never the end result, but rather was part of the incremental steps taken towards a more comprehensive system; the ability to retain the “fabric of the city,” required laws with “teeth in them.”\textsuperscript{136}

V. THE D.C. HISTORIC PRESERVATION ACT

If the destruction of the McGill building led to the passage of the delay in demolition regulation, the overall frustration with the brushfire approach to saving the city’s important historical resources created an atmosphere in which nearly everyone interested in preservation

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\textsuperscript{133} Anne H. Oman, Building Preservation Sought in Commercial Complex Project, WASH. POST, Feb. 23, 1978, at DC4. The developer attitude of, “I’ll do what I want,” is best illustrated in the initial discussions to save a group of landmarks across from the Treasury Building. During those discussions, the developer told community members that if he would “proceed with total demolition if [he couldn’t] raise” enough private funding. \textit{Id}. \\
\textsuperscript{134} Oman, \textit{supra} note 130, at DC1. \textit{Id}. \\
\textsuperscript{135} \textit{Id}. \\
\textsuperscript{136} Email Interview with David Bonderman, \textit{supra} note 132; see also Oman, \textit{supra} note 135, at DC1; see generally THE WASHINGTON PRESERVATION CONFERENCE PROCEEDINGS (1972) (many conference participants emphasized the need for comprehensive legislation).
\end{flushleft}
agreed that a program was needed that would allow the city to exercise control over the willful demolition of landmarks.\textsuperscript{137}

In 1974, less than a year after the City Council adopted the delay in demolition provision, the North Dupont Community Association, angry over the proposed destruction of 10 turn-of-the-century row houses sought to make it more difficult for developers to raze residential property.\textsuperscript{138} The group unsuccessfully lobbied for legislation aimed at “barring demolition of not only of landmarks, but of all buildings used for housing.”\textsuperscript{139} As the only citywide organization devoted to preservation issues, Don’t Tear It Down was the driving force for all of the historic preservation issues at the time.\textsuperscript{140} Because of the setbacks and rising frustrations under the delay in demolition regulation, “community groups continued to press Don’t Tear It Down to come up with [stronger legislation] that could be enacted.”\textsuperscript{141} Responding to this demand, David Bonderman, vice president of Don’t Tear It Down, drafted a piece of legislation that would have required owners, if they wanted to demolish landmarks, to put their properties up for sale at a fair market value.\textsuperscript{142} Mr. Bonderman notes that he returned to the drawing board after receiving comments from various community groups.\textsuperscript{143} According to Mr. Bonderman, “Capitol Hill wanted to control new construction (in the historic district) . . . [while] Anacostia needed flexibility . . . to encourage new construction . . . and Georgetown was worried about subdivisions.”\textsuperscript{144} Over several years, members of Don’t Tear It Down began drafting a bill that

\textsuperscript{137} See Email Interview with David Bonderman supra note 132; Email Interview with Karen Gordon, supra note 54; see also Anne H. Oman, Residents Support Legislation to Protect Landmark Buildings, WASH. POST, Aug. 3, 1978, at DC5; Historic Preservation in the City, WASH. POST, Nov. 14, 1978, at A20.


\textsuperscript{139} Oman, supra note 130, at DC1; see also Rippeteau, supra note 138, at D10.

\textsuperscript{140} Email Interview with David Bonderman, supra note 132 (referring to efforts by Don’t Tear It Down to strengthen historic preservation laws in D.C.).

\textsuperscript{141} Oman, supra note 130, at DC1.

\textsuperscript{142} Id.

\textsuperscript{143} Id.; see also Email Interview with David Bonderman, supra note 132.

\textsuperscript{144} Oman, supra note 130, at DC1.
would provide for a comprehensive program aimed at preventing the needless destruction of the
District’s historic resources.

A. Purpose for the Legislation

On June 28, 1978, Councilmember John Wilson introduced the Historic Landmark &
Historic District Protection Act. This new law provided for a comprehensive system of
protection of buildings and sites with respect to demolition, alterations, subdivisions, and new
construction. According to the Committee on Housing & Urban Development, the D.C.
Historic Preservation Act remedied three significant inadequacies present in the delay in
demolition provision.

First and foremost, the new law recognized the concern expressed by many
preservationists, that the delay in demolition provision provided “no permanent safeguard for
historic sites.” Because that provision did not provide for incentives or sanctions, many
concluded that the delay in demolition law simply encouraged owners “to wait the 180 days and
then proceed with his plans for demolition . . . [or] alteration.” Many of the provisions in the
new law, particularly with regards to demolition and alteration, provided the incentives and
sanctions necessary for permanent protection for historic resources. For example, under the old
system, there was a presumption that demolition could occur so long as owners engaged in
“meaningful discussions” during the 180 day moratorium; neighbors carried the burden of
convincing owners to accept alternatives to demolition. However, the new anti-demolition
provision presumes that demolition cannot occur, and shifts the heavy burden on the owner to

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146 Id. at 2.
147 Id. at 3.
148 Id. at 4.
149 Id.
show that demolition is required under the Constitution, that demolition will not adversely impact the relevant historic district, or that demolition satisfies the special merit criteria.\textsuperscript{150}

Closely related to the first point, the new legislation also addressed the weakness of the delay in demolition law with respect to properties and sites whose applications for historical status were pending before the Joint Committee. The old regulation only covered properties already on the D.C. inventory of historic places and districts on the National Register, and therefore encouraged “hasty demolition of properties in the application stage.”\textsuperscript{151} This deficiency in the prior law often resulted in protracted and costly legal battles, such as those that occurred with respect to Red Lion Row in Foggy Bottom.

Finally, the delay in demolition provision rectified the shortcomings of the old system with respect to new construction. The delay in demolition provision only applied to demolition and alteration.\textsuperscript{152} Unless the property fell under the jurisdiction of the Shipstead-Luce or Old Georgetown Act, there was no way to assure the new construction would be appropriate for the surroundings.\textsuperscript{153} Consequently, the delay in demolition provision provided “no assurance that historic districts or landmarks will retain their character.”\textsuperscript{154}

B. \textit{Specific Provisions – Why They are There and the Concerns Addressed}

Residents generally supported stronger preservation legislation.\textsuperscript{155} At the public hearing on the bill, one citizen of Dupont Circle declared that because of the “alarming increase in

\begin{itemize}
\item \textsuperscript{150} \textit{Id.} at 10.
\item \textsuperscript{151} COMMITTEE ON HOUSING & URBAN DEVELOPMENT, COUNCIL OF D.C., REPORT ON BILL 2-367, 4 (Oct. 5, 1978).
\item \textsuperscript{152} \textit{Id.}
\item \textsuperscript{153} \textit{Id.}
\item \textsuperscript{154} \textit{Id.}
\item \textsuperscript{155} Oman, supra note 137, at DC5; see also Oman, supra note 130, at DC1; Email Interview with David Bonderman, supra note 132; Email Interview with Karen Gordon, supra note 54. During the public hearing before the city council, residents supporting the legislation represented “the Citizens Association of Georgetown, the North Dupont Community Association, the Logan Circle Community Association, the National Trust for Historic Preservation, the Friendship Citizens Association, Don’t Tear It Down, the Society of Architectural Historians, Neighborhood Housing Services, the Washington Junior League, the Patrons of the Adams House, the Mt. Pleasant Neighbors
\end{itemize}
demolition activity,” the city “desperately need[s] this bill to be passed.”¹⁵⁶ According to Karen Gordon, even the business community, to some extent, finally supported the D.C. law.¹⁵⁷ She attributes this to the fact that the new legislation established ground rules for preservation in the District.¹⁵⁸ Under the delay in demolition provision, local groups hauled developers into Superior Court at every step, and Ms. Gordon believes that the business community probably considered it easier to deal with the new law, which they had input into, rather than having to face the uncertainties and expenses associated with continually going to superior court.¹⁵⁹ A spokesman for the Board of Trade, a group initially opposed to the legislation, noted that his group was able “to make some important improvements, to change some definitions, to mitigate some negative effects.”¹⁶⁰ The spokesman referred specifically to modifying “the procedure for obtaining a demolition permit in order to construct a ‘project of special merit’” to the group’s satisfaction.¹⁶¹ The reason the law empowers the mayor’s agent, rather than the Historic Preservation Review Board, to determine whether to issue a permit, was because developers wanted such decisions to be made by a neutral agency.¹⁶² In fact, proponents of the bill always expected that an administrative law judge, or some other agent for the mayor would make the decision on whether to issue a permit after conducting a trial type hearing.¹⁶³ The developers insisted that a neutral agency be tasked with the responsibility of deciding whether to issue permits for demolition, alteration, subdivision, and new construction, because they believed it to be unfair to have the

¹⁵⁶ Oman, supra note 137, at DC5.
¹⁵⁷ Email Interview with Karen Gordon, supra note 54.
¹⁵⁸ Id.
¹⁵⁹ Id.
¹⁶⁰ Oman, supra note 130, at DC1.
¹⁶¹ Id.
¹⁶² Email Interview with David Bonderman, supra note 132.
¹⁶³ Id. The practice of having an agent of the mayor make decisions in these types of matters came about under the delay in demolition provision. Oman, supra note 130, at DC1.
judge of whether to issue a permit be the same agency charged with deciding what structures and sites to declare historic.\textsuperscript{164}

However, there were some who, for a variety of reasons, expressed concern over the legislation. D.C. Council members Willie Hardy and William Spaulding expressed concerns over elitism, that stronger preservation measures “would accelerate the displacement of poor persons from inner city neighborhoods.”\textsuperscript{165} However, despite potential gentrification issues, many residents “saw the fabric of their community being radically changed” by mindless demolition and wanted to find a way to prevent this change.\textsuperscript{166} By and large community members, including African-Americans, saw the potential of historic preservation as a community development tool, as a way of having control over their destinies.\textsuperscript{167} An example of this was in Old Anacostia, where the community generally welcomed historic preservation as a way of preserving the “best parts of the community” and obtaining funding “to continue neighborhood improvements.”\textsuperscript{168}

The American Institute of Architects also “expressed strong reservations about the bill,”\textsuperscript{169} objecting to the provision regulating new construction in historic districts, as an improper “legislative intervention into a creative process.”\textsuperscript{170} The Institute complained that the new legislation “would freeze all progress in the city,” and insisted that the District “is not a museum . . . historic Rome as we know it is about the seventh edition of that city.”\textsuperscript{171}

The Commission of Fine Arts also did not warmly receive the new law. Although supportive of efforts to strengthen the protection of historic sites in D.C., the Commission feared

\textsuperscript{164} Email Interview with David Bonderman, \textit{supra} note 132.
\textsuperscript{165} \textit{Oman}, \textit{supra} note 130, at DC1. Other residents also expressed concerns regarding the effect the bill would have on lower and middle income households living in historic districts. \textit{Preserving Anacostia}, \textit{WASH. POST}, Nov. 28, 1977, at A20.
\textsuperscript{166} Email Interview with Karen Gordon, \textit{supra} note 54.
\textsuperscript{167} \textit{Id}.
\textsuperscript{168} \textit{Preserving Anacostia, supra} note 165, at A20.
\textsuperscript{169} \textit{Oman, supra} note 137, at DC5.
\textsuperscript{170} \textit{Oman, supra} note 130, at DC1.
\textsuperscript{171} \textit{Oman, supra} note 137, at DC5.
the new law would interfere with their operation. The chairman argued that the new D.C. Preservation Review Board duplicated the review of the Commission, thus raising “legal questions regarding possible dilution of the two federal statutes under which the Commission operates. Addressing this concern, the Council incorporated into the final legislation an amendment suggested by councilmember Nadine Winter’s ad hoc committee, that would merely permit, not require, the mayor’s agent to refer permit applications for properties located in areas under the jurisdiction of the Commission of Fine Arts to the D.C. Historic Preservation Review Board.

The U.S. Supreme Court decision in *Penn Central v. New York City* not only influenced provisions in the D.C. Historic Preservation Act, but also changed the focus of the debate. Before the landmark decision by the Court, there was a question as to whether historic preservation laws were constitutional. When the Court ruled that landmark designations that restrict uses of property ordinarily do not amount to a constitutional “taking” of private property, the court provided a strong legal footing for historic preservation programs. David Bonderman notes that the *Penn Central* case “provided a roadmap . . . as to what was constitutionally permissible.” The decision also “took away the developers’ arguments that” the city could not establish a comprehensive preservation program, “and instead reduced [opponents] to fighting on the margins.”

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173 Historic Landmark & Historic District Protection Act of 1978, D.C. CODE ANN. § 6-1104(b); COMMITTEE ON HOUSING & URBAN DEVELOPMENT, supra note 177 (Letter from the Commission of Fine Arts to the D.C. City Council).
175 Email Interview with David Bonderman, supra note 132.
177 Email Interview with David Bonderman, supra note 132.
178 *Id.*
The D.C. law provides that no demolition permit may be issued unless the mayor’s agent determines “that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner.”¹⁷⁹ With regards to “unreasonable economic hardship, supporters of the legislation largely believed that based on the takings law at that time, the “unreasonable economic hardship” test “could virtually never be satisfied.”¹⁸⁰ However, in response to concerns expressed that the new law would unfairly impact lower income owners, the bill was amended to include a less demanding test. According to David Bonderman, the test for low income individuals, “onerous and excessive financial burden,” was a compromise to show that the law was not intended to burden low income owners.¹⁸¹

David Bonderman also noted that drafters added the “necessary in the public interest” provision to provide some flexibility in certain cases.¹⁸² The often cited example was the construction of a hospital or school at a critical location that would require the demolition of historic structures.¹⁸³ The “special merit” exception was placed into the legislation at the insistence of Mayor Washington. At that time a deal had been cut to construct the Washington Convention Center. There was a row of houses on the convention center site that residents had begun preparing landmark nominations for, and Mayor Washington wanted to ensure that the Convention Center project was built.¹⁸⁴ David Bonderman agreed that the “special merit” exception was regarded as being designed for “rare, one-time projects, like the Convention

¹⁸⁰ Email Interview with David Bonderman, supra note 132. Indeed, David Bonderman notes that it would have been difficult for developers to object too strongly to a test just determined to be constitutional by the U.S. Supreme Court. Id.
¹⁸¹ Id.
¹⁸² Id.
¹⁸³ Id.
¹⁸⁴ Email Interview with Karen Gordon, supra note 54.
Center.”  

He went on to note that this exception was “not intended to apply in more general circumstances, and certainly was never intended to apply to the construction of any downtown office building, regardless of whether the design incorporated aspects of the comprehensive plan.”

After signing the bill into law, a spokesman for Mayor Walter Washington, commenting on the improvement over the delay in demolition provision, noted that the new legislation “enable[s] the city to say, ‘You can’t tear [historic landmarks] down’.” Historic preservation had come a long way from seven years earlier when a group of angry citizens rallied to save the Old Post Office, and brandished placards declaring, “Don’t Tear It Down!” Although some compromises were made with respect to certain provisions, the general thrust of the legislation remained the same. Proponents of the legislation achieved their goal of establishing a comprehensive historic preservation program for the District that would ensure that the city’s historical resources remained for the enjoyment of future generations. The reasons for success are numerous. Rather than chain themselves to buildings, preservationists worked at becoming experts; they did their research, drew up alternative plans to demolition, had numbers to back up their points, and had young lawyers within their ranks who knew how to make use of the legal system. Home Rule for D.C. finally gave the District the legal ability to engage in extensive land use planning, including historic preservation activities. This legal footing became more secure with the U.S. Supreme Court’s ruling in *Penn Central*. The ruling, as noted by David Bonderman proved to be a pivotal moment in the D.C. historic preservation movement, taking away the arguments by developers that comprehensive historic preservation measures amounted to a taking of property without due process of law. Ultimately, however, preservationists succeeded

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185 Email Interview with David Bonderman, *supra* note 132.
186 *Id.*
in pushing through one of the strongest historic preservation laws in the country through sheer will and determination.

VI. CONCLUSION

Washington is a unique city that boasts a large number of landmarks significant in U.S. and D.C. history. In her statement at a public hearing on the D.C. Historic Preservation Act, councilmember Nadine Winter expressed the view held by many. She declared that Washington, D.C. and “its people would suffer irreparably if care were not given to preserving” the historical resources of the city. This is precisely the reason concerned residents joined together to save the Old Post Office. The desire to preserve the historic fabric and make the city more livable is why community groups continued to fight in the face of defeat. Despite the moral setbacks from the landmarks that couldn’t be saved, preservationists pushed forward. Even without the formal right to have a say in local affairs, preservationists publicized the plight of endangered historic sites and increased community support for more stringent preservation laws. Always pushing forward, the proponents of a comprehensive historic preservation program began a movement, a movement that laid the groundwork for the D.C. Historic Preservation Law. Those determined to save the historic resources of the District of Columbia created one of the strongest preservation laws in the country, and in so doing ensured that future generations will be able to enjoy the rich heritage of the nation’s capital.