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## SUPREME COURT OF THE UNITED STATES

# THE GRAND CENTRAL CASE

*Penn Central Transportation Company et al.,*  
**An Important Supreme Court Decision**

*City of New York et al.,*  
**May Affect Historic Preservation**

[June 28, 1978]

MR. JUSTICE BREWER, with the concurrence of MR. JUSTICE STEVENS and MR. JUSTICE POWELL, filed the opinion of the Court.

The question presented is whether a city may, as part of a comprehensive program to preserve historic landmarks and historic districts, place a burden on the development of individual historic landmarks—in addition to those imposed by applicable zoning ordinances—without effecting a “taking” requiring the payment of “just compensation.” Specifically, we must decide whether the application of New York City’s Landmarks Preservation law to the parcel of land occupied by Grand Central Terminal has “taken” its owners’ property in

## in South Florida

By Frank B. Gilbert

With its thorough, thirty-one page opinion in the Grand Central Terminal case, the United States Supreme Court has settled the doubts that existed about laws passed to save historic buildings. The decision in *Penn Central Transportation Co. v. City of New York* has given a status to historic preservation that can only come from a review of a controversy by the Supreme Court.

In the last 20 years historic preservation has grown tremendously, but even in 1978 lawyers, legislators, and laymen had serious doubts about the validity of preservation laws while well-drafted municipal landmarks and historic district ordinances were being passed. The Grand Central decision settled a specific case, but the reasoning in the opinion supports the provisions in many historic preservation laws. In fact, as the final arbiter on legal questions, the Supreme Court in this decision declares what the law is and

rejects many of the arguments made against historic preservation statutes.

Examples of legal arguments that were rejected include the taking of property without compensation when a designation is made, the placing of an unfair burden on the individual who owns a landmark, and the selecting of buildings to be protected by arbitrary means.

### Similar To Zoning

The Grand Central decision may be compared with developments in zoning laws. Zoning laws had been enacted in American cities for about twenty-five years when in 1926, the Supreme Court finally considered and upheld a comprehensive zoning ordinance in a famous case, *Village of Euclid v. Ambler Realty Co.* That decision has been cited ever since (as it was in this case), and it made zoning efforts much easier for cities.

In its own area, the Grand Central opinion may have the same effect.

It is worth noting that the size of the disputed project may have made this a harder—and better—case for the preservationists to win. Usually a city government is confronted with a small landmark to save. Hard cases are the ones that reach the Supreme Court, and the six justices forming the majority are a cross-section of the current court adding to the value of this case as a precedent. Many persons describe the present Supreme Court as conservative, and this point probably contributes to the significance of this support in a quite new area of law.

In deciding this specific controversy, Justice William J. Brennan, Jr., chooses to place the dispute in the context of what has been accomplished by historic preservation. (The dissenting opinion confines itself to the current dispute.) Justice Brennan notes, "Over the

past fifty years, all 50 states and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance."

Describing the New York City statute as "typical of many urban landmarks laws," the opinion gives recognition to the municipal laws passed to protect historic buildings "by involving public entities [landmark or historic district commissions] in land use decisions affecting these properties and providing services, standards, controls and incentives that will encourage preservation by private owners and users." While there are restrictions in the New York law, according to the court "the major theme of the Act is to ensure" landmark owners a "reasonable return" and "maximum latitude" consistent with preservation goals.

In a footnote Justice Brennan adds, "The consensus is that widespread public ownership of historic

## The (H-) 1 and Only

### *Fort Lauderdale's Historic District*

*By Elizabeth S. Bolge*

Though the legal battles over the preservation of Grand Central Station may seem remote, they may soon take on special importance as several Florida cities — including Boca Raton, Miami, and Miami Beach — move to enact or enforce historic district statutes. Undoubtedly, the questions raised by the Supreme Court case of Penn Central Transportation vs. the City of New York will be echoed in local council chambers and in zoning board meetings: are a private property owner's rights limitless or must they conform to the cultural needs of the community? What constitutes an unfair "taking" and what will suffice for due process? And on and on...

Perhaps, then, this is a good time to review the progress of south Florida's only historic district outside of Key West: the Fort Lauderdale Historic District, or H-1 (after its zoning classification) for short.

The district, located just west of Fort Lauderdale's downtown government and finance area, and north of the New River was established by local ordinances in 1975. The Fort Lauderdale Historic Preservation Board, created by the same legislation, governs the development and use of the land and structures within the five-square-block district. Its powers are unusually broad: it can exercise control over the exterior appearance of any structure, new or



The district's Reed Bryan House retains its unusual roof of patterned metal, typical of many structures built shortly after the turn of the century in south Florida.

*Ms. Bolge was the historical researcher for the 1977 survey of the H-1 District. She currently serves as the director of the Broward County Historical Commission.*

old; it can thwart attempts at demolition or new construction; it can rule certain businesses or building uses inappropriate; and it has a voice in the disposition of city-owned properties within H-1.

On the whole, free enterprise and a positive outlook, both individual and collective, have been responsible for upgrading the neighborhood, previously depressed and in disrepair. Bud Kirkpatrick exemplifies the work accomplished by a private individual's determination — he has rehabilitated several commercial buildings, the C. E. Parks Service Station, and has begun work on the Bivans Motor