

Demolition Delay Laws: A Basic Preservation Tool

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Tod Bryant

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Finding a way to control the demolition of historic buildings is one of the most important issues in historic preservation today. Land values have reached record levels from a 65% increase in three years in Montgomery County, Maryland¹ to as much as a 50% increase in five years for farmland across the country² to 19.6% in just one year around San Diego, California.³ These increases are driven by a combination of the current taste for bigger houses which had increased to an average of 2300 square feet in 2003 from 1700 square feet in 1970⁴ as well as a boom in new condominium construction and continued low interest rates.⁵

Historic houses sometimes sit on large lots and rarely offer the size or amenities that most buyers today are looking for. Some of these homes may be important historically or architecturally to the community and may even have national, state or local historic designation but to an affluent buyer or developer they are just “teardowns.”⁶ A buyer who simply wants an acre or two in the right area to build his new 5,000 or 10,000 square foot or even larger McMansion, or a developer wanting to build new homes or condos sees only land. Older buildings on a site are simply a nuisance to be eliminated.⁷ A developer in New Jersey, speaking about a 1909 American Foursquare house on a one acre lot, is quoted

¹ Miranda S. Spivack, *Rising Price of the American Dream*, Washington Post, February 1, 2005, B, 1

² John Leidner, *Hot Property*, [Progressive Farmer](#), Fall, 2005

³ Dave Downey, *Record increase in County Property Values*, [North County Times](#), July 11, 2005

⁴ Cathleen McGuigan. *The McMansion Next Door*, [Newsweek](#), 2003, 11/13/2005, <http://msnbc.msn.com/id/3225775/> visited November 30, 2005

⁵ Teresa O’Dea, Hein. *Condos Continue to Capture Investor Interest*, [Multi-Housing News](#), 2005

⁶ Adrian Scott Fine and Jim Lindberg. *Protecting America's Historic Neighborhoods: Taming the Teardown Trend*, 2002, National Trust for Historic Preservation, Washington p. 3

⁷ Michael Simko. Conversation about proposed development
Mead Point Partners, LLC

as saying, “I don’t look at his house as being historic. I look at it as being a potentially unique situation for subdividing that is allowable by ordinance.”

Indeed, the problem is so widespread that the National Trust for Historic Preservation listed “Teardowns in Historic Neighborhoods” on its 2002 list of America’s 11 Most Endangered Historic Places.⁸ Greenwich, Connecticut, with some of the highest land values in the country has seen a steady increase in requests for demolition permits from thirteen in 1997 to forty in 2003; sixty in 2004 and more than seventy expected by the end of 2005.⁹

Many important historic homes have been lost this way. Among them, according to Adrian Scott Fine and Jim Lindberg in, *Protecting America’s Historic Neighborhoods:Taming the Teardown Trend* are:

- A pre-Civil War home purchased for \$12 million was demolished but the proposed replacement was not built.
- More than a dozen classic 1950’s modern homes designed by well known architects in New Canaan, CT were demolished for McMansions.¹⁰ (The remaining modern homes are still threatened.)

Industrial and commercial buildings also fall to the wrecker’s ball:

- In Norwalk, CT a 1905 paper mill on the site of a 1789 pottery was demolished for condo development.

⁸ Fine. *Taming* p1

⁹ Susan Richardson, telephone interview, December 1, 2005

¹⁰ Fine. *Taming* p3

- In Spokane, WA the 1905 Fort Spokane Brewery was recently brought down for surface parking and demolition has begun on an entire Art Deco block.¹¹

Individual homes and commercial areas are not the only things lost to teardowns. In some older neighborhoods entire rows of buildings are quietly bought and torn down for new, larger homes or out of scale multifamily developments. The streetscape is changed, traffic sometimes increases and neighborhood character is forever different. Local and sometimes national history and sense of place are damaged when these buildings are lost. Homeowners who bought into the quiet charm of a coherent, older neighborhood are often outraged that they are unable to affect these unwelcome changes

Ironically, much of the development pressure is centered on areas where residents have done the best job of historic preservation and community building. Some of these areas are now so desirable that developers have targeted them in an effort to cash in on their success.¹²

Among the many solutions to this problem suggested by Fine and Lindberg is the demolition delay. They suggest using this approach, "...in communities where the pace of teardowns is accelerating and few, if any, management tools are in place" in order to give residents a chance to negotiate and to try to find a way to save the resource.¹³

¹¹ Spokane City-County Preservation Department., December 4, 2005, http://www.historicspokane.org/whats_new.htm#Rookery

¹² Fine. *Taming* p. 6 - 8

¹³ *ibid.* p. 13

Demolition delay ordinances are now in use around the country. They have a common history but they take many forms. They are more effective in some communities than in others. This paper will address the history, structure and effectiveness of these ordinances and will identify some of their most effective elements.

History

Demolition delay ordinances are usually part of broader historic preservation laws so it is worthwhile to look briefly at the origin of these laws. Perhaps the earliest mention of a law for the preservation of an architectural monument is the Emperor Majorian's 453 AD attempt to stop the destruction of the coliseum and other ancient relics of the Roman Empire. He was appalled by the looting of marble from these buildings and he charged the Senate with deciding, "...the extreme cases that might justify the destruction of an ancient edifice." The penalty was a large fine, whipping and the amputation of both hands.¹⁴ The Emperor may have been the most zealous preservationist in history.

This law vanished with Roman Empire and it wasn't until King Louis Phillipe of France in the 1830's that Europe again put laws in place to protect important buildings. Support for historic preservation must have been substantial in Germany as well. In 1884 Frederick II wanted to clear and beautify the area around his Potsdam palace. A miller refused to demolish his ancient mill and sued the King in civil court where the miller won. By 1913 both France and

¹⁴ Edward Gibbon. *Decline and fall of the Roman Empire*. V. 2 , p. 315. quoted in Morrison , P.1

England had enacted laws for the identification and protection of significant buildings.¹⁵

In the United States, historic preservation had traditionally been accomplished by private groups following the lead of Ann Pamela Cunningham and the Mount Vernon Ladies Association of the Union in their successful effort to save George Washington's home.¹⁶ Not until 1931 when Charleston, South Carolina, in response to the continuing loss of important buildings, created the nation's first historic district did a local government use legal regulations to protect historic assets.¹⁷

Charleston is important here for two reasons. First, because its historic district ordinance combined preservation with zoning for the first time. The goal of the law was to, "...to promote general welfare through the preservation and protection of historic places and areas of historic interest" and the mechanism for achieving that goal was to reside in an agency of the Zoning Commission. This connection allowed the use of the police power of the state in the service of preservation. Second, because the regulatory body, the Board of Architectural Review, had no real power of enforcement. They only reviewed requests for demolition in the district but could not actually prohibit demolition. However, the new procedure of formal plan submission and review created a possibility for negotiation that had never before existed. "The board's role was that of a negotiator, working with applicants to find mutually acceptable solutions to design problems" according to Charles Edwin Chase writing about the evolution of

¹⁵ *ibid.* p.2

¹⁶ Norman Tyler. *Historic Preservation* 2000, W W. Norton, New York., p. 33

¹⁷ *ibid.* p.39

historic preservation in Charleston in Forum Journal.¹⁸ The power of the BAR depended on the commitment of the community to preserve its architectural heritage. In effect, they created the first demolition delay law. Demolition delays could thus be seen as one the foundations of historic preservation practice in the United States.

The Laws

All laws concerning historic preservation rely, like zoning and other land use laws, on the police power of the state. This power derives from the Tenth Amendment to the Constitution and allows the state to regulate land use and personal conduct in order to protect the safety, health and welfare of the community. It is the legal vehicle that allows local governments to take action that directly reduces the value of private land if a public benefit is involved.¹⁹

Based on this power, every state, through enabling legislation on the environment or preservation, architectural or building ordinances, general laws or zoning laws, has enacted some form of historic or landmark preservation law²⁰ and more than 2,300 communities had created local historic districts by 2001.²¹ All of these districts can have the power to delay or deny demolition. Many more cities and towns without historic districts have enacted demolition delay ordinances.

¹⁸ Charles Edwin Chase. *Charleston: Guarding Her Customs, Buildings and Laws*. [Forum Journal](#), 1998, v.13, p. 1

¹⁹ Brandee Freeman

²⁰ Darraby p.778

²¹ Cassity, p.2

Demolition delay ordinances, whether or not they are part of historic district regulations, are very much local laws and as a result they vary widely.

There are some components that are essential to all of these laws:

1. Determination of structures that may be considered
 - a. Previously designated historic structures.
 - b. Age
 - c. Structures designated when considered
2. Criteria for invoking delay
 - a. Automatic based on existing designation
 - b. Commission decision
 - c. Public
3. Public hearing
4. Length of delay
5. Penalties or incentives
 - a. Fines
 - b. Permit denial
 - c. Zoning bonuses
 - d. Tax incentives

Which buildings may be considered for a demolition delay is the starting point for all of these laws. Most of these ordinances were, like Charleston's,

enacted in response to a demolition threat or the loss of one or more significant buildings. For example:

- In Norwalk, Connecticut a recently restored 1856 house was demolished within days of its purchase for a much larger house to be built on the site. Good press coverage and public outrage provided the opportunity for local activists to work with city government to pass a demolition delay ordinance.²²
- In Somerville, Massachusetts Tufts University planned to replace the 1840's home of their first president with a new dormitory. The City immediately started negotiating to save the building but realized that there was no legal process to prevent such demolitions. They now have a 9 month delay period.²³
- In Spokane, Washington, as noted above, an entire block of historic commercial buildings had been under threat of demolition by its owner for years. This summer, despite the city's efforts, one of the buildings was torn down and demolition of the other two started but has been stopped. The city has revised and strengthened its requirements for demolition of historic buildings directly because of this situation.²⁴
- In Nashville, Tennessee, a 200 year old home was bulldozed in less than an hour despite a city order not to do so. The site was being cleared for a

²² Brian Lockhart, *Council Approves Demolition Ordinance*, *The Hour*, March 12, 2003, v.132, n.71 p.1

²³ Kristi Chase, telephone interview, December 7, 2005

²⁴ Teresa Brum, telephone interview, December 7, 2005

Home Depot store. Nashville is now working on a new ordinance with a delay provision, a denial provision and stronger penalties.²⁵

None of the buildings mentioned in the above examples had been listed in either local, state or national registers but all of them were considered significant by their communities. All of the cities and towns in these examples realized that they needed a mechanism, other than that of an historic district, to protect such buildings. Local historic districts sometimes take years to establish and buildings are often not protected until the final district ordinance is passed. Even with one or more districts in place, not every significant structure in town can be included. Charleston's idea of allowing time for all interested parties to negotiate a solution to the problem of a proposed demolition led to adoption of demolition delay laws outside of historic districts. In fact, a 1998 study showed that all of the 623 preservation commissions studied regulated demolitions in some way and 62% of them have the power to delay demolition.²⁶

In Massachusetts, thanks to strong advocacy for this approach by Chris Skelly at the Massachusetts Historical Commission, the number of municipalities with these ordinances has increased from 71 out of 351 in 1999²⁷ to 108 today.²⁸ He believes that a demolition delay ordinance is not only much faster to

²⁵ Patrick McIntyre, e-mail to the author, November 21, 2005

²⁶ Spokane City-County Historic Preservation Office, p.1

²⁷ Christopher Skelly, e-mail to NTHP Forum-L, December 13, 1999,
<https://forum.nationaltrust.org/subNTHP/displayForumL.asp?ID=18945>

²⁸ Christopher Skelly, email to NTHP Forum-L, October 26, 2005

implement than a historic district but that it can be much more palatable to local governments. “For what it’s designed to do,” he says, “it’s a great tool.”²⁹

Which buildings should be considered for delay?

Any building that is considered for a demolition delay must meet certain criteria. Generally, the test is either age or an existing historic designation such as inclusion in the Local, State or National Register of Historic Places or eligibility for inclusion in those registers. A listing in a state or local historic resource inventory is also sometimes used. Listed structures automatically qualify for a delay in some municipalities.

The age threshold is often fifty years old or older which follows the requirements for inclusion in the National Register of Historic Places.³⁰ Boulder, Colorado, for example requires that proposed demolition of any building over fifty years old, not just landmarks, be approved by the Design Review Committee of the Landmarks Preservation Advisory Board.³¹ Tennessee, right now only considers residential structures built before 1865,³² and Norwalk, Connecticut can also review any building fifty years old or older.³³ Most towns in

²⁹ Christopher Skelly, telephone interview with the author, December 7, 2005

³⁰ National Park Service, *National Register of Historic Places*, Frequently Asked Questions. <http://www.nationalregisterofhistoricplaces.com/faq.html>

³¹ City of Boulder, Colorado, *Demolition review process*, <http://www.ci.boulder.co.us/buildingservices/historicpres/demoreview.html>

Accessed November 28, 2005

³² Partick McIntyre, e-mail to the author, November 21, 2005

³³ Code of the City of Norwalk, Connecticut, v.162, Chapter 55, Demolition Delay, http://gcp.esub.net/cgi-bin/om_isapi.dll?clientID=129915&infobase=norwalk.nfo&softpage=Browse_Frame_Pg42 accessed December 1, 2005

Massachusetts also use the fifty year standard as recommended in the Massachusetts Historical Commission's model ordinance.³⁴

Many other jurisdictions use some sort of historic or landmark designation criteria. Grapevine, Texas, for example, can impose a 90 day delay on the demolition of, "an individual landmark."³⁵

Criteria for invoking the delay

In some municipalities like Somerville, Massachusetts the path to a demolition delay is a two step process. All structures not in historic districts that are fifty years old or older that come up for demolition are reviewed by the Somerville Historic Preservation Commission. They first determine if the structure is significant using standards based on the National Register. If they decide that it is not significant, the demolition permit may be issued. If it is significant, they must decide if it is "preferably preserved." That is, "...the Commission finds that it is in the public interest that the building be preserved or rehabilitated rather than demolished." At that point it qualifies for the delay.³⁶

In Norwalk, any citizen may object during the first 21 days after notification of intent to demolish has been advertised in the local paper and signs have been posted on the building. Once an objection has been filed with the Buildings Department, the Historical Commission may hold a public hearing.³⁷

³⁴ Christopher Skelly, *Sample Demolition Delay Bylaw-Age Based, 1999*

³⁵ City of Grapevine, Texas, *Code of Ordinances, Historic Preservation Ordinance, Appendix G.*

³⁶ City of Somerville, MA, *Demolition Review Ordinance Info. 2005,*
<http://www.ci.somerville.ma.us/section.cfm?org=presbd&page=333>

³⁷ City of Norwalk, CT

Public Hearing

Most cities use a public hearing in the delay process. The Massachusetts model ordinance suggests one³⁸, Boulder³⁹ requires a hearing and Norwalk leaves it to the discretion of the Historical Commission.⁴⁰

Public hearings serve an important purpose in this process. They bring attention to the specific building in question and generally raise public awareness of historic preservation and local history. Susan Richardson, Chairman of the Greenwich, CT Historic District Commission states, "The hearings definitely get a lot of attention. People start thinking about what they might be losing."⁴¹ Bob Yapp, Community Preservation Specialist for the Historic Landmarks Foundation of Indiana, agrees, "Demo delays and public hearings do raise awareness but you have to leverage that awareness."⁴²

Public hearings are usually the only chance residents have to speak directly to a homeowner or developer who is applying to demolish a significant structure. The applicant sees first hand how the community feels about his project and this, along with press coverage, can make a difference. Negotiations can sometimes actually begin in the hearing. Without this public forum to bring the applicant and community together, a delay has little chance of changing a project.

³⁸ Skelly, *Bylaw*

³⁹ City of Boulder, CO

⁴⁰ City of Norwalk, CT

⁴¹ Susan Richardson, telephone interview

⁴² Bob Yapp, telephone interview, November 28, 2005

Length of the delay

How long should demolition be delayed? There are as many answers to that question as there are demo delay ordinances. In Independence, Missouri, for example, the Historic Preservation Staff review every application for demolition without regard to age or designation and this review period is used by the staff to try to find preservation alternatives.⁴³ While this is not a formal delay process, the staff tries to use the short time they have in the same way. In Connecticut most delays are 90 days as limited by state enabling legislation.⁴⁴ At the other end of the time limit scale is Massachusetts. West Bridgewater may have only a four month delay on properties 100 years old or older⁴⁵ but Somerville has a nine month delay for structures fifty years or older and Andover, Arlington, Brookline, Medfield and many others have one year delays.⁴⁶ These long delays increase the chances that an amicable solution will be found to save the structure.

Ocean City, New Jersey adds an interesting twist. In 1999, they had a six month delay and during that time the property had to be put up for sale at a “reasonable fair market value.” The property could only be sold to someone willing to preserve it but if it was not sold, demolition could proceed.⁴⁷

Preservationists would probably agree that the longer the delay the better. A longer delay has several effects beyond the obvious one of having more time

⁴³ Patrick Steele, email to Forum-L, January 3, 2003.
<https://forum.nationaltrust.org/subNTHP/displayForumL.asp?ID=26096>

⁴⁴ State of Connecticut, *General Statutes, Revised January 1, 2005*, Chapter 29 section 406

⁴⁵ Christine Wallgren, *Demolition Delay Seen as Saving Past for Future*. Boston Globe, Globe South, September 30, 2004, p.1

⁴⁶ Christopher Skelly, e-mail to the author, December 1, 2005

⁴⁷ Charlie London, e-mail to National Trust for Historic Preservation Forum-L, December 9, 1999

to negotiate. Both homeowners and developers faced with such a long waiting period for demolition will often choose another alternative. Chris Skelly agrees that there are intangible benefits, “Delays save houses we don’t know about because they never get into the process” he says.⁴⁸ “Developers take note. (The delay) creates respect with builders and realtors. It creates a climate where they have to think twice” says Judy Groppa of the Darien Historical Society Commission.⁴⁹ Even in Connecticut with only a ninety day delay and in Darien with extremely high land values a delay has some deterrent effect.

Unfortunately, a delay is not a denial. Demolition delays eventually run out and the applicant will, with enough patience, get a demolition permit. Some developers and homeowners are not to be persuaded by preservationists’ arguments. It is as difficult to know how many buildings have been lost to expiring delays as it is to know how many have been saved by their use. While we tend to want to focus on success stories, it is important to look at the other side of this tactic.

In Fort Worth, Texas there is a 180 day delay but little public participation. The applicant or his representative is only required to meet once with the Historic Commission and then just wait out the delay. This process has not worked well since developers apparently just figure it into their schedules.⁵⁰ The missing element of public involvement allows the process to be mostly ignored.

⁴⁸ Skelly, telephone interview

⁴⁹ Judy Groppa, telephone interview, November 18, 2005.

⁵⁰ Jerre Tracy, e-mail to Julianne Fletcher, included in an e-mail to the author, December 2, 2005

Even with a one year delay, St. Augustine, Florida, possibly the oldest city in the country, was losing buildings regularly. They now have the ability to deny demolition outright.⁵¹

Penalties and incentives

Without either a strong penalty or an enticing incentive, demolition delay ordinances could easily be ignored. Yet, in many places, the penalties are weak and there are no incentives to comply. Connecticut has a maximum fine of \$500,000 with no other penalties specified⁵² but developers still usually accept with the ninety day delay if it is invoked. Some of them, if they believe there will be a delay, simply figure it into their project schedule from the beginning.⁵³ Grapevine, Texas, however, makes a violation of its delay law a misdemeanor carrying a \$2000.00 per day fine.⁵⁴

Penalties can really escalate. Violating the delay in St. Petersburg, Florida is even more severe. It requires that:

Sec. 16-534. Civil penalties.

In addition to the other penalties provided for in this Chapter and in other City Codes and ordinances, any person who violates any provision of this chapter shall forfeit and pay to the City civil penalties equal to the fair market value of any property demolished or destroyed in violation of this chapter or the cost to repair or Rehabilitate any property that is altered in violation of this chapter. In lieu of a monetary penalty, any person altering property in violation of the provisions of this chapter may be required to repair or restore any such.⁵⁵

⁵¹ Nancy Sikes-Kline, email to Natinal Trust for Historic Preservation Forum-L, May 31, 2005

⁵² State of Connecticut, *Statutes*

⁵³ Simko, conversation

⁵⁴ City of Grapevine, Texas, *Code*

⁵⁵ City of St.Petersburg, *City Code*, chapter 16, Article VIII., p. 17

<http://www.stpete.org/Zoning%20Ordinance/Article%20VIII%20hist%20preservation.pdf>
accessed December 1, 2005

It is possible to conceive a scenario where this penalty could be absorbed but it would have to be a very large project and a small demolished property.

Somerville uses a slightly different approach to enforcement. There, the fine is even less than in Connecticut; only \$300.00. The real force here is the denial of a building permit on the property for two years.⁵⁶ It would be hard to imagine a developer who could or would wait that long to even start a project.

All demolition delay ordinances carry some kind of penalty but some municipalities, in the same ordinance, offer incentives to rehabilitate historic assets rather than destroy them. Incentives usually involve special zoning consideration or tax breaks or both. In the section following the description of its draconian penalty for violating the delay, St. Petersburg offers a ten year exemption from city taxes of 100% of the assessed value of improvements to historic properties that comply with the Secretary of the Interior's Standards. The base exemption is allowed for up to \$100,000 for single family properties and up to \$1,000,000 for other property. The amount eligible for exemption can increase based on the significance of the property, cost of code compliance and other factors.

Both the severity of the penalty and the generosity of the incentive indicate the city's commitment to historic preservation. They present a balanced approach which sends a clear message to the owners of historic property.

⁵⁶ City of Somerville, *Code*, Section 4.7

Conclusion and recommendations

How effective is all this review and regulation? Preservationists involved in the demolition delay process admit that it has one major limitation. All delays eventually run out. No matter how long a waiting period an ordinance requires, an owner who cannot be persuaded to reuse the resource in some way can simply tear it down. The following elements, probably with some local modifications, should go into an ideal demolition delay ordinance:

1. A longer delay is definitely better. It has more deterrent effect since a developer looking for a quick profit will likely avoid the possibility of losing so much time. A long delay also simply provides more time for more possibilities to present themselves. The perfect solution to a complex problem rarely presents itself immediately.
2. Structures that are listed on any local, state or national historic register or inventory should automatically be subject to the delay.
3. Any building fifty years old or older should be subject to the delay if it is considered important by the community.
4. A public hearing should be held as early as possible in the process and the applicant should be required to attend.
5. Penalties, including fines and long term denial of building permits, should be harsh enough that it is not practical for an applicant to ignore them.

6. Incentives should be offered for the rehabilitation of threatened structures.

Incentives could be in the form of zoning relief, tax relief, technical assistance or outright grants.

All of this regulation will be useless without dedicated advocates to work with applicants to find good preservation solutions. As Bob Yapp says, “These things only work if they’re worked.”⁵⁷ Demolition delays give us time but we have to use it well.

⁵⁷ Yapp, interview

