



2004

Saving the District's Historic Properties from Demolition by Neglect

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**SAVING THE DISTRICT'S HISTORIC PROPERTIES FROM
DEMOLITION BY NEGLECT**

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MAY 14, 2002**

Deterioration that results in the demolition of a building for health and safety reasons is known as "demolition by neglect" and is one of the greatest threats to the preservation of historic property in the District of Columbia.¹ The Historic Landmark and Historic District Protection Act² (Historic Preservation Act), passed in 1979, required historic preservation review for all demolition permit applications for protected properties,³ but did not extend this authority to protect the same properties from loss through deterioration. Demolition by neglect can be the result of benign indifference or a deliberate strategy to circumvent historic preservation restrictions against demolition. Regardless of the owner's motivation, the result is the same, the loss of historic, cultural, and aesthetic resources that can never be replaced.

Until recently, the Historic Preservation Review Board (Review Board), the entity charged with protecting the District's historic properties, lacked the authority to intervene and address deterioration at two critical stages. First, the Board had no early intervention authority to try to prevent demolition by neglect from occurring. Second, once deterioration was advanced, the Board had no role in City decisions to demolish historic properties under the health and safety statutes. With no means of preventing serious deterioration of historic properties and no role in the City's decisions to save or demolish them, the Board's ability to fulfill its charge to protect and perpetuate properties of historical, cultural, and aesthetic merit within the District was seriously compromised.⁴

¹ See Report and Action Plan, *Strengthening Preservation Enforcement in the District of Columbia*, (D.C. Preservation League), June 4, 1998, at 1. See also D.C. PRESERVATION LEAGUE, *Most Endangered Places for 2001*, at <http://www.dcpreservation.org/endangered/2001/woodson.html> (March 19, 2002).

² D.C. CODE ANN. §§ 6-1101-1115 (2001).

³ See §6-1104.

⁴ This is a close paraphrase of § 6-1101 (a), which states "It is . . . a matter of public policy that the protection, enhancement, and perpetuation of properties of historical, cultural, and esthetic merit are in the interests of . . . the people of the District of Columbia."

The late 1990s saw significant action by D.C. preservation organizations,⁵ Mayor Anthony Williams, and the City Council, to address gaps in the protection of the District's historic landscape. The result has been significant new protection for historic landmarks and districts that directly addresses two of the most significant deficiencies in the law. Amendments to the Historic Preservation Act now place an affirmative duty upon owners to protect their property against serious deterioration and give the Mayor (through his designated agent) enforcement authority to prevent demolition by neglect.⁶ Amendments to the City's existing health and safety demolition statutes place a new requirement on the City to consult with the Review Board in making any demolition decisions regarding historic properties.⁷ And finally, similar coordination requirements with the Review Board are included in a new statute that gives the Mayor an additional "due process demolition" authority to combat urban blight and the problem of vacant and abandoned buildings.⁸

Today, there are five major provisions that play a role in determining whether an historic property in the District will be demolished—two within the Historic Preservation Act, the Unsafe Structures⁹ and Insanitary Buildings¹⁰ Acts, and the new Due Process Demolition Act. This paper will discuss all five as they relate to preventing the loss of historic resources in the District through deterioration and demolition by neglect. Part I will lay out the pre-existing statutory scheme, which illustrates the gaps in protection of historic properties that existed prior to the new

⁵ In the late 1990s, a number of organizations concerned with historic preservation in the District formed the Coalition for Greater Preservation Enforcement to advocate for the more effective enforcement of existing preservation laws and the passage of new legislation to fill gaps in protection of historic properties. For a list of the organizations comprising the Coalition see Report and Action Plan, *supra* note 1.

⁶ See § 6-1102(3A) (defining "demolition by neglect;" § 6-1104.01 (requiring maintenance of property); § 6-1104.02 (authorizing Mayor to prevent demolition by neglect); § 6-1104.03 (providing for revolving fund to finance City repairs to prevent demolition by neglect).

⁷ See § 6-801 (a-1); § 6-802(b); § 6-803(b) (requiring various consultative roles for the Review Board under the Unsafe Structures Act). See § 6-901(a)(1) - (2) (requiring consultation with the Review Board under the Insanitary Buildings Act).

⁸ See 49 D.C. Reg. 1468 (2002).

Amendments and is essential to interpreting the 2001 Amendments. Part II will analyze the amendments to the Unsafe Structures and Insanitary Buildings Acts, which require coordination with the Review Board in demolition decisions for health and safety reasons. Part III will discuss the new demolition by neglect provisions, and provide guidance on interpretation and implementation of the new ordinance. Part IV will discuss the coordination requirements in the new due process demolition provisions and identify other aspects of the Mayor's efforts to address the problem of blight and vacant and abandoned buildings that are relevant to demolition by neglect issues.

I. INTERPLAY BETWEEN THE HISTORIC PRESERVATION, UNSAFE STRUCTURES, AND INSANITARY BUILDINGS ACTS PRIOR TO THE 2001 AMENDMENTS.¹¹

Until passage of the Historic Preservation Act in 1979, the City exercised its authority to demolish a building for safety or health reasons under either the Unsafe Structures Act or the Insanitary Buildings Act with no formal consideration of its historical value. With the new Historic Preservation Act, the demolition of all historic properties¹² were subject to review under section 6-1104(e) of the Act; however, section 6-1111 preserved the authority of the Mayor to demolish *any* building, under certain circumstances, under both the Unsafe Structures and Insanitary Buildings Acts.

This was the statutory framework that existed throughout the 1980s and 1990s. Considerable confusion existed as to the interrelationship between these three statutes, and the historic preservation community was often surprised and dismayed at the result. How and when

⁹D.C. CODE ANN. §§ 6-801-808 (2001).

¹⁰D.C. CODE ANN. §§ 6-901-919 (2001).

¹¹I will use the phrase "2001 amendments" to collectively refer to the amendments to the Historic Preservation Act, the Unsafe Structures Act, and the Insanitary Buildings Act enacted as part of the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, which are effective April 27, 2001. The Abatement and Condemnation Nuisance Properties Omnibus Amendment Act is also known as Bill 13-646.

¹²I will use the phrase "historic property" to mean all property protected under the Historic Preservation Act, i.e., "an historic landmark or a building or structure in an historic district." § 6-1104(a).

could the City exercise its authority and bypass the historic preservation review process? Did an owner have a right to bypass the Historic Preservation Act and obtain a demolition permit for his or her historic property upon a showing that their building was unsafe?¹³

To introduce and give context to the analysis of the basic relationship between the three statutes, I will briefly outline the relevant provisions of each Act and then analyze whether and when the City, under the previous framework, could bypass the Historic Preservation Act and demolish an historic property for health and safety reasons.

A. *Statutory Provisions*

Under the Historic Preservation Act, the Mayor is required to review all applications¹⁴ for demolition permits for historic properties under section 6-1104(e) of the Act, which allows demolition only in limited circumstances. Specifically, the Act provides that "[n]o permit shall be issued unless the Mayor finds 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."¹⁵ The historic preservation review first requires consideration by the Historic Preservation Review Board. If the Review Board recommends against the permit, the owner may request a public hearing before the Mayor's Agent,¹⁶ who must take into account the recommendation of the Board¹⁷ and also makes his or her decision in accordance with section 6-1104(e) of the Act.¹⁸ The Mayor's Agent's decision to grant or deny a demolition permit for an historic property may be appealed to the D.C. Court of Appeals, but is otherwise final.

¹³ This question paraphrases the issue as framed by the D.C. Court of Appeals in *J. C. & Associates v. D. C. Board of Appeals*, 778 A.2d 296,298-99 (2001).

¹⁴ Applications for demolition permits must be made to the D.C. Department of Regulatory and Consumer Affairs.

¹⁵ §6-1104(e).

¹⁶ The Mayor's Agent is an administrative judge appointed by the Mayor, who exercises the Mayor's authority under section 6-1104(c) of the Historic Preservation Act.

¹⁷ See §6-1104(b).

¹⁸ See §6-1104(c).

Under the Unsafe Structures Act and the Insanitary Buildings Act the Mayor has the authority to demolish any building or structure within the District for safety or health reasons under certain circumstances, whether or not it is an historic property. The Unsafe Structures Act gives the Mayor authority 1) to determine if a structure is unsafe,¹⁹ 2) to order the owner to secure or remove the unsafe structure,²⁰ and 3) to enter the property and stabilize it or demolish it where "public safety requires immediate action."²¹ Where there is not an immediate public safety threat, and the owner refuses or neglects to comply with the District's order to repair or remove, the Mayor can enforce the order. First, the building is surveyed by three disinterested persons,²² who must present to the Mayor a report of specific action—repairs or demolition—necessary to make the building safe.²³ Second, the Mayor issues an order to the owner to comply with the report.²⁴ If the owner remains non-compliant, the Mayor has the authority to enter the premises, make the repairs as outlined in the report, and assess all reasonable costs for those repairs as a tax against the property.²⁵

Under the Insanitary Buildings Act, the Mayor, through the Board for the Condemnation of Insanitary Buildings²⁶ (Condemnation Board), has the authority 1) to condemn a building that is determined to be in "an insanitary condition as to endanger the health or lives of the

¹⁹ See §6-801(a).

²⁰ *See id.*

²¹ *See id.*

²² See § 6-802(a). One is to be appointed by the Mayor, one by the owner, and the third is to be chosen by the first two.

²³ See § 6-802(a).

²⁴ See §§ 6-802 to 803.

²⁵ See §§ 6-803, 805.

²⁶ See § 6-902. Formerly, any order of the Board for the Condemnation of Insanitary Buildings was reviewable by an appellate administrative body, the Condemnation Review Board (CRB). This appellate Board was dismantled under the Abatement and Nuisance Properties Omnibus Amendment Act of 2000 as part of the effort to streamline existing demolition proceedings. Testimony by DCRA officials at the June 14, 2000 hearing on the 9 bills that make up the Omnibus Act, informed the City Council that the appellate board increased both the time and cost of condemnation proceedings. The effect of dismantling this Board is minimal, however, as the officials noted that there had been no requests for appeals to the CRB throughout the 1990s and only two in the 1980s, and the CRB has not even been

occupant,"²⁷ 2) to order the owner to make habitable or demolish the building,²⁸ and 3) in the event of the owner's non-compliance, to enter the premises, direct such repairs or demolition be made as required, and assess the costs of such action as a tax against the premises.²⁹

B. *Analysis*

Though the Historic Preservation Act requires 6-1104(e) review³⁰ of all demolition permit applications for historic properties, section 6-1111 of the Act provides exceptions pursuant to the Unsafe Structures and Insanitary Buildings Act. Specifically, section 6-1111(a) provides that "nothing in this subchapter shall interfere with the authority of the [Condemnation Board] to ... demolish" a building pursuant to the Insanitary Buildings Act. Similar language in section 6-1111(b) protects the authority of the District to remove a building pursuant to the Unsafe Structures Act. Contained within the Condemnation Board clause, there is an exception to the exception, which states, "except, that no permit for the demolition of an historic [property] shall be issued to the owner except in accordance with the provisions of this subchapter."³¹ The Unsafe Structures Act clause contains no similarly explicit differentiation.

Two recent decisions—one by the Mayor's Agent in *In re Webster School* and the other by the D.C. Court of Appeals in *J.C. & Associates v. D.C. Board of Appeals*—interpret section 6-1111 of the Historic Preservation Act and clarify the interplay between the three statutes as they existed prior to the 2001 amendments. Both cases involve the specific question of whether

functional for several years. See COUNCIL OF D.C. COMM. ON CONSUMER AND REG. AFFAIRS, REPORT ON BILL 13-646, COUNCIL PERIOD 13, at 22 (hereinafter COUNCIL REPORT, BILL 13-646).

²⁷ See § 6-901(a). Uninhabitable is defined as being the "condition of being in an un'h'v'able condition due to deterioration and infestation, improper maintenance, decaying structures, insufficient light or ventilation, inadequate plumbing, defective electrical system, or general filthy conditions that may cause health and safety concerns for the public, or that is a fire hazard or nuisance." § 6-901(b).

²⁸ See § 6-903.

²⁹ See § 6-907(a).

³⁰ I will at times refer to the requirements of § 6-1 104(e) as "1 104 review."

³¹ § 6-1 111(1)

³² *In re Webster School*, HPA No. 00-462 (Feb. 15, 2001)(hereinafter Webster School).

an owner, acting under a notice of violation and an order to demolish pursuant to the Unsafe Structures Act, is subject to the 1104 historic preservation review process or is exempt by virtue of section 6-1111. Both authorities held that section 6-1111 waives the Historic Preservation review process only when the City, through its agent, acts to demolish a building after a finding of imminent danger to the public.³³ Where there is no imminent danger, and the City issues a notice of violation ordering the owner to take appropriate action to stabilize or demolish the structure, the owner must still apply for the appropriate permits and comply with the Historic Preservation Act as part of the regular permitting process.³⁴

In the *Webster School*, petitioner, the National Treasury Employee's Union (NTEU), applied for a permit for partial demolition of the Webster School, a designated historic landmark located at the corner of 10th and H Streets, N.W..³⁵ Vacant since the early 1990s, the southeast quadrant of the building was significantly deteriorated—the roof in that area had caved in and the floors had subsequently collapsed into the basement.³⁶ To address this problem and move forward with plans to rebuild and rehabilitate the property, NTEU applied for a permit to demolish the southeast and northeast quadrants of the Webster School. The Review Board recommended denial of the permit on June 22, 2000, after which NTEU requested a public hearing before the Mayor's Agent.³⁷

During the time the petitioner's application for partial demolition was under review by the Board, and before the Mayor's Agent's hearing occurred, the Building and Land Regulation Administration (BLRA)³⁸ issued the NTEU a notice stating that "the southeast wing of the

³³ See *id.* at 17; *J.C. & Associates v. D.C. Board of Appeals*, 778 A.2d 296, 308-09 (2001).

³⁴ See *Webster School*, *supra* note 30, at 17; *J.C. & Associates*, 778 A.2d at 308-09.

³⁵ See *Webster School*, *supra* note 30, at 3 (finding effect #1).

³⁶ See *id.* at 4 (finding of fact #3).

³⁷ See *id.* at 7 (finding of fact # 22).

³⁸ A division of D.C.'s Department of Consumer and Regulatory Affairs.

building was in structural failure" and that NTEU must "either stabilize the exterior walls or remove that portion of the structure to avoid further collapse."³⁹ Petitioner's arguments at the Mayor's Agent's hearing raised the issue of whether the Mayor's Agent lacked jurisdiction to decide on the partial demolition permit application because of the BLRA's condemnation and order to abate.⁴⁰

The Mayor's Agent rejected the challenge to his jurisdiction, finding that the plain meaning of section 6-1111 of the Historic Preservation Act only permits the D.C. government to take action to demolish a building under the Unsafe Structures Act and that simply giving a directive to the Applicant under that Act does not exempt the owner from Mayor's Agent review.⁴¹ In support of his argument, the Mayor's Agent cites the specific language of section 6-1111, which says that that "no permit for the demolition of an historic landmark . . . shall be issued *to the owner* except in accordance with the provisions of this subchapter."⁴² As a result, the Mayor's Agent finds that his jurisdiction in the matter of a demolition permit for the Webster School is not inhibited by the BLRA order,⁴³ and denies the permit because the Applicant failed to meet their burden under section 6-1104(e) as required.⁴⁴

The D.C. Court of Appeals, in *J.C. & Associates v. D.C. Board of Appeals*,⁴⁵ similarly held that City action to demolish a building may be exempt from the historic preservation review, but any action by the owner remained subject to the 1104(e) review process. In that case, the petitioner's property, a designated historic landmark located at 1429 Rhode Island Avenue,

³⁹ Webster School, *supra* note 30, at 7 (finding of fact #21).

⁴⁰ See Webster School, *supra* note 30, at 7 (issue #4).

⁴¹ See Webster School at 17 (Mayor's Agent's Continuing Jurisdiction f 1).

⁴² See *id.* (citing § 6-1110(a) of the Historic Preservation Act (emphasis added by the Mayor's Agent)).

⁴³ See *id.*

⁴⁴ See *id.* at 24 (conclusion of law #7).

⁴⁵ 778 A.2d 296 (2001).

N.W., was badly damaged in a fire.⁴⁶ Petitioner applied for, and the Review Board advised against, a demolition permit, after which he requested a hearing before the Mayor's Agent.⁴⁷ As in *Webster School*, the BLRA, prior to the Mayor's Agent hearing and independent of the pending demolition permit application, notified petitioner that the building was "in imminent danger of falling" and ordered the owner to "raze it immediately."⁴⁸

Pursuant to the BLRA order, petitioner filed a second demolition permit application with BLRA. In response, both the Chief of Technical Review, Anmet Ozusta, and BLRA Administrator, Armando Lourenco, inspected the property. Finding that the building was not "imminently dangerous," the Administrator determined that the condition of the building did not warrant a waiver of the 1104(e) review.⁴⁹ Subsequently, the BLRA denied petitioner's second application for a demolition permit.⁵⁰ Petitioner appealed the BLRA decision to the D.C. Board of Appeals, which affirmed.⁵¹

On appeal to the D.C. Court of Appeals, petitioner argued that because the BLRA ordered him to demolish the building, he was exempted from the 1104 review process and the Mayor's Agent lacked jurisdiction to rule on the permit application. The petitioner further argued that because the BLRA issued a notice of violation and order to demolish the building, the BLRA was compelled to issue him the demolition permit he needed to comply with the order.⁵²

The issue articulated by the Court was whether a notice of violation issued by the BLRA under the Unsafe Structures Act provided owners with a way "to bypass the restrictions and procedures set forth in the Historic Preservation Act" by giving them an independent means of

⁴⁶ *See id.* at 298.

⁴⁷ *See id.* at 298-99.

⁴⁸ *Id.* at 299.

⁴⁹ *Id.* at 300.

⁵⁰ *See id.*

⁵¹ *See id.*

⁵² *See id.* at 300, 308.

obtaining a demolition permit for a historic property.⁵³ The Court answered with an unequivocal "no."

First, the Court agreed with the BLRA that section 6-1111 preserved their authority, under the Unsafe Structures Act, to waive the 1104(e) review process if the Mayor (through the BLRA) takes action to secure or demolish a building that it determines is in an "imminently dangerous condition."⁵⁴ The Court held, however, as did the Mayor's Agent in *Webster School*, that this same authority did not extend to the owner acting pursuant to an order to demolish issued by the BLRA under the Unsafe Structures Act. According to the Court, where the BLRA declines to exercise its authority to waive the 1104 process, the owner is entitled to a demolition permit only if he complies with "other applicable law, including the Historic Preservation Act."⁵⁵

Second, the Court rejected petitioner's argument that the BLRA notice and order to demolish entitled him to a demolition permit without the Mayor's Agent's approval. The Court held that the BLRA's authority to waive the 1104 process is discretionary. Even when the BLRA issues a notice that a building is unsafe, the Unsafe Structures Act, according to the Court, does not grant "building owners or any other private parties the right to obtain demolition permits upon a showing that their building are unsafe."⁵⁶

Finally, the Court upheld BLRA's denial of petitioner's demolition permit because petitioner had not made the requisite showing under § 6-1104, having withdrawn his request before the Mayor's Agent just days before the hearing was to take place.⁵⁷ The Court found that the BLRA Administrator, after finding that the building was not imminently dangerous, acted

⁵³ See *id.* at 298.

⁵⁴ § 6-801. The opinion cites § 5-601, which was the code section prior to the 2001 amendments. See also *J.C. & Associates*, 778 A.2d at 308.

⁵⁵ *Id.* at 309.

⁵⁶ *Id.* at 308.

correctly and "in accordance with D.C. Code [§ 6-1104(a)]⁵⁸ in denying petitioner's application."⁵⁹

While the situation in *J.C. & Associates* illustrates that the former statutory scheme could provide protection for historic properties from demolition by neglect even without a defined role for the Review Board, other situations did not end so well. For example, in July of 1998, despite a moratorium on demolition in the Shaw neighborhood in Northwest D.C., and a negative recommendation by the Review Board on a demolition permit, a three-story pre-Civil War row house at 1116 10th Street was demolished after the chief building inspector found that it was "imminently dangerous."⁶⁰ Because the inspector had "no duty to inform the preservation division," the building was torn down without notice to the Board or the Advisory Neighborhood Commissioner, to the surprise and anger of many.⁶¹

To address these and other problems with existing laws, the City Council amended both the Unsafe Structures Act and the Insanitary Buildings Act, as part of the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000.⁶² The new provisions provide additional protection for historic properties and a role for the Review Board in the City's health and safety demolition decisions. The new language clarifies the circumstances under which the BLRA may exercise its authority to bypass the historic preservation review and places a new requirement on the BLRA to consult with the Review Board in its decisions to invoke that authority. The next section will analyze the amendments of each Act in turn, and offer guidance in interpreting the statutory language.

⁵⁷ When BLRA denied his second demolition permit, petitioner withdrew his request for a Mayor's Agent hearing just days before it was scheduled to occur, choosing instead to challenge BLRA's decision on the second permit application and arguing that the Mayor's Agent had no jurisdiction. *See J.C. & Associates*, 778 A.2d at 300.

⁵⁸ The text of the case cites the provision as § 5-1004(a), which was the citation prior to the 2001 amendments.

⁵⁹ *J.C. & Associates*, 778 A.2d. at 308.

⁶⁰ *See* David Montgomery, *Despite Ban, Historic D.C. House Razed*, WASH. POST, July 22, 1998, at B1.

⁶¹ *Id.*

II. AMENDMENTS TO THE CITY'S HEALTH AND SAFETY DEMOLITION PROVISIONS

Under the Unsafe Structures Act, there are three situations in which the City makes decisions about whether or not to demolish a building: 1) when the City must take immediate action to address an imminent public safety threat;⁶³ 2) when there is no immediate threat and the owner is directed to correct the unsafe conditions;⁶⁴ and 3) when the owner does not comply and the District takes steps to enforce the abatement order, including invoking its authority to enter the property and abate the unsafe condition for the owner.⁶⁵ Under the amended Act, the Review Board now has a role in each of the three situations; previously, they were only involved in the second scenario.

The Mayor retains the authority under the new amendments to take immediate action to address a public safety threat without going through the 1104 review, but the BLRA may no longer exercise that authority alone. The BLRA must now make its decision to demolish a structure *in consultation* with the Review Board.⁶⁶ In addition, new language makes explicit the standard for demolition of a deteriorated historic property under this statute.⁶⁷ Specifically, section 6-801(a)(a-1) of the Unsafe Structures Act now provides that:

[I]f the unsafe building is an historic landmark or is located in an historic district the Mayor shall not order or cause the building or structure, or portion thereof, to be removed or taken down unless the Mayor determines, *in consultation with* the [Review Board], that:

- (1) There is an extreme and immediate threat to public safety resulting from unsafe structural conditions; and
- (2) The unsafe condition cannot be abated by shoring, stabilizing, or securing the building or structure.⁶⁸

⁶² 48 D.C. Reg. 1888 (2001).

⁶³ See § 6-801(a).

⁶⁴ See *id.*

⁶⁵ See § 6-802-03.

⁶⁶ See § 6-801(a)(a-1).

⁶⁷ See § 6-801(a)(a-1)(1)-(2).

⁶⁸ § 6-801(a)(a-1)(emphasis added).

New subsection 6-801 (a)(a-2) appears to address the situation, such as in the *Webster School* and *J.C. & Associates*, where an owner must take action pursuant to an order under the Unsafe Structures Act. In this case, the Mayor does not have to consult with the Review Board in making its finding of an extreme and immediate threat, but the *owner* is specifically directed to "make the building safe and secure in accordance with the provisions of subsection (a)." ⁶⁹ According to *J.C. & Associates*, section 801 (a) requires the owner, pursuant to an order by the BLRA, to apply for a demolition permit in accordance with the Historic Preservation Act.⁷⁰

This interpretation of new subsections 6-801(a)(a-1) and (a-2) is consistent with both the statutory construction of the original statute and textual analysis, however, the language in subsection 6-801(a)(a-2) is less than clear:

"[T]he Mayor shall not order the removal of [historic property] unless the Mayor determines that there is an extreme and immediate threat . . . [after which] the Mayor shall require the owner to make the building safe and secure in accordance with... subsection (a)."⁷¹

This interpretation maintains the distinction between the City's authority to waive the 1104 review process under section 6-801 and the requirement that the owner, even pursuant to an order to demolish under section 6-801, must still comply with all other applicable laws through the permitting process, including section 6-1104(e). This interpretation also explains why, under section 6-801(a)(a-2), the Mayor would not have to consult with the Review Board in making the same determination of "extreme and immediate threat" that is a prerequisite for ordering demolition in section 6-801(a)(a-1). The reason is because the Review Board has an even greater role than consultation as part of the permitting process the owner will subsequently have to go through.

⁶⁹ § 6-801(a)(a-2) (emphasis added).

⁷⁰ See 778 A2d. at 308-09.

⁷¹ See § 6-801(a)(a-2).

To read section 6-801(a)(a-2) otherwise, for example as some additional means of bypassing the historic preservation review process or the new consultative role for the Board, would lead to an unlikely and illogical result. The purpose of these amendments is to increase the historic preservation protection for deteriorated properties where there currently is none. If subsection 6-801(a)(a-1) were read as applying to both City actions and actions by owners, and if subsection 6-801(a)(a-2) were read as a new authority to bypass the 1104 process, the result would be to diminish preservation oversight of owner actions and increase the oversight burden for the City, which is acting in the interests of public safety. This result is illogical and at cross-purposes with the purpose of the new amendments.

A second interpretive question under this first section is the meaning of the words, "in consultation with" the Review Board in subsection 6-801(a)(a-1). To what extent do the BLRA official and the Review Board have to agree as to both prongs of subsections (a)(a-1)(1) and (2)? A textual analysis supports an interpretation that "in consultation with" is a higher standard than, for instance "after consultation with" or perhaps even just "consult with." "In consultation with" implies on active wrestling with a decision between two parties. If the City Council had wanted the BLRA to simply seek the Review Board's advice, it could have, and likely would have used one of the alternative phrasings mentioned above. The action of making the decision remains with the Mayor, however, which implies that where there is disagreement, the BLRA likely retains the authority to make the decision to demolish an historic property under this section.⁷²

The second situation under which the City may invoke the Unsafe Structures Act, is where there is not an immediate threat to the public and the City orders the owner to make the property safe. This is the situation in which the petitioners in *Webster School* and *J.C. Associates* found themselves. Subsection 6-801(a)(a-1), as interpreted above, requires owners to proceed as

under the pre-amendment scheme: they must apply for a demolition permit in order to comply with a BLRA order under the Unsafe Structures Act, as a result of which the owner is subject to all applicable laws, including the Historic Preservation Act and the 1104 review process.

Finally, where an owner refuses to comply with the BLRA order, the Unsafe Structures Act, as amended, gives the Mayor the authority to enforce it. As before, the first step is to provide the owner with a detailed report, made by three disinterested persons outlining specific recommendations to repair or demolish.⁷³ Previously, there was no specific role for historic preservationists. Now, if it is an historic property, the Mayor must appoint a fourth person to participate in the report.⁷⁴ That person must be "an architect or historic architect . . . or a representative of the [Review Board]," who also meets the requirements of 36 C.F. R. § 61.4(f)(1), which are the federal qualifications for appointees to State Historic Preservation Review Boards.⁷⁵ Should the owner still refuse to comply, the City can exercise its right to act and implement the report's recommendations; but, for historic properties, the City may not demolish the building unless "there is an extreme and immediate threat."⁷⁶ Moreover, in making its determination of the extreme threat, the City must "give *great weight* to the recommendations of the [report]," to which the Review Board, or historic architect, had input.⁷⁷

As with the Unsafe Structures Act, the Insanitary Buildings Act has been amended to require that the City, in exercising its authority to demolish a historic property without going through the 1104 review process, make its decision in consultation with the Review Board. Using the exact language that amended section 6-801 (a), the Mayor's general authority under

⁷² See § 6-802(a).

⁷³ See § 6-802(a).

⁷⁴ See § 6-802(a). The other three are to be selected as before: one is to be appointed by the Mayor, one by the owner, and the third is to be chosen by the first two.

⁷⁵ § 6-802(b).

⁷⁶ § 6-803(b).

⁷⁷ § 6-803(b)(emphasis added).

section 6-901 (a) now prohibits the Mayor from demolishing a historic building "unless the Mayor determines, *in consultation with* the [Review Board] that: (1) there is an extreme and immediate threat to public safety resulting from unsafe structural conditions; and (2) the unsafe condition cannot be abated by shoring, stabilizing, or securing the building or structure."⁷⁸

The 2001 amendments to the Unsafe Structures Act and the Insanitary Buildings Act represent a partial victory for historic preservationists. While the City retains its authority to demolish a protected property without going through the 1104 review, the BLRA can no longer act alone or without the knowledge of the Review Board. But the new amendments only provide a consultative role for the Review Board, and the respective roles of the two agencies is not completely clear. The language is strong enough, however, for the Review Board and the Historic Preservation Division⁷⁹ to assert a substantive role and establish practices to support such a role.

III. DEMOLITION BY NEGLECT PROVISIONS

Increased participation in the District's health and safety demolition decisions addresses one major deficiency in the District's historic preservation laws and the new demolition by neglect provisions address the other. Demolition by neglect authority gives the City significant new tools to proactively address deterioration of historic properties before demolition becomes the only option. Along with this new opportunity, however, comes new responsibilities to be proactive in other ways, to continue to build close partnerships—with owners, neighborhood organizations, and other City agency personnel—in order to effectively wield these new tools. Before discussing guidelines for effective implementation of the ordinance, I will first lay out the provisions that make up the District's new demolition by neglect authority.

⁷⁸ See § 6-901(a)(emphasis added).

A. *Statutory provisions*

The District's new authority provides two new protections against deterioration. First, owners now have an affirmative duty to preserve historic properties against decay, deterioration, and structural defects⁸⁰ and to correct conditions that would compromise the building's long-term integrity.⁸¹ Second, the Mayor, after determining that a building is threatened by demolition by neglect and obtaining an order from the D.C. Superior Court, has the authority to require the owner to repair defects that threaten the building or take the necessary action itself,⁸² at cost to the owner.⁸³ These new remedial provisions are in addition to any remedies and penalties that apply to violation of any provision of the Act, including civil and criminal fines and other penalties.⁸⁴

Four amendments provide the framework for the new demolition by neglect authority. First, "demolition by neglect" is now defined in the statute and means "neglect in maintaining, repairing, or securing an historic [property] that results in deterioration of an exterior feature of the building or structure or the loss of the structural integrity of the building or structure."⁸⁵ Second, the statute now requires owners of historic properties to prevent demolition by neglect and confers upon them an affirmative "maintenance of property" duty.⁸⁶ Like many demolition by neglect ordinances,⁸⁷ this subsection lists specific conditions that the owners must prevent or

⁷⁹ The Historic Preservation Division serves as staff to the Review Board and is part of the District's Department of Consumer and Regulatory Affairs, which includes BLRA.

⁸⁰ See §6-1104.01(a)(2001).

⁸¹ See §6-1104.01(a)(1)-(6).

⁸² See §6-1104.02(a)(XIXB)

⁸³ See §6-1104.02(b)

⁸⁴ See §6-1110(a)-(c).

⁸⁵ §6-1102(3A).

⁸⁶ §6-1104.01.

⁸⁷ See, e.g., RALEIGH, N.C., CODE § 10-6180 (2002); VICKSBURG, Miss., CODE ART VIII § 820; PORTLAND, ME., CODE § 14-681 (2002); NEW ORLEANS, LA., CODE § 5H at <http://www.new-orleans.la.us/cnoweb/hdlc/NO%20ordinance.dwt> (April 12, 2002); The New York City Code is the only one I saw that does not iterate conditions that must be maintained. See NEW YORK, N.Y., CODE § 25-31 1 (2001).

correct, such as "facades which may fall,"⁸⁸ "deteriorated foundation . . . flooring, . . . walls,"⁸⁹ and "ineffective waterproofing of exterior walls, roofs, foundation, or floors, including broken windows or doors,"⁹⁰ to name a few. In addition to specific conditions, the last subsection is written in a more general style, which would likely capture any specific condition not explicitly noted.⁹¹

The remaining two amendments provide new enforcement tools when the District makes a finding that a building is threatened by demolition by neglect. New subsection 6-1104.02 authorizes the City to order an owner to "repair all conditions contributing to demolition by neglect" or enter the property and make the repairs if the owner does not.⁹² The City may also take the same action for a contributing building within a *proposed* historic district, which is a district identified in an application pending before the Review Board or with the Historic Preservation Division.⁹³ New subsection 6-1104.03 gives the District a new revolving fund, which will fund repairs the City makes to historic properties to correct demolition by neglect.⁹⁴ The District will charge the owner with the costs of the repairs, which will be assessed against the property and paid into the fund when received.⁹⁵

B. Enforcement and Implementation Issues

Implementation of a demolition by neglect ordinance, as one historic preservation practitioner noted, "is not for the faint of heart[;] [i]t is aggressive, pro-active preservation."⁹⁶ Ideally there will be multiple levels of enforcement, administration of which can be staff-

⁸⁸§6-1104.01(aXI).

⁸⁹§6-1104.01(aX2).

⁹⁰§6-1104.01(a)(4).

⁹¹See§6-1104.01(a)(6).

⁹²§6-1104.02(a).

⁹³See§6-1104.02(a)(2).

⁹⁴ See §6-1104.03.

⁹⁵See§6-1104.02(b).

resource intensive. And while these laws can be a powerful means of intervening to prevent the loss of historic properties through deterioration, overzealous enforcement can potentially erode public support for historic preservation in general. Maintenance requirements will affect the average home and business owner in a very personal, i.e., financial, way and must be handled with sensitivity.

To inform this discussion, I will analyze the enforcement framework established by the D.C. statute, which provides for both administrative and judicial enforcement, and provide examples and insights from several jurisdictions with similar ordinances. While an exhaustive study of the experience of other jurisdictions is beyond the scope of this paper, I researched three cities—New York City, New Orleans, Louisiana, and Raleigh, North Carolina⁹⁷—all of which have significant, and slightly different, experiences enforcing their demolition by neglect ordinances.

1. Administrative Enforcement

The D.C. demolition by neglect statute is structured to allow two levels of enforcement. For enforcement of the maintenance provisions, the City can use the Historic Preservation Act's standard enforcement provision, which provides a range of civil and criminal fines and other penalties for violation of any provision of the Act.⁹⁸ As the experience of other cities show, the administrative procedures and administrative adjudication under this authority will comprise the greater part of the District's program, providing the principle means by which the City can

⁹⁶ See Dan Becker, *Establishing a Demolition by Neglect Ordinance*, THE ALLIANCE REVIEW, Feb.- March 1999, at 2.

⁹⁷ I selected New York City because of its leadership in historic preservation, generally, and its long history with affirmative maintenance requirements, specifically. I selected New Orleans because they too have a long record in historic preservation and their experience seemed to provide D.C. with some cautionary insights. And finally, I selected Raleigh, North Carolina, because of the in-depth research in demolition by neglect that the Executive Director of their Historic Districts Commission, Dan Becker, did in the early 1990s when Raleigh was implementing the first demolition by neglect ordinance in North Carolina. ⁹⁸ §6-1110.

intervene early to prevent demolition by neglect. The second mechanism available to the District, judicial enforcement for properties threatened by demolition by neglect, will likely be used in only the most severe cases and will be discussed in the following section.

The experience of the three cities surveyed shows that administrative enforcement will successfully resolve the vast majority of failure to maintain or demolition by neglect violations. Even before invoking the formal administrative adjudication process, New York and New Orleans send out initial letters notifying owners that they are out of compliance resulting in many owners fixing the problem within a reasonable amount of time. New Orleans, which sends out six to eight letters weekly," is perhaps more typical in its volume than New York, which has relatively few offenders given the strength of their real estate market.¹⁰⁰ New Orleans often sends out multiple letters over several months before initiating more formal measures.¹⁰¹

New York City has a more streamlined approach: two warning letters also serve as the preliminary steps leading to an administrative hearing. Using the same procedures as for any violation of the preservation statute, the City will send out a first warning letter, which gives the owner 20 days to correct the problem. If the owner does not comply, the City sends out a second warning letter, which requires the owner to appear before an administrative judge and explain any mitigating circumstances. The owner can avoid the hearing if she or he admits guilt and proceeds to correct the problem promptly.¹⁰² Even before initiating this system of warning letters, the Commission will encourage owners, who may be danger of a failure to maintain violation, to work with the Landmark Conservancy, a non-profit whose mission is to help owners

⁹⁹ Telephone Interview with Tracy St. Julian, Architectural Historian, New Orleans Historic District Landmarks Commission (April 15, 2002) (hereinafter Conversation with Tracy St. Julian).

¹⁰⁰ Telephone Interview with John Weiss, Deputy Counsel, New York City Landmarks Preservation Commission (April 30, 2002) (hereinafter Conversation with John Weiss).

¹⁰¹ Conversation with Tracy St. Julian, *supra* note 99.

¹⁰² See Conversation with John Weiss, *supra* note 100.

of landmark buildings get loans and grants. The Conservancy also lends assistance to homeowners to work with other city agencies to get necessary approvals and resolve disputes that may be contributing to the problem,¹⁰³

In New Orleans, administrative adjudication, after the preliminary contact with the owner is unsuccessful, has been highly successful in motivating owners to comply with the demolition by neglect ordinance. Previously, New Orleans relied exclusively on judicial enforcement, which in reality meant almost no formal enforcement, largely due to competition for the resources of the City Attorney's office. Under the new provisions in New Orleans, the procedure is similar to that of New York.¹⁰⁴ First a letter is sent that requires the owner to repair the deteriorated conditions within 30 days. If the owner does not comply, the Commission can require the owner to come before the Historic Districts Commission and rebut the finding of violation. If the violation still stands, the City may then order the owner to repair or the City may repair the deterioration and charge the costs to the owner as a lien against the property.¹⁰⁵

2. Judicial Enforcement

For the most serious situations, the District, upon obtaining an order from the D.C. Superior Court, can order an owner to repair all conditions that are threatening a building with demolition by neglect or make the repairs if the owner refuses to comply.¹⁰⁶ Seeking a court order to prevent demolition by neglect raises several interesting questions. First, in order to pursue a court order, the City must make a finding that a building or structure is threatened by demolition by neglect, as defined in section 6-1102(3A). What conditions will rise to this level? How will the City and Courts interpret "demolition by neglect"? Second, will the City allocate

¹⁰³ See Conversation with Mark Silberman, *infra* note 109.

¹⁰⁴ See Conversation with Tracy St. Julian, *supra* note 99.

¹⁰⁵ See NEW ORLEANS, LA., CODE, *supra* note 86, §§ XII - XIII.

¹⁰⁶ §6-1104.02.

sufficient resources to use the courts to prevent demolition by neglect and will the revolving fund be adequately funded to support City repairs when the owner fails to comply?

How the City should interpret "demolition by neglect" and what the threshold should be for pursuing a court order is informed by the experience of the cities of New York and Raleigh.¹⁰⁷ Officials from both cities stress the need to use restraint and only selectively invoke the foil enforcement powers available under the statute. New York, which unlike many jurisdictions has a very broadly worded demolition by neglect statute,¹⁰⁸ has interpreted the City's authority very narrowly, invoking it in only the most serious cases.¹⁰⁹ In just the last few years, New York has sought its first two judicial enforcements in 37 years of operating under its ordinance.¹¹⁰ Since the program's inception in the early 1990s, Raleigh has filed only six formal petitions requiring administrative adjudications of which only one subsequently needed court action.¹¹¹ Officials from both cities strongly believe that selective judicial enforcement increases the legitimacy of the ordinance and prevents community backlash against broader historic preservation efforts.¹¹²

The D.C. ordinance, by virtue of its construction, indicates a legislative intent to seek court enforcement selectively and in only the most serious cases. First, the city must make a finding that a building is "threatened by demolition by neglect."¹¹³ While D.C.'s definition of

¹⁰⁷ I consulted several other jurisdictions, including Dallas, Tex., Charlottesville, Va., Portland, Me., and Chicago, Ill., but their practices were either not relevant or the relevant personnel were unavailable or unresponsive to my inquiries.

¹⁰⁸ The New York City ordinance merely states, "every [owner] of a landmark site or historic district shall keep in good repair (1) all of the exterior portions of such improvement and (2) all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to deteriorate, decay or become damaged or otherwise to fall into a state of disrepair." NEW YORK, N.Y., CODE § 25-311 (2001).

¹⁰⁹ See Telephone Interview with Mark Silberman, General Counsel, New York City Landmarks Preservation Commission (April 12, 2002) (hereinafter Conversation with Mark Silberman).

¹¹⁰ See *id.*

¹¹¹ See Telephone Interview with Dan Becker, Executive Director, Historic Districts Commission (April 1, 2002) (hereinafter Conversation with Dan Becker).

¹¹² See *id.* See also Conversation with Mark Silberman, *supra* note 109. ¹¹³ § 6-1104.02(a)(1).

demolition by neglect, like the New York maintenance statute, would allow for a range of conditions to qualify, the phrase "threatened by" indicates that there needs to be an "indication of imminent danger,"¹¹⁴ some high probability that "demolition" or loss of the building will result *if* action is not taken.

Second, a court order is itself a high threshold. Significant City resources will be required to pursue a court order, from the detailed investigation and documentation of the issues and problems by DCRA, to Corporation Council,¹¹⁵ which will have to bring the matter to Court, to the D.C. Superior Court, which will hold the hearing. In addition to significant resources, a high level of scrutiny, by Corporation Counsel and the Court, will be brought to bear on a decision by DCRA to bring an owner to Court. Only compelling cases will meet that challenge. In addition to the fierce competition that exists for City resources, it is not in the best interests of the City, or the historic preservation cause, to haul citizens into court for situations that could be construed as simple property maintenance problems.

In New York City and Raleigh the initiation of court action has been a prelude to intensive negotiations with the property owners to address the significant deterioration of the buildings at issue. In Raleigh, of the only six cases that even had to go through the administrative hearing process, only one subsequently required a court order to enforce. In that case, the owner, after failing to act and accruing \$60,000 in fines (calculated at \$100 per day), completely fixed the demolition by neglect conditions.¹¹⁶

In New York City, the two court cases pursued by the City involve highly complex situations, which have progressed but are not yet resolved. The first case involves an absentee

¹¹⁴ WEBSTER'S NEW WORLD COLLEGE DICTIONARY 1394 (1996).

¹¹⁵ Washington D.C.'s City Attorneys

landlord, who abandoned the property and let it deteriorate for over 20 years. Tracking down the owner, who had since died, was itself a complex task; ultimately the City filed suit against the deceased owner's estate. The executors of the estate are in the process of seeking a buyer.¹¹⁷

Similarly, the owners in the second case are also seeking a purchaser as a result of the lawsuit. The defendant developers purchased a significant landmark building on Staten Island with the intention of redeveloping it through the tax rebate program of the 1980s. The landmark building was already abandoned and severely deteriorated when they purchased it. When the tax rules changed shortly thereafter, they just let it sit. The City lawsuit gave the developers a choice of fixing the property or selling it. The owners are trying to sell it and have met with at least one potential purchaser to date.¹¹⁸

Not surprisingly, the New York experience, where a demolition by neglect lawsuit results in the owners trying to sell the property, may be a typical and even desirable outcome. Though property transfer may not immediately rehabilitate the property, it can be a positive first step for buildings that have languished for years. Some demolition by neglect programs, for example Charlottesville, Virginia, and Vicksburg, Mississippi, work with owners to try to sell the properties as a principle strategy under their demolition by neglect ordinance.¹¹⁹ This may be a useful strategy for the District, which currently has a very robust real estate market.

¹¹⁶ See Conversation with Dan Becker, *supra* note 111. The City negotiated and granted relief from the fines, when the owner ultimately complied. And despite the man's inability to act prior to the consent order, the quality of the rehabilitation of the property far exceeded minimum requirements.

¹¹⁷ See Conversation with Mark Silberman, *supra* note 109.

¹¹⁸ See *id.*

¹¹⁹ Telephone interview with Ronny Bounds, City Planner, City of Vicksburg (April 4, 2002). If the owner refuses to correct the problem, the City tries to find a buyer for the property and facilitate the property transfer. In Charlottesville, the ordinance itself requires owners, whose properties are determined to be threatened by demolition by neglect, to try to sell the property at a price "reasonably related to the fair market value" for a specified amount of time, depending on the property's value. If the offer is not accepted by anyone during that time, the owner is then entitled to receive a demolition permit. CHARLOTTESVILLE, VA, CODE § 34-580 (2002). This certainly is an interesting provision, however, upon what authority the City could enforce it is unclear.

A final issue for the City to consider is the viability of the new revolving fund set up by § 6-1104.03, the purpose of which is to finance City repairs of properties determined to be threatened by demolition by neglect. The District does not have a good track record with a pre-existing fund, known as the 5-513 Fund, which is a similarly constructed fund to make repairs to properties under the City's health and safety statutes.¹²⁰ City officials attribute their difficulty in enforcement of housing code violations in part to the lack of money in the 5-513 Fund.¹²¹ The 5-513 Fund had less than \$50,000 prior to FY 2001.¹²² The insufficient balance in the Fund was exacerbated by the inability of the City to collect fines reimbursing the City for outlays under the condemnation statutes, and the inability to properly credit the Fund for fines collected and costs recovered.¹²³ Over a million dollars in new funding was committed to the 5-513 Fund in the FY 2001 budget cycle;¹²⁴ however, this still falls far short of what the District is likely to need.¹²⁵

With both administrative and judicial enforcement authority, the District can structure a thoughtful and effective program that takes advantage of the benefits of each. More research on the specific processes of other jurisdictions may be helpful to the District, but in reality, what will make the most difference is the continued political will to make the protection of historic and cultural resources a priority. Allocating the necessary staff resources to craft programs to work closely with owners around maintenance issues, through outreach and support services, will go furthest in achieving the District's goals.

¹²⁰ See COMM. REPORT, BILL 13-646, *supra* note 26, at 8

¹²¹ See *id.* (citing the testimony of the unnamed DCRA Administrator).

¹²² See *id.* at 2.

¹²³ See *id.*

¹²⁴ See *id.* at 3.

¹²⁵ Testimony at the time did not identify the number of property that needed City action to abate. The City Council looked at Philadelphia's budget for the same type of fund and noted that it was currently funded at \$10 million. See *id.* at 2-3.

IV. DUE PROCESS DEMOLITION

As part of the Mayor's and City Council's response to the problem of vacant and abandoned buildings that cause blight in the neighborhoods,¹²⁶ the City now has several new tools to track, acquire, develop, sell, and demolish abandoned or deteriorated buildings. One of these tools gives the Mayor new authority to demolish deteriorated buildings in the new Due Process Demolition Act of 2002, Title I of the broader Housing Act of 2002.¹²⁷ Continuing the recent sensitivity to concerns of historic preservationists, protections for both designated historic properties and properties potentially eligible for designation are written into the statute.

Due process demolition authorizes the Mayor to determine whether any building or structure is deteriorated and to demolish such a structure after following a series of detailed procedures.¹²⁸ A deteriorated structure is defined by the statute as an unoccupied structure that violates one or more provisions of the D.C. Construction Codes and that the Mayor determines "constitutes a threat to the public health, safety, or welfare, or contributes to the deterioration or dilapidation of the community in which the structure is located."¹²⁹ Once the Mayor determines that a building meets this criteria, the Mayor requests a cost and feasibility analysis of the property's redevelopment potential from the City's Department of Housing and Community

¹²⁶ The political winds, however, seem to have shifted early in 1999. At the D.C. Preservation League's 1999 annual meeting, Mayor Anthony Williams announced a need to end demolition by neglect. *See* Linda Wheeler, *An End to Demolition by Neglect*, WASH. POST, June 24, 1999, at J1. Beginning early in that same year, the City Council held a number of public hearings on the numerous issues surrounding nuisance properties, including concerns of preservationists regarding demolition by neglect. *See* COMMITTEE REPORT, *supra* note 26, at 2. Through those hearings, the Council identified three major obstacles to proper enforcement of existing laws: 1) insufficient funding, (2) lack of trained inspectors, and 3) a need for "refinements and streamlining in the law." *See id.* at 4. The first two issues were addressed in the FY 2000 and 2001 budget cycles, *see id.*, and the third was addressed in the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2001.

¹²⁷ 49 D.C. Reg. 1468 (2002).

¹²⁸ *See id.* at 1473.

¹²⁹ *See id.* At 1472.

Development.¹³⁰ And the Mayor must file a notice with the Historic Preservation Review Board, to determine the historic preservation status or potential status of the property.¹³¹

The Mayor is not allowed to demolish, outside of the 1104 review process, a designated historic landmark, a contributing building in a designated historic district, or a building that the Review Board determines has a "substantial possibility" of being eligible for designation as either type of protected property.¹³² In order to demolish any of these three types of protected property, the statute requires that the Mayor must determine that "demolition of the structure is necessary in the public interest, as provided in section 5(e) of the [Historic Preservation Act]."¹³³ The due process demolition authority, therefore, will not circumvent the section 6-1104(e) historic preservation review process for property otherwise protected by it. In addition, the statute provides full historic preservation review for properties not yet designated, but which the Review Board believes may be eligible for protection.

An additional piece of enacted legislation that is worth noting, that is also part of the Mayor's initiative to address neighborhood blight, requires the registration and maintenance of vacant buildings. This new Act¹³⁴ requires owners of vacant properties to register the property with the City and pay a registration fee for each year the property remains vacant.¹³⁵ The owner will arrange for an inspection,¹³⁶ upon registration, and the owner is thereafter required to "adequately maintain" the property as required by the "Vacant building maintenance standard" in section 6-721.08.

¹³⁰ See *id.* at 1473-74.

¹³¹ See *id.* at 1474.

¹³² See *id.*

¹³³ See *id.* This section only requires the City to meet the first part of the 1104(e) test. Once the District acquires the property under this Act, the unreasonable economic hardship clause is inapplicable.

¹³⁴ §§721.01-721.11.

¹³⁵ §721.02-.03.

¹³⁶ §721.03.

This new authority may be another strategy that historic preservationists can use to address maintenance problems with vacant historic properties. First, the registration requirements provide an inspection, which gives the City authority to enter on the property and determine its condition. Second, the vacant building maintenance standard is more stringent and detailed than the historic property maintenance standards and may be useful for ensuring the building is protected from the elements.

CONCLUSION

The recent changes in the District's laws to address gaps in the protection of historic properties are impressive and offer numerous opportunities to safeguard and perpetuate these valuable resources. The current political will to craft and ensure a thoughtful and comprehensive scheme to address deterioration of historic buildings is at an all time high. Now is the time to continue to press for the resources that will allow the City to capitalize on these advances.

This paper provides a roadmap of sorts for the many ways in which the historic preservation community can intervene in preventing the deterioration and subsequent loss of D.C.'s historic resources. Given the number and complexity of D.C.'s demolition provisions, however, this paper is only the first step in understanding how these tools may be used. More research into the practices of other jurisdictions, particularly in the implementation of demolition by neglect ordinances and effective enforcement mechanisms for all demolition provisions, would be particularly useful.