

Court Weighs Grand Central Status

By ROBERTA B. GRATZ

A state appeals court today begins deciding whether Grand Central Terminal should be an official city landmark. The decision, which may not be forthcoming for several months, is expected to have a major impact on the future of landmarks preservation in the city.

A five-man panel of the Appellate Division of the State Supreme Court yesterday heard almost two hours of oral arguments in the case, the concluding procedure for both sides. The court's own building at Madison Av. and 25th St. — a classic 1900 courthouse structure—is itself a designated landmark.

The city initiated the appeal following a decision last January by Supreme Court Justice Irving H. Saypol that the 1967 designation of the terminal by the Landmarks Preservation Commis-

sion was a "taking of property for public use without just compensation."

The Saypol decision did not deny the constitutionality of the landmark law in general, but it held that in its application to the specific site it was confiscatory because of the economic hardship placed on the property owner, Penn Central Transportation Co.

The railroad wants the right to build a 59-story office building above the terminal, a right denied by the Landmarks Commission in 1969. A designated landmark may not be altered without commission approval. The commission found that the new structure would in effect destroy the exterior of the 1913 Beaux Arts structure.

The city has been joined in its appeal by New York State, the National Trust for Historic Preservation, the American Institute of Archi-

tecs, the Municipal Art Society, the Citizens Union, the City Club, other leading architectural and civic organizations and numerous public figures from Jackie Onassis to former Mayor Wagner.

Regardless of the Appellate Division decision, the case is expected to go to the Court of Appeals, the state's highest court.

The six-year-old case has national implications. It is expected to indicate for states and municipalities across the country just how vigorous they may be in their landmarks preservation programs.

In its appeal brief the city has argued that if the lower court decision is upheld it would "eviscerate" the city's landmarks preservation program. Yesterday's arguments focused primarily on the economic viability of the terminal with or without an office tower constructed above it.

The city argued, among other things, that the proposed tower would negate the landmark structure and that the revenue potential of existing space has not been fully exploited.

In effect, the city says, the new building is economically unnecessary to insure the owner a "reasonable return" on its property.

Penn Central maintains that without the office building, it cannot achieve a reasonable return and that alternative proposals to increase income have been shown to be impractical.

Although the case is quite complicated, two issues have emerged as crucial.

The first is that the basic constitutionality of the law is no longer — as in earlier landmark court cases — in question. Over the years, even in decisions that have invalidated specific designations, the courts have upheld the law's constitutionality. What remains unresolved is how extensively that law may be applied and how far it may economically restrict the property owner without it being a "taking of property without just compensation."

The second crucial issue, which is central to the city's appeal in this case, is what status should be ascribed to the landmarks law. Preservation advocates have argued that landmarks designations should be awarded the same status that legal precedent has already given to zoning regulations.

In zoning cases, the courts have upheld the principle that an owner is not entitled by right to the "maximum" profit potential of the property. In effect, government may restrict that property for the public good as long as the owner may achieve a

reasonable — rather than maximum — return on that property.

If the city wins the Grand Central appeal, observers say that it will have the effect of finally elevating the landmarks law to the same

"first class status" already enjoyed by the zoning code. Both the zoning code and the landmarks laws are based on the government police power—the right of government to restrict private enterprise for the public good.