Invisible Businessman: Undermining Black Enterprise with Land Use Rules

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Rates of self-employment in African-American neighborhoods remain feeble. Although the reasons behind the failure of black businesses are complex, zoning regulations play a largely unexamined role in constraining the development of African-American enterprises. Land use fees, municipal zoning board decisions, and the general insistence on separating residential from commercial uses all impress unique and disproportionate harms on African-American merchants, making it difficult to find affordable business space in suitable locations.

Moreover, current attempts to reorganize the land use system are inadequate to solve the problems facing black businesspeople. A complete rolling back of zoning laws is impractical and unnecessary, while attempts to promote street vending or home-based business run aground on the objections of local homeowners. Instead of pursuing these failed strategies, municipal governments should create programs that transfer abandoned buildings to fledgling merchants of the inner city. This new land use policy could spark a revival of urban entrepreneurship and help restore crumbling neighborhoods to their former glory. Unlike other proposals to reform zoning laws, transferring vacant government-owned land unites the interests of businesspeople, homeowners, and local governments. Inner-city merchants receive the space they need to foster new business ideas. Local homeowners rid themselves of the scourge of empty buildings. Finally, municipalities generate new revenue by returning unproductive buildings to the tax rolls.

INTRODUCTION

At the start of the twenty-first century, land use reform is the most underexamined method of restoring the economic vitality of central ci-
ties. Building on insights from sociology and economics, this Article explores how additional regard for the land use needs of urban communities could spur entrepreneurship in the impoverished, largely African-American neighborhoods of the inner city.1

Understanding the connection between land use and the vitality of black entrepreneurship becomes especially important as the fabric of enterprise in urban places continues to fray,2 and conventional techniques of promoting business growth seem ineffective at creating needed jobs and opportunities.3 Professor Janet Thompson Jackson diagnosed the problem facing black areas: “At one time, African-American urban communities contained thriving business districts . . . . [Now,] low-income
urban communities are filled with abandoned businesses, vacant lots, and dilapidated housing.\footnote{4} Empirical evidence confirms the sagging state of black business. Census records indicate that although African-Americans make up twelve percent of the general population, they create only three percent of new business ventures.\footnote{5} Additionally, black entrepreneurs are, on average, less successful than their white counterparts; they hire fewer workers, pay lower salaries, and make considerably smaller profits.\footnote{6} Most disturbing, a recent study shows that black-owned firms account for only 0.5 percent of all business receipts.\footnote{7}

The tattered state of black-owned businesses imposes steep costs on the residents of African-American places.\footnote{8} Policymakers and bureaucrats worry, correctly, that the lack of entrepreneurship in black neighborhoods has closed a reliable avenue out of poverty and into the lower rungs of the middle class.\footnote{9} Moreover, the erosion of enterprise also separates black communities from the goods and services they desperately need: supermarkets—where they do exist—sell foodstuffs of inferior quality, banks frequently collect exorbitant fees, and shops sell poorly made goods at high prices.\footnote{10} In short, black neighborhoods seem ripe for
a new wave of commercial development, yet the storefronts necessary to remake neighborhoods remain covered with plywood. What is to be done?

In this Article, I propose a plan to ameliorate the anemic rate of business growth in black neighborhoods. I begin by arguing that black business lags, at least in part, because commentators have overlooked a key constraint on African-American entrepreneurship—land use regulation. In both academic circles and in city hall, observers have failed to understand how land use rules restrict commercial development in minority communities. More specifically, the literature has not acknowledged that zoning—the process of dividing an entire municipality into districts and designating permitted uses for each area—has sharply limited the formation and expansion of entrepreneurship in black neighborhoods.

This analysis of zoning strives to move beyond the customary and formulaic critiques of municipal regulation. In recent years, it has become “standard fare in moderate-left to libertarian-right circles” to claim that overly technical government rules disadvantage small businesspeople. Rather than treading this familiar ground, in Part II of this Article I argue that land use schemes impose unique and disproportionate harms on African-Americans. Relying on extensive analytic and ethnographic evidence, I make three core claims. First, I argue that the cost of complying with land use regulations has a disparate impact on African-American business. Black-owned companies, which are notoriously undercapitalized, have the same land use costs as multinational corporations, but possess significantly fewer resources to pay fees and apply for permits. Second, I empirically show that the types of ventures typically pursued by black entrepreneurs—small-scale service enterprises—face the most stubborn resistance from local zoning boards. Finally, I assert that zoning, which insists on separating commercial uses from residential neighborhoods, creates particular problems for black entrepreneurs. The segregation of uses, for example, divorces black business owners from local customers—a considerable obstacle in a community where relatively few households have access to a private automobile. The overriding theme of these claims is that restrictive land use measures make it near


11. See infra Part II.
impossible for black entrepreneurs to find affordable commercial space in desirable locations.

After highlighting the disparate effect of zoning regulations on African-American enterprise, I turn toward devising a policy proposal that could revive the commercial infrastructure of black urban areas. Part III of this Article applies previous attempts to reorganize zoning law to the problems facing inner cities. Over the last thirty years, scholars have saturated legal journals with dozens of plans intended to curb the mischief caused by zoning and other land use measures. Although these reform efforts pack much theoretical punch, I contend that they offer little hope to older and poorer urban neighborhoods. Currently, the problem is that proposals to fix the land use system are either politically untenable or they disregard the distinct needs of the African-American community.

Part IV—the final Section of this Article—searches for a new, more practical approach to urban land use policy. Rather than advocate a complete rollback of zoning laws, I push for something less grandiose but


14. See infra Part III.
more achievable. I argue that municipal governments should selectively convert abandoned houses into commercial space. Such a measure could unleash the entrepreneurial energies of inner-city residents and spark a sustainable revival of urban environments. The basic idea is that the conversion of abandoned homes would grant small-scale entrepreneurs the affordable commercial space they need to establish fledgling business ventures. This plan, unlike other proposals to eliminate zoning regulations, would also garner the support of neighboring homeowners. Abandoned houses, studies show, act as a beacon for sex workers, vagrants, and the narcotics trade. For homeowners concerned about their property values and personal safety, law-abiding neighbors of any sort—even commercial vendors—would seem preferable to the risks associated with abandoned property.

I. A NOTE ON THE IMPORTANCE OF BLACK ENTREPRENEURSHIP

My critique of the land use system requires some preliminary groundwork. Before I attempt to explain the effect of contemporary zoning schemes on black business ownership, it will be useful to pause and briefly explore why self-employment merits increased scholarly attention.\(^{15}\) The purpose of this Section is not to catalogue every potential advantage of promoting entrepreneurship. Rather, my intent is to give an overview of the general impact that such initiatives may have, explicitly highlighting that many benefits of small-business ownership cannot be quantified in dollar figures.

A. Entrepreneurship as Economic Development

Economists have long argued that entrepreneurship plays a vital role in the health of local economies.\(^ {16}\) According to a growing chorus of policy analysts, urban economists, and legal academics, small-business ownership has become especially important to the financial outlook of black communities. Economist Stuart Butler plainly states that small business will fire any lasting revival of the inner city.\(^ {17}\) Professor Janet Thompson Jackson similarly asserts that the success of the black community has “always stood on the shoulders of black entrepreneurs.”\(^ {18}\)

\(^{15}\) See David E. Pozen, We Are All Entrepreneurs Now, 43 WAKE FOREST L. REV. 283, 284 (2008) (documenting the proliferation of entrepreneurship in the American academic idiom).


Still other academics contend that entrepreneurship remains the best vehicle “for accelerating the revitalization of urban areas”19 and “transforming poverty devastated neighborhoods into at least relatively [stable] communities.”20

The commentators who argue that business ownership presents people in disadvantaged neighborhoods with the best chance to improve their economic position make two strong arguments to support their position. First, they point to statistical data that confirms that entrepreneurship bolsters the income and employment prospects of the urban poor. Self-employed African-Americans, evidence shows, earn higher wages and display more upward mobility than salaried workers with similar skill sets and education.21 Second, the boosters of entrepreneurship make a convincing case that the positive effects of business growth ripple from individual merchants throughout entire communities. Consider that small, newly created firms—not large vertically integrated corporations—create at least eighty percent of the country’s new jobs and drive overall metropolitan growth.22 Thus, black vendors not only create high-paying jobs for themselves, they bolster employment figures and tax revenues throughout their local communities.23
Of course, not every scholar believes self-employment has the potential to reverse the decay of the inner city. A handful of academics insist that inner-city neighborhoods provide too thin a soil to nourish entrepreneurship; in their eyes, black families need more abundant reserves of capital to support new stores and shops. They also make the argument that low-income workers lack the skills, resources, and connections necessary to open shops in competitive markets. Louise Howells, a skeptic of the power of micro-enterprise, has given thoughtful voice to these concerns, suggesting that the urban poor often “find themselves in circumstances that are inversely related to successful business entrepreneurship.”

On close examination, however, these objections ring hollow. Indeed, a rough consensus has emerged that black neighborhoods offer particularly fertile ground for the growth and expansion of new small businesses. Between 2000 and 2007, black purchasing power has increased. Even in the poorest areas, black shoppers “have always had money to spend.” Yet, decades of redlining by credit institutions and poor zoning decisions have created a barren commercial landscape that vastly underserves local consumers. The lack of supermarkets, for ex-

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24. See Howells, supra note 22, at 161–62 (questioning the strategy of using small-scale entrepreneurship as a tool to lift welfare-dependent persons out of poverty); Audrey G. McFarlane, Race, Space, and Place: The Geography of Economic Development, 36 SAN DIEGO L. REV. 295, 300 (1999) (“The most salient criticism concerns development’s exclusively localized view, which focuses on the specific problems of the targeted poor or disadvantaged community rather than seeing these problems in the context of a totality.”); Daniel S. Shah, Lawyering for Empowerment: Community Development and Social Change, 6 CLINICAL L. REV. 217, 220–21 (1999) (arguing that community economic development lawyering ties community groups to complex legal structures that reinforce market subordination and reorient community goals).

25. See Howells, supra note 22, at 162 (stating that a low-income person is not likely “to enjoy the personal resources that are necessary to support a growing business and her family at the same time.”).

26. See, e.g., id. at 161–62 (pushing the idea that low-income individuals make poor entrepreneurs); Suggs, supra note 3, at 496 (arguing that black entrepreneurs need human and social capital to advance).

27. Howells, supra note 22, at 168.

28. See, e.g., Suggs, supra note 3, at 489 (“The potential for entrepreneurship in these inner-city neighborhoods is substantial.”).


30. See Troutt, supra note 10, at 472.

31. The absence of a vibrant commercial landscape has resulted in an increased demand for goods and services in black neighborhoods. See DAVID DANTE TROUTT, THE THIN RED LINE: HOW THE POOR STILL PAY MORE 24–36 (1993); Troutt, supra note 10, at 472 (“[M]any companies are now discovering (or being exhorted to discover) the potential profits to be made in ghetto communities.”); John M. Broder, Clinton, in Poverty Tour, Focuses on Profits, N.Y. TIMES, July 7, 1999, at A14 (reporting on the release of a HUD study suggesting that chronic disinvestment of poor urban neighborhoods has resulted in more than $300 billion in untapped retail demand); Bob Herbert, Ending a Retail Drought, N.Y. TIMES, July 5, 1998, at WK11 (discussing New Haven, Connecticut’s efforts to revitalize its commercial sector).
ample, remains an intractable problem that limits access to fresh, high-quality foodstuffs. African-Americans also complain that decent bookstores and first-run movie theatres have gone missing from large swaths of urban America. Policies designed to correct these market failures could allow local businesses—those best understand the needs of local customers—to remake the consumer infrastructure of their neighborhoods and turn significant profits. Most famously, Earvin “Magic” Johnson built a series of multiplexes in traditionally black neighborhoods during the early 1990s. Although many observers doubted the viability of the project, by all accounts the theaters have been a huge financial windfall for Johnson and his partners.


33. See, e.g., Andres Viglucci, Books Galore, No Store, MIAMI HERALD, Nov. 2, 2007, at 1B (stating that there is no comprehensive, general interest bookstore within the entire city of Miami); Christopher Kough, Inner-City Insight, ENTREPRENEUR, Oct. 22, 2001, http://www.entrepreneur.com/tradejournals/article/7966450.html (interviewing developer who states that there is not a major bookstore within “miles and miles” of Baldwin Hills, one of the wealthiest black neighborhoods in the country).

34. Until recently, the residents of Jamaica, New York had to travel to far flung communities if they wanted to see first-run movies. See Jane H. Lii, Multiplex, by Magic Johnson, N.Y. TIMES, Sept. 8, 1996, at CY9.

35. The U.S. Department of Commerce has also identified unmet demand for “home repair, painting, electrical services, plumbing, carpentry work, and small appliance repair; child and elder day care; health and environmental services; computers and information services; clothing manufacturing and repair; and crafts and foods services such as catering and specialty foods.” Lewis D. Solomon, Microenterprise: Human Reconstruction in America’s Inner Cities, 15 HARV. J.L. & PUB. POL’Y 191, 208 (1992).

36. See Regina Austin, “An Honest Living”: Street Vendors, Municipal Regulation, and the Black Public Sphere, 103 YALE L.J. 2119, 2124 (1994) (discussing how black entrepreneurs can “succeed by catering to the specialized demands of black consumers”); Troutt, supra note 10, at 472 (arguing that “[p]oor people in poor neighborhoods have always had money to spend” and that inner cities can support successful business enterprises).

37. Earle Eldridge, Rebounding from Basketball Court to Boardroom, USA TODAY, Nov. 8, 2004, at 5B.

38. See, e.g., id.; Greg Hassell, Northline Gets an Assist, HOUS. CHRON., Apr. 18, 1999, at 1D. Entrepreneurs large or small can find success in the black community. Consider the story of Albert Cleage and Barbara Martin. In the 1970s, the pair noticed an unmet demand for African-American-themed literature among the black citizens of Detroit. In response, they opened a small bookstore called The Shrine of the Black Madonna. The Shrine, the Black Madonna Cultural & Bookstore, http://www.shrinebookstore.com/about.aspx?cid=93&eid= (last visited May 25, 2009). By all accounts, The Shrine is a success: it now possesses one of the largest collections of black-interest literature in the country and has established two additional stores in Atlanta and Houston. See Candice Hannigan, A Political and Spiritual Focus, ATLANTA J.-CONST., June 25, 2005, at B5; Thonnia Lee, Shrine of Black Madonna Fosters Spiritual, Economic Advancement, ATLANTA J.-CONST., Mar. 31, 1990, at B9; Robin Richardson, A Cultural Experience: Picture of Black History, Culture Available at Shrine, HOUS. CHRON., Feb. 14, 2001, Zone 8, at 1. The triumph of small entrepreneurs like Cleage and Martin provides further evidence that entrepreneurial opportunities abound in the black neighborhoods of the urban core. The rising interest of retailers like Wal-Mart, Home Depot, and Kmart in urban communities also confirms that the needs of inner-city black consumers can support profitable businesses. See, e.g., Ta-Nehisi Paul Coates, Wal-Mart’s Urban Romance, TIME, Sept. 5, 2005, at 44; Teresa F. Lindeman, An Urban Pioneer, PITTSBURG POST-GAZETTE, Feb. 6, 2000, at Cl. It is also
A further reason to believe that increased rates of entrepreneurship could transform inner-city economies is that self-employment remains a surprisingly accessible career path. Unlike law or medicine, opening a small business does not depend on educational credentials acquired during childhood. As Professor Nicole Stelle Garnett writes, “many thousands of welfare recipients” already supplement their incomes by providing “quality, loving childcare” in their homes and apartments. Ventures like food delivery services, car repair shops, and home cleaning companies also welcome individuals who lack fancy diplomas and the “skills demanded by large, service-oriented employers.” Thus, programs that promote entrepreneurship seem to be among the sharpest arrows in the quiver of policymakers concerned about the health of inner-city economies. More than any other poverty-alleviation method, self-employment offers blacks the opportunity to become economically self-sufficient and form the valuable networks that propel neighborhood growth.

B. Entrepreneurship as Political and Social Change

Perhaps more important than the economic gains, entrepreneurship has the potential to remake the political and social landscape in urban communities. Policies that encourage black enterprise, for example, have a large role to play in maintaining the safety of black neighborhoods. In her landmark book, The Death and Life of Great American Cities, Jane Jacobs famously hypothesized that busy streetscapes enhance the safety and sense of community in a neighborhood. Pedestrian-thronged areas, Jacobs argued, guarantee the presence of many “eyes on the street,” standing vigil against deviant behavior. If this theory is sound—and a growing swath of scholars defend it—then self-employment plays a singular role in suppressing urban disorder.

worth noting that some scholars argue that promoting a new wave of small-scale entrepreneurship would take advantage of the capitalist drive that already inheres in many black neighborhoods. These academics suggest that, if nothing else, the narcotics trade shows that the profit motive survives even “where violence (often culminating in homicide), rather than bankruptcy, supplies the ultimate market discipline.” Suggs, supra note 3, at 489.


40. Garnett, On Castles and Commerce, supra note 13, at 1217; see also HOUSE-SOREMEKUN, supra note 7, at 73.


42. See, e.g., id. at 1216 (arguing that small entrepreneurial businesses “may enable people with limited education and job-related skill to achieve economic self-sufficiency”).

43. Golden, supra note 22, at 298 (“Economic development, wherever it takes place acts as a catalyst of social and political change.” (quoting T. VIETORSZ & B. HARRISON, THE ECONOMIC DEVELOPMENT OF HARLEM (1970))).

44. JACOBS, supra note 13, at 40–45.

45. Id. at 42–43.

46. David J. Barron & Gerald E. Frug, After 9/11: Cities, 34 URB. LAW. 583, 592 (2002) (“[T]here has been a newfound appreciation for Jane Jacobs’ argument that urban density promotes safety by ensuring eyes on the street and a heightened level of community watchfulness.”).
business owners create the lively stores, bars, nightclubs, and restaurants that keep the sidewalks busy and secure. Second, entrepreneurs seem better positioned to monitor the neighborhood ecology than other citizens. Anxious about the safety of their customers and the physical condition of their stores, they are often the first—or only—community members to discourage heinous street behavior or call police when trouble stirs. One longtime resident of Chicago distilled the point to its essence: small businesses keep urban places safe because they make everything feel “lighted.” Thus, any program that stimulates business ownership not only reduces joblessness, but it also recruits new sentries in the struggle against urban disorder.

Entrepreneurship also has great potential to neutralize the most harmful pathology in low-income minority neighborhoods: the lack of a “culture of work.” As William Julius Wilson observes, persistent unemployment has eroded many African-Americans’ belief in the necessity of labor and the efficacy of individual effort. The aftershocks of this phenomenon devastate inner cities. Social scientists have chronicled how unemployed men and women gradually drift away from community-based institutions toward “undisciplined and empty” activities. Sudhir Venkatesh, for example, notes a direct relationship between the decline of labor-market opportunities in the Chicago area and the amount of social stigma attached to joining a gang. Moreover, psychologists have suggested that chronic joblessness undermines parents’ ability to impart mainstream values to their children.

Entrepreneurship can help. Foremost, a surge of entrepreneurship seems likely to provide role models for wayward adolescents. Almost by definition, the presence of successful business owners reinforces the notion that individuals can acquire material reward and respect outside of gang membership and the narcotics trade. Neighborhood businesses

47. See Stuart Butler, Urban Renewal: A Modest Proposal, 13 POL’Y REV. 95, 102-03 (1980); Troutt, supra note 10, at 451 (arguing that “investors . . . become stakeholders in the stability of the community, contributing their power, influence, and, perhaps most importantly, reinvestments”).
48. Wilson, supra note 2, at 4.
49. Id. at 66.
50. Id. at 73–74 (citing MARIE JAHODA ET AL., MARIENTHAL: THE SOCIOGRAPHY OF AN UNEMPLOYED COMMUNITY vii, 66 (John Regimall & Thomas Elsaesser trans., Aldine Atherton 1971)) (discussing a long-term study of depression era unemployment).
53. Mary C. Daly, Rebuilding the City of Richmond: Congress’s Power to Authorize the States to Implement Race-Conscious Affirmative Action Plans, 33 B.C. L. REV. 903, 975 (1992) (linking economic development with an increase in community role models); Golden, supra note 22; Solomon, supra note 35, at 207 (arguing that exposure to entrepreneurs “can help individuals in inner-city areas, especially children, become aware of the existence of other options and opportunities”).
may also reestablish work as the fulcrum of daily life.\textsuperscript{54} Wilson and others counsel that the constant toil of neighborhood entrepreneurs helps to impose the expectation that work structures social interactions and human biography.\textsuperscript{55} Put another way, as the unemployed and disengaged regularly observe shopkeepers opening stores and conducting business, they may begin to feel a renewed sense of connectedness to the formal economy—it becomes possible to envision work as a regular, and regulating, force in their daily lives.

Finally, black-owned businesses provide one of the few safe, quasi-public gathering places and political forums in inner-city neighborhoods. Barbershops, cafeterias, and coffee stands all function as modern-day agoras in black places, serving as spaces to voice opinions, discuss politics, and reaffirm African-American culture.\textsuperscript{56} Mitchell Duneier, for example, described how a cafeteria on the South Side of Chicago helped shape the shared identity of the neighborhood: “Social life at the cafeteria functions to bring about a conception of the collectivity as a means of the possession of higher self-worth. . . . What is true of them is true of him.”\textsuperscript{57} Although Duneier’s language sets a rather lofty tone, the underlying principle rings true: for black Americans, locally owned businesses remain the preferred hub to test new ideas and renew political and social bonds.

Looking at the scholarly literature on entrepreneurship, it seems relatively clear that a surge of self-employment would bestow tremendous benefits on traditional black neighborhoods of the urban core. Not only would local business growth help satisfy the needs and wants of individuals overlooked by traditional retail outlets, but it could also act as a catalyst for political and social change by reducing urban disorders and providing new spaces for the development of black culture and politics. With these advantages firmly on screen, this Article now begins to attack one of the most pervasive constraints on black entrepreneurship—zoning.

\textsuperscript{54} See Jackson, supra note 4, at 702–03 (explaining that businesses “reinforce the idea that community life is organized around work” (citation omitted)); see also Ross Gittell & J. Phillip Thompson, Inner-City Business Development and Entrepreneurship: New Frontiers for Policy and Research, in URBAN PROBLEMS AND COMMUNITY DEVELOPMENT 473, 475 (Ronald F. Ferguson & William T. Dickens eds., 1999).

\textsuperscript{55} WILSON, supra note 2, at 73–75; see also Vicki Schultz, Essay, Life’s Work, 100 COLUM. L. REV. 1881, 1886–92 (2000) (discussing the importance of work); Noah D. Zatz, What Welfare Requires from Work, 54 UCLA L. REV. 373, 373 (2006) (postulating that “work is central to much of life”).


\textsuperscript{57} MITCHELL DUNEIER, SLIM’S TABLE: RACE, RESPECTABILITY, AND MASCULINITY 112 (1992).
II. THE EFFECTS OF LAND USE RULES ON BLACK BUSINESS

Despite policymakers’ best efforts to promote the virtues of self-employment, many black communities still struggle to attract capital investments and produce successful merchants. A casual observer of this situation might ask, “Why?” After all, if business ownership truly has the capacity to bring prosperity to African-American families, we should expect entrepreneurship to spread like a wildfire across urban places. This Article argues that black business remains dormant, at least in part, because one key obstacle in the path of urban entrepreneurs has gone unnoticed. The black business community, long hampered by inadequate access to financial services and job training, now struggles against overly burdensome land use practices. Zoning rules, in particular, wreak havoc with small-business growth in the African-American neighborhoods of the urban core.

The broad contours of this argument may sound familiar. Complaints about government interference with private property are commonplace among businesspeople, with many insisting that the web of land use regulations unnecessarily increases costs and stifles innovation. Indeed, the troubling effects of building codes, subdivision rules, and planning schemes on the shape of American enterprise have been thoroughly documented in the scholarly literature.

The purpose of this Article is not to rehash these old arguments. Rather, this Article intends to illuminate a crucial issue that seems en-

58. See TIMOTHY BATES, BANKING ON BLACK ENTERPRISE 50 (1993) (“[B]anks treat black and white loan recipients differently, even when their qualifications do not differ.”); VENKATESHI, supra note 3, at 14 (arguing that financial institutions fail to trust urban entrepreneurs); Timothy Bates, Unequal Access: Financial Institution Lending to Black- and White-Owned Small Business Start-ups, 19 J. URB. AFF. 487, 487–88 (1997); Hyman, supra note 22, at 160–61 (noting that lack of access to job training has prevented African-Americans from entering certain professions); Robb & Fairlie, supra note 3, at 56–58, 66 (showing that African-Americans have difficulty getting access to start-up capital); Carrie Mason-Draffen, Financing for Business a Concern for Black Entrepreneurs, NEWSDAY (LONG ISLAND, N.Y.), Jan. 21, 2005, at A59.
61. ROBERT C. ELICKSON & VICKI L. BEEN, LAND USE CONTROLS: CASES AND MATERIALS 475 (2d ed. 2000) (stating that some observers assert that the regulatory maze surrounding subdivisions “is needlessly complex and duplicative, produces unnecessary delays, and raises development costs”); Ellickson, Growth Controls, supra note 13, at 391 (stating that “onerous design specifications in subdivision ordinances” can impede development); Jane E. Larson, Free Markets Deep in the Heart of Texas, 84 GEO. L.J. 179, 221–22 (1995) (looking at cost savings in unregulated Texas border subdivisions).
62. JACOBS, supra note 13, at 238 (“Cities have the capacity of providing something for everybody, only because, and only when, they are created by everybody . . . .”); JAMES C. SCOTT, SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED 142–43 (1998) (arguing that overregulation destroys the “value and magnetism” of downtown areas); Huffman & Howard, supra note 59.
tirely missing from the discussion of zoning devices. No scholar or government official has analyzed whether land use rules pose a distinct set of problems for minority entrepreneurs. In response to this silence, I sifted through qualitative and quantitative evidence to determine how land use regulations influence the behavior and outcomes of black entrepreneurs. Armed with this data, I contend that land use schemes inflict unique and disproportionate harms on African-Americans. This is not to say that the effects of land use regulation are insignificant on white-owned businesses, but only that they are likely to be more burdensome on black enterprise. In the Section that follows, I offer three original arguments to illustrate how modern land use rules restrict commercial development in black communities.

A. Compliance Costs

Despite the facial neutrality of zoning and planning laws, the costs of complying with local land use rules—drafting permit applications, observing local design standards, and fighting run-of-the-mill NIMBY complaints—fall most heavily on black businesspeople. The problem, in a nutshell, is that compared to self-employed whites, black entrepreneurs begin with far fewer resources and, therefore, have greater difficulty navigating the tangle of inflexible zoning costs.

The disparity between black and white business stems, in large part, from African-Americans’ long battle against lending discrimination. Since the first black entrepreneur set foot in colonial Virginia, African-Americans have labored to attract start-up financing for their entrepreneurial endeavors. Economist Timothy Bates’s influential book, *Banking on Black Enterprise*, demonstrates that race continues to dictate commercial lending patterns in urban areas. Bates gathered data from twenty-eight metropolitan areas and discovered that, all other things being equal, commercial banks award white loan recipients twice as much

63. Many African-American entrepreneurs report difficulty securing a bank loan. See Robert Schafer & Helen F. Ladd, Discrimination in Mortgage Lending 298–300 (1981) (arguing that mortgage lenders discriminate against inhabitants of minority neighborhoods); Keith N. Hylton & Vincent D. Rougeau, Lending Discrimination: Economic Theory, Econometric Evidence, and the Community Reinvestment Act, 85 GEO. L.J. 237, 239 (1996) (finding that most evidence suggests minorities face lending discrimination); Jackson, supra note 4, at 662 (“[P]rivate sector investment . . . has long lagged in poor urban areas.”); Loßtröm & Wang, supra note 3, at 34 (reporting that banks are more likely to deny credit to black-owned small business, even controlling for creditworthiness). For many budding black entrepreneurs, self-financing also presents problems. If one considers home equity, total investment, and the value of all other savings, fifty percent of all black households have less than $6,166 in net worth. Robb & Fairlie, supra note 3, at 55.


investment capital as blacks. Sounding a similar note, the Department of Justice has asserted that “[o]ver and over again, studies show that minority applicants for business loans are more likely to be rejected and, when accepted, receive smaller loan amounts than nonminority applicants with identical collateral and borrowing credentials.” These empirical claims leave little doubt that the discrimination still churning through the financial services sector reduces the amount of start-up capital available to African-American entrepreneurs relative to similarly situated white business owners. Indeed, the overwhelming majority of black businesspeople, forced to rely on credit cards and personal savings, start out with fewer than $5,000 on hand.

Unfortunately, municipal zoning administrators have not acknowledged this reality. Unlike most business expenses, which fluctuate based on the number and frequency of a firm’s activities, the costs of land use regulations are relatively fixed. Zoning permits, environmental impact statements, and historic preservation hearings all impose steep, one-time fees without regard to firm size. The municipal government of Tulare County, California, for example, charges businesses $1,439 plus $100 per hour to apply for a zoning use variance; the same fee applies to multinational corporations and local mom & pop convenience stores. Thurston County, Washington levies even steeper fees on zoning applications. Companies, both large and small, must pay $5,075 to file an application for rezoning, $3,565 for a shoreline development license, and $2,765 for a permit to operate a home-based business.

The one-size-fits-all structure of land use charges creates daunting barriers for the average black firm. African-Americans have the same land use costs as multinational corporations, but control significantly less capital to pay fees and apply for permits. Compliance costs, consequently, consume an enormous percentage of total start-up capital. This

67. Id. (concluding that “banks treat white and black loan recipients differently even when their qualifications do not differ”). Banks granted white borrowers $1.83 in debt capital for each dollar of equity they invested in their business, whereas black borrowers received only $1.16 for each dollar of equity invested. Id.


69. HOUSE-SOREMEKUN, supra note 7, at 73.

70. Huffman & Howard, supra note 59, at 68 (“[C]osts associated with compliance with most regulations are relatively fixed.”).


72. Id.

threatens the vibrancy and competitiveness of black enterprise, as African-American merchants end up with fewer assets to purchase inventory, advertise, and hire workers. At the margin, land use fees may even shutter some small businesses. A group of entrepreneurial welfare recipients in Knoxville, Tennessee, for example, were forced to close a handful of day care centers after the local zoning board imposed a series of fees on their endeavor—the charges made it impossible for the women to pay staff and purchase needed equipment.74

At the end of the day, the success of all entrepreneurs depends on finding an affordable place to work. Unfortunately, by charging similar costs to all entrepreneurs, irrespective of their resources or ambitions, local zoning laws make it painfully difficult for underfunded African-American businesspeople to absorb the cost of land use compliance in order to pursue new ventures.75 It is hardly surprising that as land use regulations proliferate, the health of small black businesses deteriorates relative to their white competitors. Exposed to inflexible costs and lacking private investment, many black businesses simply dissolve, while others either forgo plans to expand or sell their ideas to larger, better-financed competitors.76

B. Zoning Boards and Black Business

An equally salient problem for black businesses is that the types of ventures most attractive to African-Americans entrepreneurs—small-scale service enterprises—face hostility from local zoning bodies. Since the 1920s, the complex anatomy of state zoning law has mandated that most towns and municipalities establish a citizen-led Board of Zoning Appeals (BZA) designed to evaluate land use permit applications.77 In general, BZAs possess authority to vary the strict enforcement of zoning regulations by granting applications for variances and special exceptions from local zoning schemes.78 Although BZAs must act in accordance with principles and criteria set forth in state and local statutes, in the field

74. See, e.g., Held, supra note 12, at 487–89 & n.70.
75. Id.
76. See HOUSE-SOREMEKUN, supra note 7, at 154–58.
77. See, e.g., COLO. REV. STAT. ANN. § 31-23-307(4) (West 2008) (called the “board of adjust-ment”); CONN. GEN. STAT. §§ 8-1–8-7 (2008). BZAs were first widely established in the 1920s following the Supreme Court’s decision to uphold the constitutionality of zoning ordinances in Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

A board of appeals is indispensable to the zoning process both from the constitutional and the practical standpoint. . . . The essential purpose of a board of appeals is to deal with these cases by furnishing elasticity in the application of regulatory measures so that they do not operate in an arbitrary or confiscatory, and consequently, unconstitutional, manner.

115 A.2d 328, 332–33 (Conn. 1955).
of land use, subjective standards remain the rule rather than the exception. Consequently, local zoning officials possess vast power to shape the commercial infrastructure of municipalities. Their judgment often determines how corporations may expand their physical plants and where merchants may locate their businesses. It is not difficult to see why local BZAs may discriminate against the kind of business endeavors likely to draw black entrepreneurs. Since the early twentieth century, a range of cultural and economic forces have pushed self-employed blacks into personal-service-related fields that require minimal start-up capital and little training. In the urban core, barbershops, auto repair businesses, billiards parlors, secondhand stores, and ethnic restaurants typify the class of enterprises traditionally owned by African-Americans. Members of municipal zoning boards—often prominent citizens appointed by the mayor—may not understand the vital role such establishments play in inner-city communities. It is a common refrain in the zoning literature that the views of the BZA often reflect the assumptions and prejudices of the general population. There is reason to worry that such laypersons needlessly reject land use permit applications received from merchants hoping to open hair-braiding salons and neighborhood bodegas, because such establishments are mistakenly “equated with urban decay” rather than a rebirth of small-scale economic vitality. That is, BZA members may associate black enter-

79. Judge Benjamin Cardozo observed in an early zoning case, “There has been confided to the board a delicate jurisdiction and one easily abused.” People ex rel. Fordham Manor Reformed Church v. Walsh, 155 N.E. 575, 578 (N.Y. 1927) (invalidating variance for a parking garage). See also Huffman & Howard, supra note 59, at 60 (describing the broad discretionary powers vested in Oregon’s local governments); Sampson, supra note 78, at 905 (arguing that most BZA decisions are not supportable under the strict letter of the law).

80. Osborne M. Reynolds, Jr., The “Unique Circumstances” Rule in Zoning Variances—An Aid in Achieving Greater Prudence and Less Leniency, 31 URB. LAW. 127, 128 (1999) (“The power to grant or deny lies in the discretion of the members of the board of adjustment, and their exercise of this discretion will not be overturned unless they act arbitrarily, capriciously, or outside the scope of their authority.”).


82. As noted by commentators, black merchants tended to develop in niche markets ignored or disdained by whites. See, e.g., Suggs, supra note 3, at 496.


84. See Owens, supra note 81, at 280 (stating that zoning boards are largely unelected).

85. Carol Rose states that if local zoning bodies “have any ‘expertise’ in land as such, it derives less from professional or technical education or information than from sheer familiarity with a locality taken as a whole, in all its complexity.” Carol M. Rose, Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy, 71 CAL. L. REV. 837, 869 (1983). Jan Krasnowiecki has a lower opinion of local BZAs: “To suggest that the board is intended, or competent, to handle large scale planning and design decisions is, I think, far fetched.” Jan Krasnowiecki, Planned Unit Residential Development, 52 URB. LAND INST. TECHNICAL BULL., May 1965, at 9, 38.

86. Jon Dubin asserts that attempts to integrate small businesses into African-American neighborhoods can amount to “assaults on the safety, quality, and integrity of their communities ranging from dangerous and environmentally toxic hazards to more commonplace hazards, such as vile odors, loud noises, blighting appearances, and traffic congestion.” Jon C. Dubin, From Junkyards to Gentrifi-
prise with the daily annoyances of city life—aggressive panhandling, noise, and filth—and subject such businesses to more rigorous scrutiny than other applicants for land use permits. In a recent zoning spat in Dayton, Ohio, for example, local officials made unfounded charges that granting zoning permits to a café would increase loitering and make the community less safe.

To put some flesh on the bones of the theory that local zoning officials are biased against the types of businesses African-Americans tend to start, I conducted a small empirical study of the BZA in New Haven, Connecticut. To uncover evidence of discrimination against the small-scale service enterprises that populate black neighborhoods, I examined every permit application for a zoning variance or exception filed with the New Haven BZA over a nine-year period, tracking both the type of relief sought and the parties involved. After gathering the data, I isolated all of the applications from the personal service and retail businesses typically owned by African-American merchants. This set of data included permit requests from every car repair service, day care, convenience store, hair salon, restaurant, and dry cleaner. Finally, I evaluated the extent to which the BZA treated this class of enterprises differently from similar institutions. Assuming that land uses of similar intensity should be granted permits at the same rate, the comparison should reveal the presence of any unspoken bias.

87. See, e.g., John Fritz, City Eyes Late Night Licensing, BALT. SUN, Apr. 29, 2008, at 3B (equating fast food restaurants with loitering and crime); Curt Yeske, Dunkin’ Donuts Gets Approval to Open Up Shop, TIMES (Trenton, N.J.), Nov. 16, 2007, at A3 (reporting that a town imposed anti-loitering measures on a donut shop).

88. See Nancy Bowman, Cyber Cafe Set for Historic Tipp Site, DAYTON DAILY NEWS, Dec. 20, 2007, at Z9 (reporting that board members raised concerns about loitering at permit hearing for cyber café).

89. The Illinois Law Review and the author have tables on file detailing the permits considered over the nine-year period, the category of business each permit implicates, and whether that permit was granted or denied by the New Haven BZA.

90. It is possible, however, that the BZA could reject black business applicants at a lower rate and still harbor bias. If, for example, black businesses present only the most meritorious claims, while more high-end applicants submit hundreds of groundless applications, the data could hide evidence of bias. Cf. George L. Priest & Benjamin Klein, The Selection of Disputes for Litigation, 13 J. LEGAL STUD. 1, 36 (1984) (predicting that trial rates are influenced by local decision standards and the parties’ uncertainty in estimating case quality). Fortunately, however, both pools of applicants examined in this study contained requests of varying sophistication and varying merit.
The results of this admittedly small-scale study reveal a striking difference between the fate of the “black” businesses and the fate of other commercial uses. The city records show that over a nine-year period, the New Haven BZA approved nearly eighty percent of all land use applications submitted by the business community as a whole, but only granted sixty-eight percent of requests from commercial uses that populate African-American neighborhoods—a large, statistically significant difference. Take, for instance, applications submitted by corner groceries, the most numerous of the small-scale service enterprises in this study. These applications fared dreadfully in the regulatory gauntlet: the BZA approved only fifty-seven percent of requests from entrepreneurs attempting to open or expand neighborhood convenience stores. Viewed alone, the low rate of success suggests that claims of bias against black enterprise have merit. The BZA routinely denied small-scale service entrepreneurs the basic opportunity to test their business models in the arena of competition.

Comparing all “small-scale service enterprises” against the undivided mass of “total commercial applicants,” however, may manufacture overbroad and misleading conclusions. After all, the “total applicants” category includes dozens of requests from large companies looking to install new signs or dormer windows—activities that are most likely to receive the blessing of the BZA because they inflict few externalities on neighbors. A richer, more complex analysis would measure convenience stores and their ilk against land uses of similar character and intensity.

In the zoning context, professional offices are arguably the kind of use most analogous to the service-related enterprises accessible to black entrepreneurs. Both increase traffic, create sporadic parking shortages, operate long hours, and attract outsiders to the community. If, indeed, BZAs treat black enterprise with an even hand, we would expect that uses like hair-braiding salons find comparable success to businesses like chiropractors’ offices. This assumption, however, runs aground on the facts. Throughout the permitting process, skill-intensive businesses ex-

91. This finding accords with previous studies conducted on local BZAs. See, e.g., Joseph H. Bornong & Bradley R. Peyton, Contemporary Studies Project, Rural Land Use Regulation in Iowa: An Empirical Analysis of County Board of Adjustment Practices, 68 IOWA L. REV. 1083, 1279 (1983) (finding that the statewide average approval rate for area variances exceeded ninety-one percent); Jesse Dukeminier, Jr. & Clyde L. Stapleton, The Zoning Board of Adjustment: A Case Study in Misrule, 50 KY. L.J. 273, 320 (1962) (reporting that the BZA in Lexington, Kentucky approved seventy-five percent of variance requests); Owens, supra note 81, at 308–09 (finding seventy-two percent of variance requests approved according to a survey of 441 North Carolina jurisdictions); Sampson, supra note 78, at 893. Unlike these studies, my examination of New Haven recorded all decisions by the BZA, not just the decisions on variance requests.

92. See supra note 89.

93. See supra note 89.

94. Applicants that exposed neighbors to few externalities experienced tremendous success with the BZA. The grant rate for additions to residential homes, for example, was approximately ninety-seven percent. See supra note 89.
experience much greater success than their working-class equivalents, even though both subject neighbors to the same brand of irritants. The data from my research shows that the New Haven BZA accepted over eighty-five percent of requests from white-collar firms, in contrast to the sixty-eight percent approval rate for small, personal service ventures.95 No matter how the numbers are manipulated, the result always remains the same—the class of businesses favored by black merchants face widespread obstacles in obtaining land use permits.

Of course, the defenders of the BZA could argue, plausibly, that the approval gap between professional and blue-collar applicants arises for nonpernicious reasons. Arguably, podiatrists and lawyers have a more sophisticated understanding of the zoning process, and may gain the support of local zoning officials by locating their offices in areas that mitigate externalities.96 Professional offices, after all, rarely occupy the same city blocks as second-hand stores. To test the hypothesis that “location effects” may account for the troubles of black business, my study assessed the fate of small-scale service firms against the success of storefront churches in the zoning permit process. The animating theory behind this comparison is that storefront churches and the types of businesses accessible to black entrepreneurs frequently attempt to locate in similar hard-scrabble areas. Of equal import, houses of worship—like small retail firms—often make less than ideal neighbors.97 Both uses produce negative secondary effects in the form of noise, traffic, and sanitation issues.98 Despite the similarities, comparing the success of churches against personal-service firms suggests, again, that local zoning officials devalue black enterprise. Zoning permit applications from exotic religious denominations like the Church of the New Beginnings, the Third Star of Jacob Christian Church, and the Church on the Rock (all located in heavily African-American neighborhoods) had a seventy-eight percent approval rate99—ten full percentage points higher than the approval rate for “black” business applications.

95. See supra note 89.
96. There is also some thought that city planners and zoning officials have become overly sensitive about allowing commercial and institutional uses in low-income neighborhoods. See, e.g., Dubin, supra note 86.
99. See supra note 89.
Although the results of a single, small-scale study can hardly be considered determinative, the data generated here lend some support to the conclusion that zoning boards possess some unspoken hostility toward the types of businesses that attract African-American entrepreneurs. Again and again, land use permit applications from small service-oriented enterprises floundered in front of the New Haven BZA. Chiropractors’ offices, architectural firms, and colorful religious congregations all experienced greater success than the businesses that pervade central cities and inject life into the black community. Thus, it seems that the regulatory choices of local zoning officials further undermine the vitality of inner-city black business. Black entrepreneurs not only shoulder disproportionately larger permit fees than their white competitors, they also must face zoning officials who do not value the types of businesses they seek to open.

C. The Segregation of Uses

Perhaps the true Gordian Knot constraining African-American enterprise lies in the basic architecture of American zoning law; namely, ongoing efforts by city planners to purge commercial uses from residential areas. Recall that zoning, at its core, allows regulators to divide a municipality into districts and designate permitted uses for each area. Since the 1920s, city planners have routinely employed this power to create wholly separate spaces for industrial, commercial, and residential uses under the theory that such activities generate reciprocal nuisances. Although the partition of land into these “single-use” districts deviates sharply from the tradition of the multi-use neighborhood, zoning remains immensely popular with homeowners across the American landscape; proponents insist it separates smoke-belching factories from

100. See ELICKSON & BEEN, supra note 61, at 86 (stating that a zoning ordinance “typically defines the boundaries of various zones, and the substance of the controls differs from zone to zone”); ZONING AND LAND USE CONTROLS § 1.03[2] (Patrick J. Rohan ed., 1987); Garnett, supra note 12, at 4 (“Euclidean zoning . . . reflects a longstanding value judgment that the appropriate way to order different land uses is to separate them from one another into single-use zones.”).

101. Many books and articles have dissected the historical moment that gave rise to the spread of such “single-use” zones. See, e.g., Lewyn, supra note 13, at 261–64 (providing a “Brief History of Zoning”); Nelson, supra note 13, at 836–42 (outlining the history of American zoning); Katharine B. Silbaugh, Women’s Place: Urban Planning, Housing Design, and Work-Family Balance, 76 FORDHAM L. REV. 1797, 1821 (2007) (discussing the history of zoning). Zoning, academics reveal, arose during the 1920s in a period of rapid urban growth and industrialization. In cities and towns around the country, the specter of unregulated factory pollutants and unfettered apartment construction triggered waves of anxiety among politicians and their constituents. Homeowners, we are told, worried that inappropriate developments would sully the character of their neighborhoods and decrease the value of their property. In this climate of fear and instability, zoning offered a systematic method for stabilizing land values and preventing the spread of tenements and industries into residential neighborhoods.

102. For a thorough treatment of old multi-use neighborhoods, see generally RAЕ, supra note 2 (analyzing New Haven, Connecticut before the adoption of zoning).
neighborhood playgrounds, contains the expansion of unwanted retail stores, and protects property values in single-family housing districts.\textsuperscript{103}

Academics, however, regard single-use zoning with somewhat less enthusiasm. In fact, scholars of all political stripes agree that the implementation of exclusively residential districts has spawned a rather monstrous variety of unintended consequences. Critics from the law and economics tradition regularly attack restrictive zones, claiming that they distort the market for land and divert property from its optimal use.\textsuperscript{104} Left-leaning thinkers, for their part, argue that American land use policy degrades the natural environment,\textsuperscript{105} creates stultifying communities,\textsuperscript{106} and increases the rate of obesity.\textsuperscript{107} In the discussion that follows, I argue that the continued survival of single-use zoning has also played a prominent role in the stagnation of African-American enterprise.


As we have seen, single-use zoning demands that city planners attempt to eliminate all mode and manner of commerce from local neighborhoods. This peculiarity of American zoning law dampens enthusiasm for entrepreneurship in the inner city because it forces budding entrepreneurs to locate outside of their immediate residential communities, a process that violates deeply held cultural norms in the black business community.

In order to fully understand this argument, it helps to know a bit about the ideological threads that hold together African-American business in urban areas. Note, first, that study after study shows black entrepreneurship does not operate as textbooks describe. While it is widely assumed in business schools that the primary goal of business is to “maximize economic capital”\textsuperscript{108} and “make money,”\textsuperscript{109} scholars of the urban

\textsuperscript{103} As has been argued elsewhere, it seems that municipalities originally adopted comprehensive land use schemes as a rational response to the uncertainty of the age. See Stephen Clowney, Note, A Walk Along Willard: A Revised Look at Land Use Coordination in Pre-Zoning New Haven, 115 Yale L.J. 116, 128–36 (2005).

\textsuperscript{104} See, e.g., SIEGAN, WITHOUT ZONING, supra note 13, at 123–33 (arguing that zoning restricts the development of industry and curtails construction activity).

\textsuperscript{105} See, e.g., Patrick Gallagher, The Environmental, Social, and Cultural Impacts of Sprawl, 15 NAT. RESOURCES & ENV’T 219, 219–23 (2001); Jay Wickersham, Jane Jacob’s Critique of Zoning: From Euclid to Portland and Beyond, 28 B.C. ENVTL. AFF. L. REV. 547, 557 (2001) (“By fostering or requiring low density development . . . Euclidean zoning is one of the great generators of suburban sprawl, with all of its environmental, economic, and social costs.”); see also ANDRES DUANY ET AL., SUBURBAN NATION 229–33 (2001); PETER KATZ, THE NEW URBANISM xii–xiii (1994).

\textsuperscript{106} See Lance Freeman, The Effects of Sprawl on Neighborhood Social Ties, 67 AM. PLAN. ASS’N J. 69, 70 (2001) (“[S]prawl reduces social capital primarily because it reduces opportunities for spontaneous social interaction.”).


core make the case that many African-American merchants are not primarily motivated by opportunities to enhance their economic standing.  Rather, much of these entrepreneurs’ energy is consumed by attempts to anchor themselves within their respective ethnic communities and existing social networks. Sudhir Venkatesh states, and others confirm, that black entrepreneurs “describe themselves as being woven together in a web of exchange based on highly personal connections.” The implication is that any entrepreneur who fails to embed himself in the local neighborhood cannot succeed. In practice, this means black businesspeople may prioritize nurturing the social and human capital of their communities—providing job training to former felons and bartering with indigent customers—over making a profit or creating personal wealth. Though such behavior defies much orthodox thinking about entrepreneurship, the emphasis on cultivating alliances continues to have deep resonance in a world where reversals of fortune are common and instability remains the norm.

Of immense importance for land use, urban sociologists and ethnographers also suggest that African-American entrepreneurs may ignore lucrative business opportunities if they are forced to operate outside of these closely cultivated networks of friends, creditors, and potential customers. Black businesspersons “display a clear preference to remain with their current peers. This preference can lead them away from new entrepreneurial waters. In particular . . . the men sometimes forgo opportunities to expand, particularly when this would necessitate severing local


110. VENKATESH, supra note 3, at 103; Brush et al., supra note 19, at 170-74 (describing the social mission of inner-city entrepreneurs).

111. VENKATESH, supra note 3, at 117; Brush et al., supra note 19, at 157 (“[Many businesses] survive and even prosper to the extent that they are socially embedded in their community. That is, they have good ties to their customers and other neighborhoods organizations and local people trust them . . . .”).


113. See Brush et al., supra note 19, at 161 (arguing that inner-city entrepreneurs “were more likely to say their goals were to provide jobs or create a quality work environment than to make a profit”); Jeffrey Robinson et al., Exploring Stratification and Entrepreneurship: African American Women Entrepreneurs Redefine Success in Growth Ventures, 613 ANNALS AM. ACAD. POL. & SOC. SCI., Sept. 2007, at 131, 149 (observing that most African-American entrepreneurs defined success in terms of their ability “to provide employment and economic support for their . . . communities”).

114. VENKATESH, supra note 3, at 105 (“Making adjustments in order to continue working with existing friends and associates seems a rational decision, given their belief that they need to remain in these local support networks to have any chance of staying afloat.”).
ties—for instance, they might decide against... opening a store outside [their neighborhood].” 115

The hesitancy of entrepreneurs to leave local communities regardless of their resources and opportunities permeates both the backrooms of small firms and the boardrooms of “elite businesspersons.” 116 Allison Davis, a successful businesswoman from the South Side of Chicago, concedes that many African-Americans ignore promising opportunities if they cannot set up shop in their immediate neighborhood. She says, “[I]t’s a mental thing, really. And a lot of us get stopped by our fear. Say you got the mayor asking if we want a job out... in some white community. Yeah, there’s money, but we don’t trust it... [Y]ou’re outside your own home, your community.” 117 She continued, “If [you fail], then what next? You don’t know nobody, you can’t just start looking for clients. White folks will never come to you... [When you come back] folks around here wonder what your loyalty is. ‘Ain’t down with the community, no more?’ That’s what they be saying.” 118

The current incarnation of American land use law makes no provision for these on-the-ground realities. City planners stubbornly insist on scrubbing the urban workaday world from residential districts; however, they consistently fail to acknowledge that single-use zoning compels budding black entrepreneurs to locate businesses outside of their established webs of trust. Take the example of Oklahoma City. In the heart of Oklahoma City—a typical sprawling Western city built upon an orderly street grid—a historic black neighborhood lies almost two miles from the nearest commercial zone. 119 This arrangement, as we have seen, violates a core tenet of inner-city business—do not move outside the neighborhood. Forced by land use laws to choose between starting an enterprise in a distant neighborhood or struggling along on familiar turf, many African-Americans choose the latter course.

2. Single-Use Zoning vs. Transportation Inequality

Single-use zoning disadvantages black merchants in other related, but distinct, ways. As discussed above, single-purpose districts push residential and commercial uses into separate, and often remote, geographic

115. Id. at 103 (emphasis added).
116. Id. at 145.
117. Id.
118. Id.
119. Using the City’s Zoning Map Locator, I measured the distance from the corner of 50th Street and North Kelley Avenue to the nearest commercial use. The zoning tool can be found at The City of Oklahoma City, Zoning Locator, http://www.okc.gov/Planning/zoning/locator_intro.html (last visited May 25, 2009).
areas. This pattern of regulation, scholars agree, disrupts traditional walkable communities and “virtually guarantees that the automobile will be crucial in accomplishing one’s daily business.” One observer noted that, under a single-use zoning ordinance, “[n]ot only can you not visit your neighbor for a cup of coffee without getting into your car, but there isn’t a Starbucks within even a short car trip from your . . . home.” Indeed, the stark segregation of uses creates almost total dependence on motor vehicle transportation for accomplishing even mundane tasks: buying groceries, seeing a movie, and transporting children to day care.

The problem for the long-term health of black business is that so few African-Americans have access to transportation that can bridge the distance between residential and commercial zones. The data on car ownership in the United States, for example, reveals sharp divisions along racial lines. Nationally, twenty-four percent of black households do not own a car, compared with only seventeen percent of Latino households, thirteen percent of Asian-American households, and seven percent of white households.

Note, as well, that public transportation networks do little to overcome the spatial constraints imposed by single-use zoning. Most cities configure their bus routes to haul suburban

120. See Terry J. Tondro, Sprawl and Its Enemies: An Introductory Discussion of Two Cities’ Efforts to Control Sprawl, 34 CONN. L. REV. 511, 514 (2002) (defining “single-use zoning” as “the designation of separate land areas for different uses”).

121. See Michael E. Lewyn, Suburban Sprawl: Not Just an Environmental Issue, 84 MARY. L. REV. 301, 331 (2000) (“[A]bsent a zoning variance, walkable traditional neighborhoods are [often] outlawed . . . because every activity demands a separate zone of its own; people cannot live within walking distance of shopping, and offices cannot be within walking distance of either.”); Silbaugh, supra note 101, at 1821 (”Single-use zoning has meant that, by definition, people cannot get everything that they need—work, housing, schools, and retail—within a tightly defined geographic area.”).

122. G.S. Kleppel, Urbanization and Environmental Quality: Implications of Alternative Development Scenarios, 8 ALB. ENVTL. OUTLOOK J. 37, 47–48 (2002). The history of this arrangement and its affect on individuals has been amply recounted elsewhere in the literature. Thus, I will not repeat others’ descriptions of the social and economic isolation experienced by the elderly, women, and low-income workers who find themselves trapped in unwalkable communities. See Oliver Gillham, The Limitless City 8–26 (2002); Ibipo Johnston, Location, Race, and Labor Force Participation: Implications for Women of Color, in FED. HIGHWAY ADMIN., U.S. DEP’T OF TRANS., PUBNL. NO. FHWA-PL-97-024, WOMEN’S TRAVEL ISSUES: PROCEEDINGS FROM THE SECOND NATIONAL CONFERENCE 338, 339 (1996), www.fhwa.dot.gov/ohim/womens/chap18.pdf; Elizabeth W. Markson and Beth B. Hess, Older Women in the City, in WOMEN AND THE AMERICAN CITY 124, 135 (Catharine R. Stimpson et al., eds., 1981); Donald N. Rothblatt et al., The Suburban Environment and Women 171 (1979); Garnett, supra note 13, at 1198–1205. As mentioned elsewhere, this Article attempts to fill a gap that has gone unnoticed in the literature; academics have written little about the effect of the built environment on business health and even less on the particular struggles of minority entrepreneurs.

123. Tondro, supra note 120, at 514.

124. See Silbaugh, supra note 101, at 1818.

125. See Robert D. Bullard, Addressing Urban Transportation Equity in the United States, 31 FORDHAM URB. L.J. 1183, 1190–91 (2004). It is not difficult to see why rates of car ownership diverge along racial lines: owning a car is an expensive proposition and black families tend to have fewer resources. Transportation costs eat up thirty-six percent of household expenditures in the lowest-income families, and fourteen percent of the outlays in the highest-income families. See Surface Transp. Policy Project & Ctr. For Neighborhood Tech., Driven to Spend: A Transportation and Quality of Life Publication 5, 10 (2000), http://www.transact.org/PDFs/DriventoSpend.pdf.
workers into the central city during morning rush hour and then ship them back to their “bedroom communities” in the evening. These traditionally designed networks do little to address the transportation needs of African-Americans struggling to move about urban neighborhoods or access out-of-the-way retail centers. Studies also show that poorly conceived route lines often force black commuters to transfer buses multiple times to reach their final destinations. Transfers not only increase the duration of a merchant’s or shopper’s trip “but also the likelihood that something will go wrong along the way, causing a delay that can have disastrous consequences.”

In this environment, it should be no surprise that black merchants lag so far behind their rivals. Without access to adequate transportation services, many African-Americans with innovative business ideas simply cannot reach the far-off enclaves where zoning allows commercial uses. Indeed, the academic literature is replete with statistical and anecdotal evidence supporting the notion that blacks forgo business opportunities because they cannot reach outlying commercial districts through traditional transportation networks. Of course, some determined entrepreneurs may decide to walk long distances (often through bad weather) or hustle rides to reach commercial zones. Such resolve, however laudable, provides a weak antidote for the problems unleashed by single-use zoning, as relying on jerry-rigged transport schemes may ultimately prevent black businesspeople from maintaining steady hours and properly serving customers—a severe competitive disadvantage.

* * * * *

Perhaps unsurprisingly, many funeral dirges have been written for black enterprise in inner-city communities. Commentators have spilled much ink explaining how increased competition from white merchants,
discriminatory FHA loans, and increased levels of urban violence have led to a structural weakening of black communities, black families, and black business. Although these insights remain immensely valuable, I have argued here that policymakers concerned about the future of inner-city business ignore land use issues at their peril. City planning regulations steal few headlines, but they have profound effects on the structure of communities. Zoning schemes, in particular, have caged the ambitions of black entrepreneurs in city centers. Land use fees, municipal zoning board decisions, and the general insistence on separating residential from commercial uses all impress unique and disproportionate harms on African-American merchants, making it difficult to find affordable business space in suitable locations. Throughout urban neighborhoods, “[p]rivate, sheltered, decent space is at a premium.”[131] There is, however, some good news for the merchants of the inner city; unlike social problems rooted in the currents of culture and history, the troubles that stem from zoning can be fixed swiftly by thoughtful and creative local governments.

III. CURRENT EFFORTS TO REFORM THE LAND USE SYSTEM

The previous Part constituted the first attempt to identify how land use rules constrain African-American entrepreneurship in the urban core. The broader problems caused by zoning, however, have already received much attention. In the last three decades, legal scholars have developed a proud tradition of decrying the worst abuses of land use law and offering suggestions to mitigate the harms caused by zoning. It is no exaggeration to claim that there exist tens, if not hundreds, of proposals to fix the current zoning regime. At this juncture, it seems worth asking if these general reform proposals—applied in black neighborhoods—could help black entrepreneurs navigate the land use system. At the very least, a richer understanding of the strengths and weaknesses of current efforts to reorganize zoning law would assist scholars in fashioning new and more effective approaches to the land use problems of black neighborhoods.

Although the policy proscriptions advanced by scholars are numerous, I focus on four developments with the deepest scholarly support: (1) the movement to eliminate all zoning measures, (2) plans to allow home-based businesses, (3) the growth of street vending, and (4) increased neighborhood control of land use decisions. After kicking the tires and checking under the hood, I argue that the broad-based attempts to reorganize the land use system all have major shortcomings, which virtually ensure the real world condition of black entrepreneurs will not improve. More specifically, I contend that current plans to amend the zoning and planning apparatus share two recurring flaws: (1) they face opposition from homeowners concerned about the value of

131. VENKATESH, supra note 3, at 170.
their property, and (2) they disregard the on-the-ground reality of African-American communities.

A. Rollback All Zoning Regulations

More than any other proposed reform, the sweeping deregulation of land use laws has the potential to transform the landscape of black business. Since the early 1980s, a vocal group of commentators has pushed municipalities to abolish the entire zoning system and replace it with a regulatory apparatus that relies solely on private covenants, nuisance lawsuits, and the invisible hand of the free market. The common theme that emerges from this cluster of writings is that zoning distorts the natural allocation of land and permanently traps valuable property in unproductive uses. Critics imply that if cities had the courage to eliminate land use regulation, individual property owners could put their land to its highest and best use, thereby creating more dynamic communities.

The wisdom of this approach is firmly grounded in empirical evidence gathered in Houston, Texas, which is the only major American city that refuses to adopt zoning regulations. Most observers assert that, although Houston lacks a comprehensive web of regulation, land use patterns in the metropolitan area do not differ greatly from those in other American cities. Of critical importance for this Article, the health of black business in Houston’s deregulated environment seems especially robust. In 2001, Black Enterprise magazine studied ten large cities and found that Houston had the highest incidence of black self-employment—roughly, one in twenty-nine African-Americans owned a business. Houston is also heralded for its low housing costs, lack of residential segregation, and vibrant entrepreneurial spirit—strengths that seem tied, at least in part, to the lack of zoning.


133. See Nelson, supra note 13, at 849–50 (“[Z]oning restrictions kept valuable suburban land bottled up in less productive uses.”).

134. One of the more thorough proposals for widespread deregulation comes from the proponents of so-called enterprise zones. Inspired by the success of deregulated Hong Kong, advocates of the enterprise zone concept suggest that governments should eliminate all wage controls and planning laws in the most impoverished areas. See BUTLER, supra note 17, at 129–60; Michael Allan Wolf, Enterprise Zones: A Decade of Diversity, 4 ECON. DEV. Q., Feb. 1990, at 3, 3–4.

135. Houston is not without detractors. Naysayers will point out that the city has relatively high levels of traffic congestion, environmental degradation, and sewer issues. See, e.g., JOE R. FEAGIN, FREE ENTERPRISE CITY: HOUSTON IN POLITICAL–ECONOMIC PERSPECTIVES 40–41 (1988).


Although a nonzoning legal regime would bestow real and lasting benefits on black populations, attempts to revoke established zoning laws seem destined for failure. Quite simply, too many entrenched interests support the current land use system to expect any large-scale rollback of zoning laws. Take landowners, for example. Encouraged by government policies, middle-aged homeowners have, on average, more than six times as much invested in their houses as in other, more liquid, financial assets.\textsuperscript{138} The risk that these households face is enormous—a sudden, unexpected change in neighborhood character could send home values plummeting and destroy years of hard-earned home equity. It is a situation comparable to having all of one’s stock sunk in a single lumbering and undiversified company.\textsuperscript{139} Zoning laws, however, enable homeowners to ease the perils of homeownership; land use controls give individuals a legal tool to resist any developments that threaten local property values.\textsuperscript{140} Zoning becomes, in effect, a crude form of home-equity insurance that may boost the average home’s value by almost ten percent.\textsuperscript{141} It seems relatively certain that homeowners—the most politically powerful group in any jurisdiction—will fight tooth and nail to prevent the rollback of zoning, even if such a measure would benefit the community as a whole.\textsuperscript{142} Although less sympathetic than property holders, politicians, too, have little motivation to jolt the system. It is a somber fact that mu-

\begin{footnotesize}


141 \textsuperscript{. See Newman F. Baker, \textit{Zoning Legislation}, 11 CORNELL L.Q. 164, 169 (1926) (“Often zoning increases the value of the property concerned. To illustrate—if a residence district is set aside by a zoning regulation, the exclusion of the business usually has the effect of increasing the value of the property for residential purposes.”); Abraham Bell and Gideon Parchomovsky, \textit{The Integration Game}, 100 COLUM. L. REV. 1965, 2005–09 (2000) (discussing home equity insurance); William A. Fischel, \textit{An Economic History of Zoning and a Cure for its Exclusionary Effects}, 41 URB. STUD. 317, 318 (2004) (explaining that Albert Breton first argued zoning is a rudimentary form of home equity insurance); Malpezzi, supra note 137, at 224–31 (determining that land use regulation raises housing prices); Speyer, supra note 137 (finding that zoning generally boosts home values by almost ten percent); Edward Glaeser & Joseph Gyourko, \textit{Zoning’s Steep Price}, REGULATION, Fall 2002, at 29–30 (empirically linking high housing prices to excessive zoning regulation).}

142 \textsuperscript{. For a delightful example of a small group of risk averse homeowners fighting a proposed development, see Mark Singer, \textit{The Haves and the Haves}, NEW YORKER, Aug. 11, 2003, at 56 (detailing how residents of an affluent Connecticut town fought an experienced developer attempting to construct a world class golf resort).}
\end{footnotesize}
municipal governments benefit from a kaleidoscope of kickbacks and quid pro quos under a typical zoning regime. Thus, political realities reduce efforts to eliminate zoning to little more than scholarly vapor. Academics and politicians concerned about black business would better serve their cause by focusing on smaller, more attainable solutions.

B. Allow Home Businesses

In other circles, scholars argue that allowing a handful of low-impact commercial uses into residential neighborhoods could help alleviate some of the negative consequences that zoning law inflicts on entrepreneurs. More specifically, advocates of this approach suggest that permitting merchants to operate small, home- or apartment-based enterprises would sharply lower the cost of starting a business, boost the “efforts of low-income individuals to earn an honest living,” and help parents find a better balance between the competing demands of family and work. Scholars also emphasize that, unlike proposals to rollback all zoning rules, welcoming greater numbers of in-home day care centers and dot-coms into residential areas would not require a “radical restructuring of American land use law.”

The successful deregulation of in-home entrepreneurship would, almost certainly, ease the restraints on African-American merchants; however, even the most devoted supporters of home businesses recognize the pitfalls and limitations of this alternative to single-use zoning. First, any attempt to loosen the restraints on home-based enterprise would, again, incur resistance from neighboring homeowners. Within a residential community, conglomerations of home businesses would undoubtedly amplify negative externalities, such as “customer visits that increase traffic or delivery trucks that wake napping toddlers,” and likely depress property values. Second, and of critical importance for African-American enterprise, even the most liberal home business regula-

143. See William A. Fischel, Regulatory Takings: Law, Economics, and Politics 139 (1995) (making the case that special interests easily distort local regulation); Ellickson, Alternatives, supra note 13, at 702 (“Studies have documented the lawlessness of zoning variance decisions in most communities.”).
144. See, e.g., Jacobs, supra note 13, at 206 (discussing how neighborhoods should create a mixture of uses “in accord with the district’s character”).
146. Garnett, supra note 13, at 1240.
147. See supra text accompanying notes 138–42.
148. Garnett, supra note 13, at 1231.
tions would not permit high-intensity uses like automobile repair, warehousing, convenience stores, food processing, and wholesale trade—the sectors of the economy where black firms have gained a significant foothold.\footnote{For example, Tampa, Florida permits sewing, weaving, and washing businesses, but excludes any business like auto-repair or welding. \textit{Tampa, Fla.}, \textit{Code of Ordinances} § 27-131(1), (9) (1999). \textit{See also} \textit{House-Soremekun}, supra note 7, at 8 (discussing sectors of the economy where black businesses will grow in the future); Suggs, \textit{supra} note 3, at 492 (same).} Laws designed to permit home businesses, if they overcome the objections of local homeowners, would benefit upscale uses like technology companies and law offices rather than the uses that draw black merchants.\footnote{See Garnett, \textit{supra} note 13, at 1208 (stating that many zoning codes allow professional offices to operate in residential offices, however, most “prohibit nonprofessionals from doing so”).}

\section{Encourage Street Vending}

Other critics of municipal zoning suggest that cities should legalize and regulate street vending. Street vending—the act of selling goods like prepared food, clothes, or videotapes from sidewalk kiosks or carts—has the potential to greatly expand entrepreneurship in poor black communities.\footnote{Gregg W. Kettles, \textit{Regulating Vending in the Sidewalk Commons}, 77 \textit{Temp. L. Rev.} 1, 6 (2004).} Street vending is, almost certainly, the most accessible path to business ownership. Sidewalk merchants do not pay “rent, utilities, wages, [or] taxes,”\footnote{See Austin, \textit{supra} note 36, at 2124.} and they can more easily avoid the onerous building codes, environmental regulations, and health standards that often stifle the growth of small businesses.\footnote{Philip Mattera, \textit{Off the Books: The Rise of the Underground Economy} 4 (1985).} With little overhead, sidewalk merchants can charge less than their competition and increase sales. The recent history of Mexico illustrates the benefits of nurturing a robust culture of street peddling. In Mexico City alone, as many as 200,000 entrepreneurs have started small businesses that sell goods from sidewalk stalls.\footnote{See Austin, \textit{supra} note 36, at 2127 (“[O]ne justification for black street vending is that it is a step on the road to more successful formal black businesses.”).}

In addition to enlarging the pool of potential entrepreneurs, street hustling may also help workers learn to operate larger businesses in the formal economy. According to this theory, as vendors gain business know-how and accumulate a network of industry contacts, they will move from roadside stands into more permanent locations that can house bigger stocks of inventory and serve more customers.\footnote{Kettles, \textit{supra} note 151, at 15.} Gregg Kettles, a leading authority on street vending, has confirmed that sidewalk selling routinely allows some street merchants to “get a grasp on the bottom rung of the ladder of economic success.”\footnote{Kettles, \textit{supra} note 151, at 26.}
Although the legalization of street vending has the potential to transform entrepreneurship in low-income communities, such peddling faces consistent opposition from an organized and powerful political group—merchants who retail products from privately owned buildings.\footnote{157} Storefront entrepreneurs, who make significant contributions to tax and employment rolls, routinely complain that street enterprises siphon dollars away from their places of business.\footnote{158} Store-based merchants also grumble that sidewalk sellers appropriate public spaces to the detriment of the larger community. “Their presence effectively turns recreational spaces, alleys, and other thoroughfares into workplaces.”\footnote{159} Some of that work, like performing oil changes, exposes children and other passersby to hazardous waste material.\footnote{160} Unfortunately for low-income entrepreneurs, the arguments advanced by storefront merchants have carried the day. From New York to California, vending remains either illegal or hyperregulated, calling into question the viability of street peddling as a long-term solution to the problems of black businesses.\footnote{161}

Some scholars suggest that African-American entrepreneurs should ignore local land use regulations and engage in illegal street vending as a form of civil disobedience.\footnote{162} Although this argument is not without merit, proponents of “off-the-books” work fail to realize that, over time, illegal vending exposes African-Americans to unnecessary safety hazards and hurts black neighborhoods. Capital accumulated through illegal work does not enable an individual to make a down-payment on a home, buy stocks, or otherwise pursue socially legitimate activities.\footnote{163} The threat of detection and punishment also looms; in New York, individuals caught vending without a license lose their merchandise and face steep fines and court fees.\footnote{164} Finally, the task of “having to mete out the law” when a customer shoplifts or a dispute arises over pricing may expose many off-the-book workers to individuals well-acquainted with violence and physical intimidation.\footnote{165} To sum up, any calculation of the full costs and benefits of illegal street vending should steer black entrepreneurs and legal academics toward policies that promote legitimate, legal enterprise.

\footnote{157}{\textit{Id.}} at 27–28.
\footnote{159}{Venkatesh, supra note 3, at 90.}
\footnote{160}{\textit{Id.}}
\footnote{161}{See Kettles, supra note 151, at 26.}
\footnote{162}{See Austin, supra note 36, at 2119–21.}
\footnote{163}{Venkatesh, supra note 3, at 386–87 (detailing the challenges of operating in the black market).}
\footnote{164}{Austin, supra note 36, at 2129; see also Schneider \& Enste, supra note 158, at 159 (2002) (“[A]ll the knowledge the individual has gathered automatically becomes worthless when he is discovered . . . .”).}
\footnote{165}{Venkatesh, supra note 3, at 382.}
D. Promote Neighborhood Control

The final land use reform that could, potentially, boost black entrepreneurship calls for devolving the zoning power from city governments to neighborhood organizations. Advocates of this program stress that when land use decisions are made at the municipal level, planners often ignore the localized needs of block-level areas. A better land use system, so the argument goes, would rest the machinery of zoning with a multiblock-level collective entity, such as a neighborhood board, enabling local residents to cater to the unique land use needs of their area and produce greater varieties of public goods. To illustrate, imagine a black neighborhood in the urban core that gained independent control over its land use decisions. It could, conceivably, provide space for all of the entrepreneurial uses that have traditionally offended the tastes of city planners—day care centers, funeral parlors, fortune-tellers, barbershops, and immigrant cooperatives—or increase the amount of land devoted to multifamily apartments.

Although shifting the locus of the zoning power toward local groups could remove many obstacles that dull the commercial energy of black communities, there are reasons to believe that such a plan will never gain traction in city halls and state legislatures. First, as a political matter, it may be difficult to wrest control of zoning and planning responsibilities away from city governments. Zoning, after all, allows city officials to extract significant payments from developers in exchange for land use permits and other entitlements. These concessions, which fund park maintenance, road construction, and other infrastructure projects, make land


167. See Liebmann, Devolution, supra note 166, at 343–44 (“The ability of existing neighborhoods to adjust to changed demographic patterns has been constrained by zoning, which also has resulted in an imposed uniformity precluding neighborhoods from enriching their character by adding stores and other convenience uses . . . .”).

168. See Ellickson, supra note 166, at 83.

169. As a result of free-rider problems, devolving zoning power to local institutions would, almost certainly, require state legislatures to enact some sort enabling legislation. Although details vary between proposals, most scholars argue that the enabling acts should authorize the formation of a neighborhood zoning commission if the owners of a supermajority of the property value in the designated area agree to the plan. See generally id. (discussing formation procedures and the allocation of votes).

use regulations enormously popular with elected officials.\footnote{171}{See Reynolds & Ball, \textit{Public Sphere}, supra note 170, at 472 (noting that exactions are of “enormous popularity with . . . local governments”).} It seems difficult to imagine that a city councilperson or planning department would ever relinquish such a flexible and discretion-laden bargaining tool without a fight. Second, divorcing the zoning power from other municipal functions has the potential to increase the prevalence of externalities in the land use process.\footnote{172}{See Fischel, \textit{supra} note 139, at 899–902 (discussing transaction costs of devolving zoning power).} Neighborhood zoning boards would have few incentives to consider how their actions impact the welfare of persons in nearby communities.\footnote{173}{This is a perennial problem with zoning. Local control causes problems when a proposed use affects areas beyond local borders. See Ellickson & Been, \textit{supra} note 61, at 875–87.} Parochial land use boards could, quite easily, veto developments that have citywide benefits or approve construction that has negative spillover effects. Third, there is a real concern that local, block-level institutions may lack the planning expertise to make informed decisions about zoning policy. In a rapidly deteriorating inner-city neighborhood, it seems unlikely that many individuals will have the experience or qualifications necessary to lead a zoning board. A purported lack of local expertise motivated residents of East Palo Alto, a majority black district near San Francisco, to protest the incorporation of the area—some residents, church leaders, and elected officials argued that East Palo Alto lacked “sufficient professional expertise within the community to ensure competent self-government.”\footnote{174}{Anjur J. Goel et al., \textit{Black Neighborhoods Becoming Black Cities: Group Empowerment, Local Control and the Implications of Being Darker Than Brown}, 23 HARV. C.R.-C.L. L. REV. 415, 420 (1998).}

A close examination of the land use system and its alternatives helps explain why single-use zoning maintains its hold on nearly every city and town across the county. First and foremost, modern zoning rules have the firm backing of homeowner groups, who seek to maximize the value of their property by preventing the spread of unwanted and unhealthy uses. And, second, reform proposals often ignore the ambitions of the individuals most likely to support zoning reform—minority and low-income workers.\footnote{175}{In a series of votes on zoning in Houston, seventy to seventy-two percent of low-income African-American voters cast their ballots against increased land use regulation. In contrast, only forty-three percent of middle-income whites voted against zoning. Siegan, \textit{Non-Zoning, supra} note 13, at 139–40.} Along these lines, any successful attempt to improve the conditions of black entrepreneurship should both acknowledge the legitimate concerns of homeowners and reckon with the particular spatial needs and culture of inner-city businesspeople. Otherwise, meaningful change is unlikely to be forthcoming.
IV. AN ALTERNATIVE APPROACH

With these lessons in mind, this Article now presents a new, more practical plan to resolve the land use needs of black entrepreneurs. In the pages that follow, I propose a legal structure that would restore vibrancy to African-American enterprise by turning empty residential buildings into commercial space. I refer to this initiative as the Vacant and Abandoned Land Transfer (VALT) program. I argue, in a nutshell, that abandoned buildings that fall under the control of municipal governments should be dezonned and conveyed to local entrepreneurs. This approach has several firm advantages. First, the deregulated land would open acres of space for black entrepreneurs to transform crumbling houses into streetscapes full of stores, bars, and small restaurants. Second, focusing on abandoned buildings would not require a sweeping overhaul of the land use machinery, but only compel legislators to tweak a tiny piece of the existing system. Finally, I put forth that unlike other revitalization projects, VALT programs will unite the interests of all parties concerned with the fate of the urban core: local governments, home owners, and the business community.

A. The Architecture of VALT Programs

Before discussing the potential strengths of VALTs, it may be helpful to briefly explain the nuts and bolts of the program. How, exactly, will cities deregulate vacant government-owned land and transfer abandoned buildings to motivated entrepreneurs? As an initial matter, municipalities would need to create a legal framework to oversee the handover of any land. Officials might configure VALTs as separate agencies within the existing structure of municipal government or, perhaps, bring them to life as independent public corporations.176 Though supporters of the VALT program should remain free to propose any governance structure that fits local needs, organizing land transfers under the authority of an independent corporate entity seems most advantageous. A single public corporation, rather than a small flotilla of government-run agencies, could most efficiently convey title to abandoned properties and manage regional needs, especially in the jurisdictions where a series of

176. Cities interested in starting a VALT could consult the structure of Land Banks for guidance. These nonprofit organizations have traditionally helped cities assemble land and conserve environmentally sensitive open space. Land Banks are chartered by state statute and organized as “independent corporate entity” possessing their own powers.” Frank S. Alexander, Land Bank Strategies for Renewing Urban Land, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 140, 158 (2005); see also GA. CODE ANN. § 48-4-61(a) (West 2008); MO. REV. STAT. § 92.875 (2008). As independent corporations, Land Banks have bylaws, charters, and boards of directors. See Matthew J. Samsa, Note, Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment, 56 CLEV. ST. L. REV. 189, 221 (2008).

177. See A. Michael Froomkin, Reinventing the Government Corporation, 1995 U. ILL. L. REV. 543, 557 (stating that efficiency is the “classic reason” given for creating a public corporation instead of an agency).
separate but overlapping government bodies—the city, the county, the school board—own abandoned buildings.178

The VALT programs would then engage in three core tasks. First, they would set out to acquire a city’s abandoned property. The project envisions that state-level enabling legislation would give VALT programs the muscle to take ownership of all properties that escheat to the government through tax foreclosure proceedings. Every year, thousands of individuals default on their property tax obligations and abandon their homes. Many of these negligent landowners flee the taxing jurisdiction to avoid debt collection.179 Consequently, to recoup lost revenue, a city may have little choice but to enforce its tax liens and take possession of vacant buildings.180 This Article advances the idea that VALT programs should automatically take control of all such forfeited land. Although, at first glance, the scope of the program may give one pause, legal precedent already exists for such a move. A handful of states currently grant Land Banks—nonprofit organizations designed to conserve environmentally sensitive open space—the authority to manage property acquired through tax foreclosures.181 Similar statutory clout could be granted to VALT programs, allowing for control over abandoned land in inner-cities.

After asserting control over government-owned land, VALTs would then work with local legislative bodies to dezone the vacant residential buildings intended for commercial use. Of vital importance for the feasibility VALTs, the authority to deregulate property falls squarely within the scope of a municipality’s legal power. Under state zoning legislation, city legislatures have broad power to transform residential spaces into commercial zones.182 They may, for example, amend zoning maps to increase the amount of space devoted to commercial uses,183 or modify the regulations that govern individual parcels of land.184

178. See Alexander, supra note 176, at 148.
182. See, e.g., 53 P.A. STAT. ANN. § 10601 (West 2008) (authorizing cities to amend zoning ordinance); id. § 10603(c)(1) (allowing for variances to the zoning rules); id. § 10609 (laying out procedures for amending the zoning code).
183. There is a deservedly rich academic literature on rezonings. The hottest debate centers on the amount of deference that judicial bodies should give to the zoning decisions of local legislatures. See Snyder v. Bd. of County Comm’rs, 595 So. 2d 65, 80–82 (Fla. Dist. Ct. App. 1991), vacated 627 So. 2d 469, 476 (Fla. 1993). For an excellent summary of the issues, see Ellickson & Been, supra note 61, at 74.
184. See, e.g., Griswold v. City of Homer, 925 P.2d 1015, 1019, 1030 (Alaska 1996) (allowing zoning change on thirteen individual lots throughout downtown Homer, Alaska).
The final step of the VALT program would convey the dezoned parcels to private citizens. To accomplish that goal, it would be prudent to establish regulations ensuring the fair distribution of deregulated property. Authorities, for example, must first decide whether VALT programs would need to sell vacant properties at full market value. Although such a restriction could generate significant revenue for local treasuries, it would undercut attempts to promote the long-term self-employment of African-Americans in inner-city communities. VALT programs must have broad discretion to distribute land at little or no cost in order to create the space that fledgling black entrepreneurs need to start businesses. Government officials should also articulate criteria to help VALT administrators evaluate potential transferees. Factors to consider in selecting the recipients of vacant property should include business experience, ties to the community, previous job history, and ability to articulate a thoughtful business plan. Whatever the formula, transparent procedures and objective criteria would do much to prevent conflict and avoid charges of corruption as municipalities transfer title of abandoned buildings to private citizens.

B. Why a Land Transfer Program Can Work

1. The Interest of Entrepreneurs

VALT programs will attract the strong support of the business community because they remove obstacles that inhibit black enterprise. Recall that, at its core, this Article argued that African-American entrepreneurs endure unique harms resulting from the zoning system. The thrust of that discussion needs reemphasis here: land use regulation makes it difficult for black entrepreneurs to find affordable commercial space in desirable locations. A low-income entrepreneur in Chicago encapsulated the problem: “[G]etting a place is priceless. That’s the hardest thing, to just have some place to keep your shit, go take a shit, rest, hide from . . . people who may be upset at you.” He continued, “So any place we have, we really guard it. And that’s why we see us hanging

185. This could prove problematic in some jurisdictions. Detroit’s legal department, for example, currently interprets the Michigan Constitution as placing restrictions on the transfer of government-owned land. See Amy Brooks et al., Harnessing Community Assets: A Detroit Land Bank Authority 4 (2004).
186. American governments have a long history of selling off land for profit. On the federal level, “American policy after the Revolution evolved from trying to charge relatively high prices (to pay off Revolutionary War debt) to offering land at lower prices, to including favorable financing terms, to permitting preemption (squatters’ rights), and finally to outright giveaways (the Homestead Acts).” Eric Kades, The Dark Side of Efficiency: Johnson v. M’Intosh and the Expropriation of American Indian Lands, 148 U. PA. L. REV. 1065, 1155 (2000). On a local level, officials tend to sell property they acquire at public auction, often with a minimum bid equal to the total sum of any unpaid taxes, penalties, and costs on the land. See Alexander, supra note 179, at 774.
187. See supra Part II.
188. Venkatesh, supra note 3, at 198.
around the same areas. See, the ones who have a place to go to, they look like they just doing nothing, just sitting around. But that’s not true, they have the most business going on.”

Urban ethnographers confirm that low-income entrepreneurs in the black community “possess skill, business acumen, and tremendous potential for innovative skills and strategies. What most lack is a physical place to ply their trade.”

VALT programs would ease the spatial crunch and unleash the coiled commercial energies of African-Americans. Freed from the need to comply with Byzantine land use rules, or appear before local zoning boards, ambitious black businesspeople could quickly convert abandoned houses into repair shops, recording studios, or tattoo parlors. Indeed, the history of American cities before the advent of zoning confirms that a more flexible land use system would help inner-city entrepreneurs fashion dynamic and prosperous communities. In the prezoning era, for example, immigrant workers had tremendous success converting older residential districts into thriving mixed-use neighborhoods. One reporter described a typical transformation in New Haven, Connecticut: “The new owners consider the property too valuable for residential purposes alone, so every house that passes into the hands of the latest owners has to go through a process of rebuilding or have a new front that provides for a store.”

Although the mishmash of uses “wasn’t exactly a model of attractive architecture, design or amenities. [T]here was no questioning the vitality, energy and activity that permeated both sides of the street . . . .”

VALTs, unlike proposals to legalize home-based business, would also open larger buildings, like abandoned schools and shuttered government offices, to commercial use. Both wholesalers and hair-braiders—entrepreneurs with very different spatial needs—could take advantage of land deregulated through VALT programs. Further, de-zoning abandoned homes in residential neighborhoods would allow individuals with few resources and little experience to pursue entrepreneurial careers—even vehicleless African-Americans could realistically access the newly created commercial space.

189. Id. at 198–99.
190. Id. at 170.
191. Of course, the speed and cost of converting a building’s use depends, largely, on the condition of the structure. A thorough renovation of a dilapidated shell can cost as much as $70,000 on average, in 1990 dollars. Alan Finder, Renovation Program Is Running Out of Abandoned Housing, N.Y. TIMES, Apr. 16, 1990, at B5.
192. See Clowney, supra note 103, at 164–71 (examining the history of a neighborhood before the advent of zoning).
2. The Concern of Homeowners

Understanding the needs of black entrepreneurs does not, by itself, bring about change. As mentioned above, attempts to revamp the land use system often fizzle under the attack of homeowners concerned about local property values. Landholders typically complain that efforts to dismantle the zoning apparatus drag down their home prices. VALT programs, however, sidestep these familiar skirmishes and unravel the tension between property owners and the advocates of zoning reform. The proposal’s key insight is this: converting abandoned land into commercial space ultimately promotes, rather than undermines, landowners’ quest to increase home prices and build stronger communities.

To grasp how VALTs could bolster land values and gain the support of homeowners, it is necessary to examine the perverse impact that empty buildings have on city neighborhoods. Study after study shows that abandoned structures visit a hydra of woe on urban places. Foremost, empty homes and apartments provide sanctuary for illegal activity of all stripes. Drug trades, prostitution, arson, and robbery all take root in the dark and untended spaces that police cannot monitor from the street. Two large studies conducted in the early 1990s reveal the extent of the problem. Criminologists in Baltimore, Maryland and Aus-
tin, Texas both found that the presence of vacant structures on a city block may double the crime rate in the surrounding area.202 Worse still, local governments report that the plague of empty lots has spread. Throughout the country, rates of home abandonment stand at all-time highs,203 forcing public safety departments to devote evermore resources to patrolling the dead zones around vacant structures. Police in Atlanta, Georgia, for example, recently organized a task force specifically designed to combat thieves who strip vacant homes of appliances, cabinets, and copper piping.204 The cumulative effect of these dangers erodes feelings of neighborhood solidarity,205 diminishes the health of local residents,206 and sends property values into a tailspin.207 One resident of a Florida county hit hard by abandonment found the nub of the issue, “[V]acant property is] like a cancer. If someone isn’t at least monitoring the front yard, vagrants and vandals will follow.”208

VALT programs would capture the support of homeowners because they offer a realistic plan to revive neighborhoods threatened by vacant buildings. Under VALTs, the worst, most decrepit buildings could swiftly become useful commercial property. Graffitied apartments could morph into artists’ studios, centers of prostitution could be remodeled into childcare centers, and a burglar’s hideout might become a barbershop. Although these changes would result in some externalities on neighbors, the noise traffic of commerce seems vastly superior to the dangers of vacant buildings. For families worried about their property values and the safety of their children, law-abiding neighbors of any

202. See GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS 197–98 (1996) (finding that measures to contain abandoned property decreased crime by fifty-six percent); Spelman, supra note 197, at 488–91 (finding that city blocks containing unsecured vacant buildings suffered from twice as much crime as city blocks without unsecured buildings).


205. See SKOGAN, supra note 197, at 70 (finding that when levels of disorder rise, social bonds break down and neighbors “go their own way”).

206. See Catherine E. Ross, Fear of Victimization and Health, 9 J. QUANTITATIVE CRIMINOLOGY 159, 170–71 (1993). Individuals who live in disorderly neighborhoods characterized by vacant, boarded-up buildings tend to walk less and have fewer social interactions with neighbors. Id.

207. See Andrew J. Gold, The Trinity Initiative in Economic Perspective: Place or People Prosperity?, 30 CONN. L. REV. 1317, 1337 (1998) (discussing Minneapolis study that indicates vacant homes reduce the value of neighboring property); Greenberg et al., supra note 198, at 436 (finding that abandonment lowers property values of surrounding community); Thomas Gunton, Comment, Coping with the Specter of Urban Malaise in a Postmodern Landscape: The Need for a Detroit Land Bank Authority, 84 U. DET. MERCY L. REV. 521, 522 (2007) (“[V]acant properties generally cause depreciation in property values in the surrounding neighborhood . . . .”). One recent study by Temple University found that houses within one block of an abandoned building lost approximately $6,700 in value. RESEARCH FOR DEMOCRACY, BLIGHT FREE PHILADELPHIA 22 (Oct. 2001), http://www.temple.edu/rfd/content/BlightFreePhiladelphia.pdf.

sort—even barbers and tattoo artists—would seem preferable to the risks associated with abandoned property.

3. The Power of Local Governments

Skeptics of VALTs may ask why municipal officials would have any interest in entangling themselves with yet another program designed to remake urban enterprise and promote black entrepreneurship. After all, establishing a VALT program would require some elbow grease—property would need to be deregulated and bureaucrats would need to be hired to distribute land. The basic reason local governments would warm to the proposal is that they currently own a startling number of vacant buildings and therefore have a strong incentives to return these properties to private ownership.

Detroit, for example, has a real estate portfolio that contains 38,000 unoccupied structures.209 Empty buildings also dot the landscape of other, smaller cities; by some estimates, cities in the Northeast average between 10,000 and 25,000 uninhabited structures.210 Owning these buildings imposes a serious drain on government coffers. Cities generally have to “absorb the added costs of nuisance abatement for vacant property” by boarding-up broken windows and keeping yards free of weeds and debris.211 More importantly, local governments do not receive vital tax revenue while a property remains abandoned and unused.212 Thus, cash-strapped local governments have a strong motivation to adopt VALTs—any land returned to productive use represents an enormous cost saving.

C. Overcoming Objections to VALTs

Although political moderates should have no strong objections to VALT, both economic conservatives and hyper-egalitarians might resist this new legal structure.213 A staunch conservative might see VALTs as a threat to the free market because they ensnare government in the ownership and distribution of property intended for private use. There are two defenses to this argument. First, over the long haul, VALTs would promote freedom and property rights by chipping away at overly restrictive single-use zoning statutes, regulations that have long frustrated conserva-

211. Kraut, supra note 197, at 1150.
212. Id. at 1149 (arguing that vacant homes have “a significant impact on a city’s fiscal health”); see also NAT’L VACANT PROPS. CAMPAIGN, supra note 200, at 7–9.
213. This work is indebted to Robert Ellickson for the term “hyper-egalitarian.” Ellickson, supra note 166, at 107.
Second, governments could structure VALTs to reduce elected officials’ entanglement with private real estate markets. One promising option would require each VALT to have a board of directors composed of community activists and local real estate professions. Ideally, the state’s governor would appoint board members to staggered, multiyear terms. This structure would best insulate a VALT’s leadership from the political upheaval and corruption that plague many local government institutions. A board composed of members who live in the affected communities would also have strong motivation to make judicious decisions and could more efficiently identify the fledgling entrepreneurs that would benefit from the space.

Thinkers with strong anti-regulatory instincts may also question whether the VALT scheme goes far enough. Would the program remove enough red tape to spark business innovation in the inner city? Although VALTs could, potentially, put buildings in the hands of low-income entrepreneurs, even then, many other regulations would remain, imposing potentially ruinous costs on small business. For example, getting an old and neglected structure to comply with municipal building codes might require renovating steel pipes and old wiring—a prohibitively expensive undertaking for most low-income business people. Federal regulations, including the ADA, could also impose tremendous costs on fledgling entrepreneurs and negate the impact of zoning reform. Although these arguments hold some water, they should not derail attempts to institute VALT programs. First, as the saying goes, the good should not be the enemy of the perfect. Any reduction in business costs, however small, has the potential to increase the number of entrepreneurs at the margin. Second, and more importantly, not all abandoned buildings are unsalvageable or in need of significant rehabilitation. The recent flood of foreclosures has left behind a supply of vacant buildings in urban areas that remain in serviceable condition. As Eduardo Peñalver recently noted, “The housing that is becoming vacant during the current downturn . . . is relatively new and should be easier . . . to repair.” Thus, at fairly minimal cost, the VALT program should allow motivated entrepreneurs to clean and convert well-built, but empty homes into vibrant storefronts.

Hyper-egalitarians, for their part, are likely to oppose any measure that treats low-income neighborhoods differently from other communities. Some commentators in this camp worry about the law’s expressive

214. See, e.g., Siegan, Non-Zoning, supra note 13, at 127 (“[Z]oning . . . will not bring about a communist economy, but it will greatly reduce the many benefits of free enterprise.”).
215. Other public corporations have had success with this structure. See Samsa, supra note 176, at 211.
216. Galvan, supra note 60, at 1750–53 (explaining how traditional building codes stifle rehabilitation efforts in center cities).
function. They insist that establishing separate land use systems may send a symbolic message that certain groups remain inferior. Richard Delgado, for example, warns that if governments enforce different housing standards, “we will come to tolerate more and more shanty conditions for those we see as different from ourselves, and these conditions in turn will simply confirm to us that the residents are indeed a different order of humanity.”

Other egalitarian-minded scholars focus their criticism on health and safety issues. Jon Dubin, for example, argues that “[r]esidents deprived of zoning protection are vulnerable to assaults on the safety, quality, and integrity of their communities ranging from dangerous and environmentally toxic hazards to more commonplace hazards, such as vile odors, loud noises, blighting appearances, and traffic congestion.”

Scholars like Delgado and Dubin, therefore, remain deeply suspicious of plans to promote mixed-use neighborhoods in black areas.

Hyper-egalitarians would be wise to abstain from attacking municipal experiments with institutions such as VALTs. For reasons previously canvassed, these programs promise to reduce crime, build social capital, and deliver new goods to underserved black consumers—all without generating additional externalities. As one scholar stated,

“[O]nly a fool would equate the . . . [small neighborhood shop] with the open-air drug markets or brazen gang intimidation that have come to epitomize urban chaos. Nor would most city officials see [a] store, which likely provides a valuable service to nearby residents, as the same kind of disorder as chronic street nuisances such as aggressive panhandling . . . .”

There is also little basis to believe that individuals would interpret VALT programs as codifying the social inferiority of African-Americans. The foundational mission of VALTs, after all, is to restore the panache of black enterprise and black neighborhoods. Moreover, local officials could (and hopefully will) apply VALT programs beyond black neighborhoods to all communities that struggle with abandoned housing and low rates of entrepreneurship. Rather than recoiling from land use reform in the city centers, hyper-egalitarians should seek to alleviate the potential side effects of mixing commercial and residential uses. For example, they might devise strategies to confront loitering around commercial uses or, perhaps, promote legislation mandating that stores in residential neighborhoods operate during reasonable hours.

221. See Dubin, supra note 86, at 762–63 (arguing that cities introduce industrial uses into black neighborhoods to deliberately displace black populations).
V. CONCLUSION

Wylie Avenue bisects The Hill, a historic black neighborhood overlooking downtown Pittsburgh.\textsuperscript{223} During the 1940s and 1950s, the area drew bustling crowds to its restaurants, nightclubs, and retail districts. But sixty years later, residents of The Hill confront a far gloomier scene.\textsuperscript{224} Plywood has replaced welcoming storefront windows. Rubbish accumulates in abandoned stores. And the corners that once hummed with commerce and jazz have collapsed into crumbling shells. Such areas seem ripe for a new wave of commercial development, yet no entrepreneurs are providing the goods and services necessary to remake the neighborhood.

This Article has attempted to explain the significant and largely unappreciated role that land use regulation has played in the demise of black enterprise. In neighborhoods like The Hill, East St. Louis, East Baltimore, and Cleveland’s Glenville, zoning and planning schemes have consistently failed African-American entrepreneurs. As a whole, the land use system takes no account of the particular historical, cultural, and economic setting where black business has tried to establish roots. Fixed-rate zoning fees drain precious start-up capital from chronically underfunded black enterprises. Zoning boards discriminate against the types of business that attract African-American entrepreneurs. And the continued popularity of single-use zoning pushes black businesspeople away from their networks of support.

Although there is no magic elixir to solve all the problems of inner-city entrepreneurs, this Article has also tried to offer a nuts-and-bolts strategy of tackling some of the broader problems imposed by zoning. Turning abandoned homes into commercial space, I argue, would provide black entrepreneurs with the space they need to incubate a new tradition of business growth and neighborhood revitalization. In the long run, African-Americans living in inner cities need institutions that would create a more flexible land use system. Small, locally owned businesses perform a vital role in underserved communities and should not be legislated out of existence through zoning regulations.

\textsuperscript{223} The dramatic works of August Wilson have kept the history and culture of The Hill alive. See, e.g., AUGUST WILSON, FENCES (1986); AUGUST WILSON, JOE TURNER’S COME AND GONE (1988); AUGUST WILSON, THE PIANO LESSON (1990).