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## A Walk Along Willard: A Revised Look at Land Use Coordination in Pre-Zoning New Haven

**ABSTRACT.** This Note seeks to forge a richer understanding of the costs and benefits of zoning. To accomplish its goal, this Note assesses and critiques Andrew Cappel's *A Walk Along Willow*. This Note asks and answers three questions: (1) Are Cappel's findings about land use patterns replicated in areas more representative of the city? (2) Did Cappel correctly assess New Haven's initial encounter with zoning in the 1920s? and (3) Was the implementation of zoning in New Haven worthwhile? This Note quantitatively demonstrates the serious tradeoffs between government regulation and strong private property rights, and concludes that previous studies of New Haven have oversimplified the knotty problems posed by land use regulation.

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## INTRODUCTION

Land use matters. Although stories about street grids, subdivision regulations, and building codes rarely make the front page, land use, in its broadest sense, shapes the most fundamental of human activities: the way we build and structure our communities. An ongoing debate exists both in the legal academy and in city halls about whether markets or governments are better able to coordinate land use and promote rational development.<sup>1</sup> Much of this heated intellectual and political discussion has focused on zoning.

This Note strives to forge a richer understanding of land use regulation by closely examining the successes and failures of an unzoned legal regime. To accomplish this goal, this Note assesses and critiques Andrew Cappel's *A Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926)*.<sup>2</sup> Almost fifteen years after it was first published, Cappel's piece remains arguably the finest small-scale, block-by-block study of an unregulated land use system.<sup>3</sup> In large part, the influence of *A Walk Along Willow* endures because it is one of the few studies to provide "empirically defended demonstrations that free land markets achieve economically efficient, politically acceptable, and socially tolerable outcomes."<sup>4</sup> In *A Walk Along Willow*, Cappel systematically measured the building setbacks, sideyards, heights, and lot

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1. Most observers favor a system that uses a mix of both free markets and government regulation to guide land use decisionmaking. See, e.g., Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L.J. 179 (1995); Leigh Raymond & Sally K. Fairfax, *The "Shift to Privatization" in Land Conservation: A Cautionary Essay*, 42 NAT. RESOURCES J. 599, 621-29 (2002); J. Celeste Sakowicz, *Urban Sprawl: Florida's and Maryland's Approaches*, 19 J. LAND USE & ENVT. L. 377 (2004). However, many questions remain unresolved about the exact role that government should play in this process. See, e.g., Robert C. Ellickson, *Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls*, 40 U. CHI. L. REV. 681 (1973) (arguing that covenants, nuisance law, and fines should replace the zoning system); Jan Z. Krasnowiecki, *Abolish Zoning*, 31 SYRACUSE L. REV. 719 (1980) (calling for the end of geographically based zoning areas and the introduction of case-by-case method to determine permissible land uses). The debate about land use decisions remains relevant because municipalities across the country continually adopt, amend, and reject zoning ordinances. For example, in 1991, rural North Canaan, Connecticut voted 748 to 519 to abolish the town's zoning ordinance. Susan Pearsall, *Zoning Code? On Second Thought, Forget It*, N.Y. TIMES, May 26, 1991, § 12 (Connecticut Weekly), at 2. Moreover, in November 1993, by a narrow fifty-two to forty-eight percent vote, Houston voters rejected a proposal to introduce zoning in the city. See R. A. Dyer, *Zoning Defeated by Narrow Margin*, HOUSTON CHRON., Nov. 3, 1993, at A1.
  2. Andrew J. Cappel, Note, *A Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926)*, 101 YALE L.J. 617 (1991).
  3. Pre-zoning New Haven was unregulated in the modern sense of lacking "consciously planned public control over the size and location of all types of public and private land uses." *Id.* at 627.
  4. Larson, *supra* note 1, at 228 n.264.

coverage throughout one New Haven neighborhood, and concluded that the city's residents fashioned a complex and orderly land use system without the aid of government regulation.<sup>5</sup> Cappel also found that (1) nuisance law effectively controlled noxious industries;<sup>6</sup> (2) zoning regulations merely codified preexisting land use patterns;<sup>7</sup> and (3) social norms govern many aspects of urban development.<sup>8</sup> All of these conclusions pose serious questions about the necessity and effectiveness of zoning and other governmental land use regulations.

*A Walk Along Willow* is deservedly one of the most cited pieces in the land use literature<sup>9</sup> and remains a staple in popular law school textbooks.<sup>10</sup> Despite Cappel's contributions to the debate over zoning, his student note in *The Yale Law Journal* is heavily flawed. As this Note demonstrates, Cappel's decision to examine a single seventeen-block area in northeast New Haven undercuts the significance of his findings. Cappel argued that New Haven was representative of the "medium-sized cities that warmly embraced zoning during the 1920's,"<sup>11</sup> and that New Haven's Willow-Canner neighborhood was "representative of the type of areas open to development in the post-1870 years."<sup>12</sup> Arguably, however, the "Willow-Canner strip" was not typical even of New Haven, let alone most American urban centers.

First, by any reckoning, this area was notably more prosperous than other, more blue-collar sections of the city. New Haven historian Douglas Rae described the area surrounding Willow Street as "the most desirable residential neighborhood in the early twentieth-century city,"<sup>13</sup> and city planners Cass Gilbert and Frederick Law Olmsted, writing in 1910, labeled the area as New

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5. See Cappel, *supra* note 2, at 636.

6. *Id.* at 629.

7. *Id.* at 636.

8. *Id.* at 631-32.

9. See, e.g., Craig Anthony (Tony) Arnold, *Planning Milagros: Environmental Justice and Land Use Regulation*, 76 DENV. U. L. REV. 1, 136 n.785 (1998); Bradley C. Karkkainen, *Zoning: A Reply to the Critics*, 10 J. LAND USE & ENVTL. L. 45, 46 n.5 (1994); Larson, *supra* note 1, at 228 n.264; Martha A. Lees, *Preserving Property Values? Preserving Proper Homes? Preserving Privilege?: The Pre-Euclid Debate Over Zoning for Exclusively Private Residential Areas, 1916-1926*, 56 U. PITT. L. REV. 367, 378 n.57 (1994); Michael E. Lewyn, *Suburban Sprawl: Not Just an Environmental Issue*, 84 MARQ. L. REV. 301, 330 n.212, 379 n.555 (2000); Carol M. Rose, *Property as the Keystone Right?*, 71 NOTRE DAME L. REV. 329, 338 n.53 (1996).

10. See, e.g., ROBERT C. ELLICKSON & VICKI L. BEEN, *LAND USE CONTROLS: CASES AND MATERIALS* 725 (2d ed. 2000); *PERSPECTIVES ON PROPERTY LAW* 437-55 (Robert C. Ellickson et al. eds., 3d ed. 2002).

11. Cappel, *supra* note 2, at 620.

12. *Id.* at 621.

13. DOUGLAS W. RAE, *CITY: URBANISM AND ITS END* 127 (2003).

Haven's "high-class northern residential district."<sup>14</sup> Second, the area Cappel chose to study was almost completely devoid of Jews, Italians, and blacks.<sup>15</sup> Third, the Willow area began to develop only after New Haven's manufacturing district firmly established itself around the harbor, meaning that there was little danger of heavy commerce or industry moving into the neighborhood. In sum, while Cappel's work remains a valuable contribution to the literature on zoning, the impact of his findings is diminished by the character of the neighborhood he chose to examine.

In this Note I hope to resolve some questions left unanswered by Cappel's study. Specifically, my research examined whether Cappel's findings stand up in more representative, working-class areas of New Haven. There are many reasons to think that the conclusions of *A Walk Along Willow* will not hold true in the more industrial sections of the city. Cappel failed to consider that the higher percentage of temporary residents, renters, and absentee landowners may affect the social capital necessary to coordinate land use without zoning regulations. Conceivably, working-class citizens might also have lacked the means and know-how to file nuisance lawsuits against deviant land users. In addition, the social and aesthetic norms so vital to maintaining order in an unzoned system are only genuinely tested in heterogeneous neighborhoods where people do not share the same cultural traditions. Finally, it seems important to examine areas slightly closer to the manufacturing sector of New Haven. Only in these places was there a real threat of incompatible land uses coming together within the same few blocks.

Methodologically, my Note maps *A Walk Along Willow* as closely as possible. Like Cappel, I have examined overall patterns of land use, building height, setbacks, and side yards from the late nineteenth century until the enactment of New Haven's first zoning ordinance in 1926. These benchmarks provide an objective set of data that can be used to measure the degree of land use coordination throughout the city. My study also draws its conclusions from the identical set of 1923 Sanborn fire insurance maps that Cappel used in *A Walk Along Willow*.<sup>16</sup> Within each neighborhood I have conducted a

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14. CASS GILBERT & FREDERICK LAW OLMTSTED, REPORT OF THE NEW HAVEN CIVIC IMPROVEMENT COMMISSION 22 (1910).

15. See CASSIUS W. KELLY, ATLAS OF NEW HAVEN, CONNECTICUT (1911) (showing names of the district's residents); ROBERT AUSTIN WARNER, NEW HAVEN NEGROES 195-98 (1940).

16. The Sanborn Map Company, founded by D.A. Sanborn in 1867, has produced large-scale maps of approximately twelve thousand cities and towns in the United States, Canada, and Mexico. The Sanborn maps were originally produced to help insurance underwriters determine fire risks and set payment premiums. The maps, usually at scales of fifty or one-hundred feet to an inch, show individual building footprints, complete with construction details as specific as building material, number of stories, location of windows, doors,

concentrated analysis of one six-block area and recorded overall impressions of the land use coordination. To further mirror Cappel's work, and for the sake of convenience in dealing with city maps, this study focuses on two parallel streets in each neighborhood whenever possible.<sup>17</sup>

Unlike *A Walk Along Willow*, which examines only one neighborhood, my research focused on four separate neighborhoods scattered throughout New Haven: Westville, City Point, Wooster Square, and the Upper Hill. Taken together, these districts are a representative cross-section of the major working-class areas of the city during the early twentieth century.<sup>18</sup> Westville was a small, almost suburban neighborhood bordered by a handful of industries along the banks of the West River. Situated close to the harbor, City Point was home to light manufacturing concerns. Wooster Square sat at the center of the city's primary port and major railroad depot, and hosted several large manufacturing facilities. Finally, the Upper Hill neighborhood bordered the area immediately south of downtown, and was generally regarded as New Haven's poorest neighborhood.

This Note will also reexamine Cappel's conclusions about the history of the adoption of zoning in New Haven. *A Walk Along Willow* contends that "local advocates of urban planning . . . came to dominate the discussion of land use controls, and the actual conditions of the city became increasingly irrelevant."<sup>19</sup> According to Cappel, a small group of elites forced zoning on the public, even though the city did not require it. I will argue that Cappel's strong assertions are not based on the full spectrum of available historical documents. With this study, I hope to promote a richer, more complex understanding of New Haven's decision to create a zoned legal regime and its ultimate effect on the city's working-class residents.

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sprinkler systems, and chimneys. On the neighborhood level, the maps depict features including building usage, block numbers, property lot lines, and street widths.

17. Ultimately, I examined two contiguous streets in half of the neighborhoods analyzed in this study. The long cross street in the Upper Hill neighborhood was almost exclusively commercial and, as a result, I chose smaller side streets for study. Additionally, I specifically chose streets in Westville to highlight the overall order of the neighborhood. Looking at the neighborhood as a whole, I felt picking two parallel streets would not do justice to the sophisticated organization of the area. I selected streets for study with the following conditions: First, I wanted streets that ran across the width of the neighborhood in order to gauge any east-to-west, or north-to-south, shifts in land use. Second, heavily commercial streets were eliminated from consideration. In order to draw fair comparisons with Cappel's work on northeast New Haven, I felt this study needed to examine primarily residential areas.
18. Wooster Square, Upper Hill, City Point, and Westville were four of the six largest manufacturing areas in New Haven. See RAE, *supra* note 13, at 89.
19. Cappel, *supra* note 2, at 635.

Ultimately, this Note presents empirical evidence that can form the basis for a new perspective on zoning. Specifically, I have set out to answer three questions: First, do Cappel's findings about the patterns of land use in the Willow-Canner strip hold up in more representative neighborhoods of New Haven? Second, did Cappel correctly assess New Haven's initial encounter with zoning in the 1920s? And third, was the implementation of zoning in New Haven worthwhile? I will argue that while Cappel's study provides a remarkable glimpse of spontaneous organization in an upscale neighborhood, *A Walk Along Willow* repeatedly oversimplifies the knotty problems posed by land use regulation.

Part I of this Note provides an overview of the most recent zoning literature and considers the reasons for New Haven's original interest in zoning. Part II examines the patterns of land use coordination across four separate New Haven neighborhoods. Finally, Part III closely examines the history of Court Street in Wooster Square and draws some conclusions about zoning in New Haven.

## I. OVERVIEW

### A. Literature Review

Zoning is the most widespread method of land use control used by local governments in the United States. Defined narrowly, zoning consists of dividing an entire municipality into districts and designating permitted uses for each area. Typically, zoning ordinances divide land into residential, commercial, and industrial sectors. Modern comprehensive zoning regulations can also control building heights, building placement, and density of construction.<sup>20</sup>

Unlike other Progressive Era reforms that have been accepted as necessary to order our complex world,<sup>21</sup> land use regulation faces continued criticism from commentators of all political stripes.<sup>22</sup> Critics from the law-and-economics tradition regularly attack zoning, claiming that it diverts land from its optimal use.<sup>23</sup> Advocates of small government resist zoning because it has

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20. See 1 PATRICK J. ROHAN, ZONING AND LAND USE CONTROLS § 1.03[2] (Eric Damian Kelly ed., 2000).

21. Among other reforms of the Progressive Era were antitrust laws, state and national income taxes, the minimum wage, direct election of U.S. Senators, and the creation of the Federal Reserve System.

22. See Larson, *supra* note 1, at 179.

23. See generally BERNARD H. SIEGAN, LAND USE WITHOUT ZONING (1972) (theorizing that zoning restricts the development of industry and curtails construction activity); Ellickson,



proven costly to administer and susceptible to corruption.<sup>24</sup> Libertarians critique land use controls as an unjustified invasion into the domain of private property.<sup>25</sup> Recently, commentators from the left have added their voices to the mix, highlighting zoning's role in creating urban sprawl, segregated communities, and monotonous urban development.<sup>26</sup>

Despite criticism, zoning has been immensely popular in American cities and towns of all sizes. If public acceptance were the only measure of effectiveness, zoning would be considered nothing short of a smashing, nationwide success.<sup>27</sup> Supporters of land use regulation insist that zoning protects property values by keeping noxious uses, such as car dealerships and junkyards, away from single-family residential developments.<sup>28</sup> Zoning also

*supra* note 1, at 705 (arguing that zoning artificially increases the supply of sites suitable only for large homes for the well-to-do).

24. See Ellickson, *supra* note 1, at 702 (citing studies that document the "lawlessness of zoning variance decisions in most communities"); Bernard H. Siegan, *Conserving and Developing the Land*, 27 SAN DIEGO L. REV. 279, 289 (1990) (arguing that government land use regulation is guided by "political rather than planning considerations").
25. See RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN 131-33 (1985); Michael M. Berger, *Happy Birthday, Constitution: The Supreme Court Establishes New Ground Rules for Land-Use Planning*, 20 URB. LAW. 735, 756-57, 781 (1988); Bernard H. Siegan, *Editor's Introduction: The Anomaly of Regulation Under the Taking Clause*, in PLANNING WITHOUT PRICES: THE TAKING CLAUSE AS IT RELATES TO LAND USE REGULATION WITHOUT COMPENSATION 36 (Bernard H. Siegan ed., 1977).
26. See, e.g., WILLIAM A. FISCHER, THE ECONOMICS OF ZONING LAWS: A PROPERTY RIGHTS APPROACH TO AMERICAN LAND USE CONTROLS 61 (1985) (discussing how zoning regulations have been used to prohibit apartments, small homes, mobile homes, and other housing options associated with persons of limited means); JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES (1961) (arguing that neighborhoods of small blocks, mixed uses, and high densities create vibrant and safe cities); Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 441 (1990) (discussing how the affluent use zoning and other land use policies to create homogenous residential communities); Joel Kosman, *Toward an Inclusionary Jurisprudence: A Reconceptualization of Zoning*, 43 CATH. U. L. REV. 59, 71-77 (1993) (arguing that zoning may lead to forms of racial and class discrimination). Many "New Urbanist" thinkers attack traditional zoning laws because they unnaturally segregate housing from small-scale development and fail to control sprawl. See, e.g., PETER CALTHORPE, THE NEXT AMERICAN METROPOLIS: ECOLOGY, COMMUNITY, AND THE AMERICAN DREAM (1993); ANDRES DUANY ET AL., SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM 9-11 (2000).
27. 1 ROHAN, *supra* note 20, § 1.02[2] (noting that all states have some form of enabling legislation for zoning).
28. Proponents of the country's first wide-ranging zoning ordinance, enacted by New York City in 1916, argued that zoning was essential to maximize property values. See COMM. ON THE CITY PLAN, CITY OF NEW YORK, FINAL REPORT OF THE COMMISSION ON BUILDING DISTRICTS AND RESTRICTIONS 12-14 (1916), reprinted in ROY LUBOVE, THE URBAN COMMUNITY: HOUSING AND PLANNING IN THE PROGRESSIVE ERA 95-98 (1967); see also DANIEL R. MANDELKER, THE ZONING DILEMMA: A LEGAL STRATEGY FOR URBAN CHANGE 24 (Lorman Ratner ed., 1971) (arguing that zoning laws avoid the negative externalities inherent in

receives strong support from city planners, who view land use regulation as essential for implementing long-term development strategies.<sup>29</sup> Without zoning, the argument goes, a municipality would have no control over the type and placement of industries within its borders. In addition, scholars defend zoning because it protects the environment,<sup>30</sup> minimizes taxes,<sup>31</sup> preserves the ideal of the single-family home,<sup>32</sup> and protects the poor from exploitation.<sup>33</sup>

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individual development choices); Daniel P. McMillen & John F. McDonald, *Could Zoning Have Increased Land Values in Chicago?*, 33 J. URB. ECON. 167, 168 n.2 (1993) (noting that advocates of Chicago's initial zoning ordinance argued the ordinance would increase property values by one billion dollars over twenty-five years by eradicating negative externalities from noxious land uses). The separation of incompatible uses was also the critical question in the Supreme Court case that affirmed the constitutionality of zoning. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

29. The New York City Department of City Planning's website states that zoning is "a key tool for carrying out planning policy." Zoning—New York City Department of City Planning, <http://www.ci.nyc.ny.us/html/dcp/html/subcats/zoning.html> (last visited Sept. 2, 2005). See also RICHARD F. BABCOCK, *THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES* 120-25 (1966).
30. See, e.g., PETER CALTHORPE & WILLIAM FULTON, *THE REGIONAL CITY: PLANNING FOR THE END OF SPRAWL* 95, 109-13 (2001) (arguing, in part, that regional planning and zoning schemes are necessary to reduce diffuse environmental problems); Charles P. Lord et al., *Natural Cities: Urban Ecology and the Restoration of Urban Ecosystems*, 21 VA. ENVTL. L.J. 317, 338 (2003) (advocating for "environmental zoning," a concept in which "growth and development [are] directed to those areas that can best manage the impact"); Robert J. Blackwell, Comment, *Overlay Zoning, Performance Standards, and Environmental Protection After Nollan*, 16 B.C. ENVTL. AFF. L. REV. 615 (1989) (arguing that overlay zoning protects the environment); *Developments in the Law—Zoning*, 91 HARV. L. REV. 1427, 1578-1624 (1978) (discussing the role that zoning plays in environmental protection).
31. See Bruce W. Hamilton, *Zoning and Property Taxation in a System of Local Governments*, 12 URB. STUD. 205 (1975) (explaining that some exclusionary zoning is necessary to ensure that everyone pays a fair share of municipal taxes); Lees, *supra* note 9, at 406 (discussing the role that tax minimization played in Boston's decision to adopt zoning).
32. See BABCOCK, *supra* note 29, at 115-16; Lees, *supra* note 9, at 413-15; William D. McElyea, *Playing the Numbers: Local Government Authority To Apply Use Quotas in Neighborhood Commercial Districts*, 14 ECOLOGY L.Q. 325, 349 (1987) (discussing how zoning can be used to protect the "character of single-family residential neighborhoods").
33. See *Developments in the Law—Zoning*, *supra* note 30, at 1433 (arguing that the pre-zoning land use system favored the most litigious and wealthy members of a community); see also Campbell Scott, *Some Facts Regarding Zoning* (Sept. 18, 1924) (on file with Yale University Manuscripts and Archives, GN 847, Series I, Box 3, Folder 36). Scott, the President of the Technical Advisory Corporation in New York and New Haven's consultant on zoning issues, argued:

Zoning, when properly carried out . . . gives to the poor man the same protection it gives to the rich man; it gives to the poor man through a city ordinance the same protection to his property, and even better protection, than the rich man frequently secures when he buys a large parcel of restricted property.

*Id.* at 1.

Underlying all of these pro-zoning arguments is the belief that a land use system governed by zoning is more orderly and rational than a system based on ad hoc nuisance lawsuits and private covenants.

Conjecture, guesswork, and speculation have become all too common in the continuing debate about whether free markets or government regulations better organize and coordinate land use. Too often in the literature, commentators announce far-reaching policy proposals without conducting the empirical research necessary to support their theories. A few pioneering works have managed to escape the sterility of this debate by combining analytic investigation with measured recommendations for reforming the prevailing land use system. Bernard Siegan's classic study of Houston, the only major American city without zoning laws, is the most thorough and influential examination of an unzoned land use regime.<sup>34</sup> Siegan argued that market forces, buttressed by social and aesthetic norms, create nearly the same degree of land use coordination as strict zoning ordinances. The market forces at work in Houston proved especially adept at separating large apartments and noxious industries from single-family residential communities.<sup>35</sup> Siegan also concluded that Houston's low housing costs result from the ability of housing developers to build apartments unencumbered by the density restrictions, height limitations, or minimum lot requirements common in most local zoning ordinances.<sup>36</sup> Other legal academics have conducted studies on land use regulation in Baltimore,<sup>37</sup> San Francisco,<sup>38</sup> Boston,<sup>39</sup> and rural Texas<sup>40</sup> that outline similar arguments against zoning regimes.

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34. SIEGAN, *supra* note 23; Bernard H. Siegan, *The Houston Solution: The Case for Removing Public Land-Use Controls*, LAND-USE CONTROLS Q., Summer 1970, at 1 [hereinafter Siegan, *The Houston Solution*]; Bernard H. Siegan, *Non-Zoning in Houston*, 13 J.L. & ECON. 71 (1970).
  35. See Siegan, *The Houston Solution*, *supra* note 34, at 12-13.
  36. See Siegan, *supra* note 24, at 292 (comparing housing prices in Houston and Dallas).
  37. Garrett Power, *The Unwisdom of Allowing City Growth To Work Out its Own Destiny*, 47 MD. L. REV. 626 (1988). Power's assessment of Baltimore's zoning experience is an exceptionally thorough investigation of the effects of zoning on the behavior of politicians, bureaucrats, real estate brokers, builders, businessmen, and homeowners. Power concluded that although zoning is inefficient and subject to corruption, the advantages it confers on brokers, builders, businessmen, and homeowners make it impossible to dismantle.
  38. ROGER W. LOTCHIN, *SAN FRANCISCO 1846-1856* (1974). Lotchin provided a legally oriented discussion of the development of San Francisco and demonstrated that some degree of land use coordination can arise without the help of top-down, rule-oriented government interference.
  39. SAM BASS WARNER, JR., *STREETCAR SUBURBS: THE PROCESS OF GROWTH IN BOSTON, 1870-1900* (1962). Warner's examination of the effect of the streetcar on the growth of Boston shows that neighborhoods develop in ways that maximize property values without the help of zoning.

Although essential to the discussion of land use regulation, all of these studies focus on large geographic areas and as a result are unavoidably general in their analysis of land use coordination. For example, Siegan focused his investigation on the placement of car dealerships and gas stations across all of Houston. Few studies have analyzed land use coordination on a block-by-block scale.

As mentioned above, the pioneering work in this area is Cappel's *A Walk Along Willow*, which examines land use patterns in a seventeen-block residential area of New Haven, Connecticut before zoning laws were enacted. Cappel's study is based on a series of fire insurance maps that detail the precise location, height, and mass of every structure in the city and specify each building's use—whether commercial, industrial, or residential. Drawing on these maps, Cappel measured setbacks, sideyards, building heights, and lot coverage to gauge the degree of land use coordination in the city. Cappel's study remains a uniquely valuable contribution to the zoning literature because of the remarkable amount of data he was able to collect. The volume of information coupled with the precision of his measurements creates a distinctively detailed picture of an American neighborhood before the advent of zoning. The data from *A Walk Along Willow* show that homes were set back generously from the street, lots were segregated according to size, building heights were largely uniform, and sideyards were remarkably coordinated.<sup>41</sup> Relying on evidence from one neighborhood, Cappel concluded that the citizens of New Haven fashioned a complex and orderly land use system without the aid of government regulation.<sup>42</sup> According to Cappel, many of the goals of zoning were achieved through market forces, contractual agreements, and social norms.<sup>43</sup> In sum, *A Walk Along Willow* argues that the sophisticated pattern of land use present in the Willow-Canner strip “cast[] doubt upon the prevailing assumption that coherent land use cannot take place without the type of planned public regulation represented by zoning.”<sup>44</sup>

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40. Larson, *supra* note 1 (discussing land use in a poor, unregulated area of Texas). Larson's study of rural Texas is perhaps the piece most similar to this Note. Larson was primarily concerned with environmental issues and housing quality, but she concluded that there are real tradeoffs between regulation and free markets.

41. Cappel, *supra* note 2, at 623-26.

42. *Id.* at 636.

43. *Id.*

44. *Id.*

*B. The Justifications for Zoning in New Haven*<sup>45</sup>

On December 6, 1926, two weeks after the Supreme Court upheld zoning as an appropriate extension of the state and local police power,<sup>46</sup> the New Haven Board of Aldermen enacted the city's first zoning ordinance by a unanimous vote.<sup>47</sup> In *A Walk Along Willow*, Cappel argued:

[T]he introduction of zoning into New Haven was not necessitated by actual conditions of local land use, but rather was the work of certain elites, particularly members of the Chamber of Commerce and City Plan Commission, who were influenced by theories developed as part of the national "City Beautiful" movement. Therefore, in contrast to the narrative traditionally advanced by supporters of zoning, the rapid spread of zoning in the 1920's may well have brought zoning to cities like New Haven where it was not really needed.<sup>48</sup>

A close examination of the history of zoning in New Haven reveals that the story is richer and more complex than the account given in *A Walk Along Willow*. While Cappel correctly identified the prominent role of elites in the zoning movement, he underestimated the threat that unchecked economic growth posed to the citizens of early-twentieth-century New Haven. Cappel also overstated the protection that nuisance litigation offered private citizens against large industrial concerns. In sum, zoning was not just a fad imposed by elite city planners, but rather a logical response to conditions that the people of New Haven observed around their city, on their streets, and in their lives.

*1. Ideals of the City Beautiful Movement*

Cappel correctly identified the City Beautiful movement as the intellectual foundation of New Haven's zoning regulations.<sup>49</sup> City Beautiful was a national

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45. This Section is indebted to the work of Christina Forbush, who pioneered the study of zoning's history in New Haven. For an extended discussion of the topic, see Christina G. Forbush, *Striving for Order: Zoning the City of Elms* (May 9, 1997) (unpublished manuscript, on file with the New Haven Colony Historical Society).

46. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

47. 1926 J. BOARD OF ALDERMEN OF NEW HAVEN 400 (Dec. 6, 1926).

48. Cappel, *supra* note 2, at 637.

49. *Id.* at 635; see also Mark Fenster, Note, "A Remedy on Paper": *The Role of Law in the Failure of City Planning in New Haven, 1907-1913*, 107 YALE L.J. 1093, 1093-95 (1998). Fenster traced the rise and fall of the City Beautiful movement in New Haven. He concluded that the movement failed because of lack of political support and the limited scope of legal doctrine on city planning. *Id.* at 1121-23.

aesthetic and scholarly movement dedicated to transforming unruly and disorganized urban areas into disciplined “centers of industry, commerce, and modernity.”<sup>50</sup> The movement focused largely on planning city parks, landscaping urban waterways, and designing attractive spaces for public buildings.<sup>51</sup>

Despite strong support from the general public, the leaders of the City Beautiful movement in New Haven could not muster the political strength to enact their bold vision for the city’s landscape.<sup>52</sup> By 1911, the movement had reached its zenith and began to lose momentum. As zoning swept through the country in the late 1910s and early 1920s, local advocates of the City Beautiful movement realized that zoning could be used as a tool to implement parts of their vision for New Haven. Although zoning did not bestow the power to erect handsome public buildings or widen streets, it could be used to impose a certain kind of aesthetic order.<sup>53</sup> City leaders like George Dudley Seymour, a prominent advocate of the City Beautiful scheme, became leading supporters in the push to adopt zoning. The motivations of these men were not entirely civic-minded. In his personal papers Seymour admitted that he had sacrificed much in “time, money and energy”<sup>54</sup> to promote the City Beautiful movement and revealed that he saw zoning as a mechanism to implement these city planning ideas throughout New Haven.<sup>55</sup> Some civic leaders saw a national zoning movement taking shape and did not want New Haven to be left behind in the march toward modernity.<sup>56</sup> Others hoped that zoning might forge more attractive residential communities throughout the city.<sup>57</sup>

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50. Fenster, *supra* note 49, at 1094.

51. See, e.g., GILBERT & OLMSTED, *supra* note 14. The original Gilbert & Olmsted report, published on expensive paper with a fold-out color map, is a classic document of the City Beautiful movement. The authors pushed for wider sidewalks, a more rational street grid, bold public buildings, and a generous system of public parks.

52. RAE, *supra* note 13, at 205-08.

53. City Beautiful advocates were very concerned with promoting “beauty” and building attractive residential environments. The premise underlying the movement was that beauty could be an effective device for creating moral and civic virtue among urban populations. See generally FRANK BACKUS WILLIAMS, *THE LAW OF CITY PLANNING AND ZONING* 381-442 (Richard T. Ely ed., 1922).

54. George Dudley Seymour, Marginalia on Personal Correspondence (Mar. 31, 1922) (on file with Yale University Manuscripts and Archives, GN 442, Series IV, Box 82G).

55. George Dudley Seymour, Marginalia on Letter from David E. FitzGerald, Mayor, New Haven, Conn. (Mar. 23, 1922) (on file with Yale University Manuscripts and Archives, GN 442, Series IV, Box 82G).

56. Office of the Zoning Comm’n, New Haven, Conn., *The Zoning of New Haven* (June 2, 1923) (on file with Yale University Manuscripts and Archives, GN 847, Series I Box 3, Folder 36). The Commission noted that of the thirty-seven cities in the country larger than New Haven, “all but four or five” were actively at work preparing zoning regulations. Moreover,

These records reflect, at least in part, Cappel's finding that many zoning advocates were not in fact concerned with on-the-ground problems of land use coordination. For idealists like Seymour, there was little discussion of the actual conditions on city streets; rather, these individuals championed zoning for a variety of personal and aesthetic reasons. However, the behavior and rhetoric of a small group of elites enamored with the City Beautiful movement does not prove that New Haven's zoning regulations were irrational or unnecessary. As the following Sections will show, the fathers of zoning in New Haven were responding to citizens' concerns about the city's rapid growth and the inadequacies of private nuisance law.

## 2. Economic Concerns

During the early twentieth century, New Haven experienced a surge of population growth of approximately fifty percent between 1900 and 1920.<sup>58</sup> Not surprisingly, a robust building boom accompanied the ever-increasing population. In 1921, the city issued 1675 building permits with a value of \$6,487,808.<sup>59</sup> By 1923, the number of building permits had jumped to 1877, and the value of all issued permits increased to \$8,934,663.<sup>60</sup> Permits for two-family houses and residential garages increased at the highest rates.<sup>61</sup> A more dramatic indicator of the region's growth can be seen in the upsurge of mortgages taken out in this two-year period. In 1921, real estate mortgages totaled \$27,981,000.<sup>62</sup> This number swelled to \$79,758,000 in 1923.<sup>63</sup>

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approximately one hundred cities that were smaller than New Haven had already passed zoning regulations. *Id.* at 1.

57. See, e.g., George B. Ford & E.P. Goodrich, Technical Advisory Corp., Simplifying Zoning (undated) (arguing that zoning could "enhance the attractiveness" of the community) (on file with Yale University Manuscripts and Archives, GN 442, Series V, Box 97, Folder 1408); George H. Gray, Zoning, Districting, or Sectoring, and Its Application to New Haven, Address Before the Board of Directors of the Chamber of Commerce (Nov. 30, 1920) (transcript on file with Yale University Manuscripts and Archives, GN 442, Series V, Box 97, Folder 1408).
58. In 1900, New Haven's population stood at 108,027. By 1920 the population had climbed to 162,567. See RAE, *supra* note 13, at 231-32.
59. Report of the Building Inspector (1921), in CITY YEAR BOOK OF THE CITY OF NEW HAVEN 521 (1921).
60. Report of the Building Inspector (1923), in CITY YEAR BOOK OF THE CITY OF NEW HAVEN 627 (1923).
61. Compare Report of the Building Inspector (1921), in CITY YEAR BOOK OF THE CITY OF NEW HAVEN 520 (1921), with Report of the Building Inspector (1923), in CITY YEAR BOOK OF THE CITY OF NEW HAVEN 627 (1923).
62. ARNOLD GUYOT DANA, NEW HAVEN'S PROBLEMS: WHITHER THE CITY? ALL CITIES? 29b (1937).

New Haven's leaders wanted to encourage this growth and expansion. The city planners hoped to establish New Haven as a leading center of a modern, urbane New England, and predicted that the population would reach 400,000 by 1950 and exceed one million by the turn of the twenty-first century.<sup>64</sup> Not surprisingly, however, the established residents of New Haven were concerned about the effect of these developments on the landscape of their city. Homeowners worried that new, inappropriate construction would sully the character of their neighborhoods.<sup>65</sup> Retailers also felt threatened, fearing that huge new buildings would create dark, congested, and uninviting streets.<sup>66</sup>

The specter of unregulated apartment and garage construction troubled the citizens of New Haven. Fueled by the increased popularity of the elevator, apartment construction was booming. Despite longstanding concerns that large high-rises blocked air and light from smaller single-family homes,<sup>67</sup> construction began on an average of thirty-five apartment buildings every year between 1921 and 1923.<sup>68</sup> The rate of production of private one- and two-car garages also exploded during this period. In the early 1920s, fifty-five percent of all building permits for new buildings in residential areas were issued for garages.<sup>69</sup> In 1901, a two-block stretch of Exchange Street contained no

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63. *Id.*

64. GILBERT & OLMSTED, *supra* note 14, at 14.

65. Letter from George H. Gray, Chair, New Haven Zoning Comm'n, to the New Haven Bd. of Aldermen (May 3, 1922) (on file with Yale University Manuscripts and Archives, GN 442, Series IV, Box 82G). Gray complained that he had "frequent communications over the 'phone from individuals urging [him] to push the matter of Zoning, as their property [was] being jeopardized by proposed buildings not appropriate to the neighborhood." *Id.* at 1.

66. *Id.*

67. See, e.g., ROBERT WHITTEN, CITY OF PROVIDENCE, THE PROVIDENCE ZONE PLAN 7 (1923) (stating that "where many [high-rises] are built in close proximity to each other, they are a serious damage to surrounding property, detrimental to health, a menace to safety and a contributory cause of traffic congestion").

68. See Report of the Building Inspector (1923), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 626 (1923); Report of the Building Inspector (1922), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 568 (1922); Report of the Building Inspector (1921), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 520 (1921); Report of the Building Inspector (1920), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 512 (1920).

69. See Report of the Building Inspector (1923), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 626-27 (1923); Report of the Building Inspector (1922), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 568-69 (1922); Report of the Building Inspector (1921), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 520 (1921); Report of the Building Inspector (1920), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 512 (1920). On average, five hundred garages were constructed each year.



garages; by 1924 the number jumped to seventeen.<sup>70</sup> In the same period the number of garages along a five-block area in City Point jumped from zero to fifty-six.<sup>71</sup> Despite their growing popularity, this construction triggered waves of anxiety in the city because garages were still considered unsightly additions to residential neighborhoods. The hostility toward garages ran so deep that one plaintiff in a Connecticut nuisance lawsuit compared his neighbor's garage to a barn and an outhouse.<sup>72</sup> Moreover, zoning experts from New York City informed New Haven's Board of Aldermen, representatives of Yale University, and the leaders of various civic organizations that the value of their property could be reduced by as much as half if apartment buildings and garages were allowed to invade the city's residential districts.<sup>73</sup> The Chair of the Zoning Commission also specifically warned the Board of Aldermen about the "blighting encroachment of the store, the commercial garage . . . the large apartment house and other familiar developments."<sup>74</sup> Earlier reports that identified growing instability in the New Haven real estate market compounded the fear that property values might begin to drop.<sup>75</sup> The building boom in apartments and garages threatened to exacerbate the volatility of housing prices and the anxiety of longtime residents.

In this climate of fear and instability, zoning offered a systematic method for stabilizing property values and preserving the character of the city's traditional neighborhoods. Armed with a favorable zoning ordinance, residents of a single-family housing district could prevent the spread of tenements, unsightly garages, and high-rise apartments into their neighborhoods. Thus, zoning could be seen as an investment for the city—it was a way to control the development that everyone knew was coming. Examined in this context, it becomes easier to see that zoning in New Haven was not enacted only to satisfy the goals of idealistic city elites, as Cappel suggested. For the residents of early-

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70. Compare 2 SANBORN MAP CO., INSURANCE MAPS OF NEW HAVEN, CONNECTICUT, Nos. 76-77, 79, 82 (1901) [hereinafter SANBORN (1901)] with 1 SANBORN MAP CO., INSURANCE MAPS OF NEW HAVEN, CONNECTICUT, Nos. 328-30 (1923) [hereinafter SANBORN (1923)].

71. Compare 2 SANBORN (1901), *supra* note 70, Nos. 113, 118, with 1 SANBORN (1923), *supra* note 70, Nos. 81-82.

72. *Bassett v. Pepe*, 110 A. 56, 57 (Conn. 1920).

73. George B. Ford, President, Technical Corp. of N.Y., Address at a Public Meeting (Apr. 7, 1922), in *Minutes of the New Haven Zoning Commission* 9 (1925) (on file with the New Haven City Plan Department).

74. Gray, *supra* note 57.

75. In 1920, the Real Estate Committee of the Chamber of Commerce testified that landlords had unreasonably raised rental prices for apartments. See *Minutes of the Executive Committee, Greater New Haven Chamber of Commerce* (Sept. 1920) (on file with the New Haven Colony Historical Society).

twentieth-century New Haven, zoning may have been a rational response to the uncertainty of the age.

### 3. *Nuisance*

In New Haven, the initial impetus for land use regulation came from businessmen concerned about nuisance abatement. A meeting of the City Improvement Committee of the Chamber of Commerce in September 1920 put zoning on the city's agenda.<sup>76</sup> The Committee then commissioned a study on zoning legislation because it was concerned about the effects of industrial smoke emissions.<sup>77</sup> At the time, it was estimated by the New Haven Chamber of Commerce that uncontained water and smoke caused \$500,000 a year in damages.<sup>78</sup>

Modern-day critics of zoning would suggest that the Committee's concern about smoke damage was misguided, because nuisance law provided an effective means of controlling unreasonable smoke emissions, noxious odors, noise pollution, and other aberrant land uses.<sup>79</sup> Cappel contended that the citizens of Connecticut were unusually well protected by private nuisance law,<sup>80</sup> citing several decisions by the Connecticut Supreme Court to show that the law was sympathetic to plaintiffs bringing nuisance suits against industries and manufacturing concerns.<sup>81</sup>

However, New Haven residents may have had greater difficulty finding judicial redress for nuisance complaints than Cappel acknowledged. First, Cappel overstated the power of nuisance litigation to protect New Haven homeowners from the worst abuses of the industrial age. Three of the four cases that Cappel cited were decided before the rise of industry in Connecticut. As large-scale manufacturing became more common and more important to the state's economy during the early twentieth century, courts began to favor industrial defendants in nuisance-related cases.<sup>82</sup> For example, in *Rockville*

76. *Id.*

77. *Id.*

78. Minutes of the Executive Committee, Greater New Haven Chamber of Commerce (Dec. 1921) (on file with the New Haven Colony Historical Society).

79. See Ellickson, *supra* note 1.

80. Cappel, *supra* note 2, at 629.

81. *Nailor v. C.W. Blakeslee & Sons*, 167 A. 548, 549 (Conn. 1933); *Hurlbut v. McKone*, 10 A. 164, 166-67 (Conn. 1887); *Whitney v. Bartholomew*, 21 Conn. 213, 218-19 (1851); *Nichols v. Pixly*, 1 Root 129 (Conn. 1789).

82. See, e.g., *State v. Woolley*, 92 A. 662 (Conn. 1914) (refusing to impose liability on the manager of a factory producing noxious odors); *Goldman v. N.Y., New Haven & Hartford R.R. Co.*, 75 A. 148 (Conn. 1910) (denying plaintiff recovery for damages caused by

*Water & Aqueduct Co. v. Koelsch*, the Connecticut Supreme Court held that an amusement park was not a common law nuisance, despite finding that it was likely to pollute a local water supply.<sup>83</sup> Second, arcane city ordinances aggravated the inconvenience of bringing private nuisance suits to prevent water pollution, smoke damage, and noxious odors. The city's charter granted the Board of Health "the duty of preventing, examining and abating" nuisance and compelled New Haven residents to present their complaints to the Board before resorting to the courts.<sup>84</sup> However, citizens complained that the Board of Health provided little relief.<sup>85</sup> Health officers were accused of refusing to acknowledge nuisance odors<sup>86</sup> and failing to act when obvious nuisances existed.<sup>87</sup>

The Board of Health was understaffed and ill-equipped to deal with the swell of nuisance complaints in industrial New Haven. The Health Department consisted largely of nurses, physicians, and epidemiologists<sup>88</sup> who focused on preventing disease, improving milk pasteurization, and inspecting food supplies.<sup>89</sup> The abatement of nuisances was a low priority: Only three examiners were employed to carry out sanitary inspections and respond to nuisance complaints.<sup>90</sup> The historical record suggests that the task of

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defendant's destruction of a drainage ditch); see also MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW 1870-1960: THE CRISIS OF LEGAL ORTHODOXY* 57 (1992) (showing that the emergence of industrialization coincided with the triumph of the negligence doctrine over strict liability).

83. 96 A. 947 (Conn. 1916).

84. NEW HAVEN, CONN., CHARTER §§ 94, 449 (1914).

85. See George Thompson, Comment at the Ward 31 Zoning Hearing (Apr. 7, 1925), in *Minutes of the New Haven Zoning Commission 138* (1925) (on file with the New Haven City Plan Department). Thompson complained about the city's unwillingness to address the mosquito infestation on Ellsworth Avenue. At the same hearing, Alderman Minor complained about the failure of the city to regulate the two piggeries operating in his neighborhood. See Alderman Minor, Comment at the Ward 31 Zoning Hearing (Apr. 7, 1925), in *Minutes of the New Haven Zoning Commission 138* (1925) (on file with the New Haven City Plan Department).

86. See Charles Gay, Gay Bros. & Co., Comment at the Ward 26 Zoning Hearing (Mar. 26, 1925), in *Minutes of the New Haven Zoning Commission 120* (1925) (on file with the New Haven City Plan Department).

87. Thompson, *supra* note 85, at 138. *Say Fair Haven Air Is Saturated with White Dust*, NEW HAVEN J.-COURIER, July 11, 1923, at 1. Neighbors had raised complaints that the neighborhood was saturated with plaster and dust continually. The Health Department did not move to alleviate the situation.

88. Report of the Clerk of the Board of Health (1921), in *CITY YEAR BOOK OF THE CITY OF NEW HAVEN* 395, 397-98 (1921).

89. See DEP'T OF HEALTH, NEW HAVEN, CONN., MONTHLY BULL., Jan. 1917-Dec. 1921. Nuisance abatement is never mentioned in the relevant five years of this publication.

90. Report of the Clerk of the Board of Health, *supra* note 88.

conducting the city's sanitary inspections was overwhelming. For example, in 1921 the three examiners carried out a total of 10,191 sanitary inspections, meaning each examiner inspected more than twelve locations per day.<sup>91</sup> The volume of work left little time, if any, to closely scrutinize the 526 nuisance complaints filed with the Board of Health in 1921.<sup>92</sup> Those with odor or noise complaints faced even steeper odds of getting relief because inspectors prioritized grievances with public health implications.<sup>93</sup> As a result of the institutional inadequacies at the Board of Health, the people of New Haven had little faith in the power of nuisance law to protect their neighborhoods from the growing threat of encroachment by modern industry.

Moreover, the traditional legal system failed the citizens of New Haven because it could not prevent the construction of most new stench- and grime-producing factories. At the beginning of the twentieth century, the government of New Haven regulated few industries beyond slaughterhouses.<sup>94</sup> As a result, if a rubber plant decided to relocate in the city, citizens could rely only on social norms or private covenants to keep the unwanted industry away from residential areas. Even in the wealthiest neighborhoods there was no legal barrier to prevent a factory from moving behind a row of well-kept homes.<sup>95</sup> Zoning, on the other hand, promised to regulate precisely where particular industries could be erected. In the age of the robber barons, as nuisance-producing industries rose and expanded at unprecedented rates, it should not be surprising that the residents of New Haven warmly embraced the security that zoning offered.

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The available historical sources indicate that New Haven turned to zoning for three principal reasons. First, as Cappel discussed, zoning promised to

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91. Sanitary Inspector's Report (1921), in CITY YEAR BOOK OF THE CITY OF NEW HAVEN 427 (1921). Calculations are based on an examiner working 261 days per year (every day except weekends).

92. *Id.*

93. The Board of Health was most concerned with mosquito breeding pools, privies, and stables. Conditions that were "merely offensive to sight and smell," such as those of yards, vacant lots, and dumps, were not a high priority. Dr. Wright, the head of the Board of Health, thought that the responsibility for non-health-related nuisances should be turned over to the police department. C.-E. A. WINSLOW ET AL., YALE SCH. OF MED., HEALTH SURVEY OF NEW HAVEN, CONNECTICUT 57 (1917).

94. NEW HAVEN, CONN., ORDINANCES §§ 217-219, 253-254 (1898) (showing that while New Haven required permits for certain inherently dangerous activities like transporting gunpowder, the entire tanning industry was barred from the city on nuisance grounds).

95. Cappel, of course, might argue that this rarely happened, but the data from the City Point, Upper Hill, and Wooster Square neighborhoods show that seemingly incompatible uses did end up on the same block. See *infra* Sections II.B-D.

fulfill some of the aesthetic goals of the City Beautiful movement. Second, increased land use regulation offered a means to control the rapid development that, as discussed above, was erupting across the city. Third, zoning promised to stop the creep of industrial nuisance into residential neighborhoods. While elites may have brought zoning to New Haven, they did so in response to on-the-ground realities in the city.

Nonetheless, *A Walk Along Willow* largely dismisses these arguments for establishing a zoned legal regime. While Cappel correctly described the influence of local elites in the rise of zoning, he failed to acknowledge that the system may have taken hold as a bold response to local anxieties. At the very least, the history of zoning in New Haven is more intricate and multilayered than *A Walk Along Willow* suggests. In fact, zoning may have been needed to impose order on the increasingly dense fabric of urban life in New Haven.

## II. PATTERNS OF LAND USE

In assessing the need for zoning in New Haven, historical records only take us so far. The most fundamental question remains unanswered: What does the empirical evidence show? In *A Walk Along Willow*, Cappel argued that patterns of sophisticated land use can arise without the help of government actors. Cappel contended that most industrial and commercial uses in New Haven were segregated from residential neighborhoods well before zoning was conceived. He also showed that, at least in some areas, building heights were largely uniform, lots were segregated according to size, single- and multiple-family dwellings were separated from each other, and neighbors established ample space between their houses to allow light and air into their homes—all without restrictions imposed by zoning.<sup>96</sup>

The research in this Note demonstrates that Cappel's findings about the success of the pre-zoning legal regime are, at best, only partially correct. In a world without strict government regulation, people in even the most humble neighborhoods often did find creative ways to solve complex problems. However, human fallibility, market imperfections, and irregular topography also led to astonishing coordination failures in many of the city's working-class neighborhoods. These breakdowns undercut Cappel's suggestion that New Haven was a well-ordered community on the eve of zoning and expose the need for significant government intervention in the land use system.

Of the four industrial neighborhoods examined in this Note, none perfectly mimicked the remarkable consistency and order of the Willow-Canner strip. Yet a fair assessment of the data shows that the Westville neighborhood closely

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96. Cappel, *supra* note 2, at 621-26.

approximated the conditions of Cappel's northeast New Haven and offers significant support for his thesis. In other neighborhoods, however, this study finds a number of recurring land use problems that *A Walk Along Willow* fails to adequately consider. According to Cappel's own numbers, almost forty percent of the city's industrial manufacturing operated outside the major manufacturing zones.<sup>97</sup> These undertakings were scattered throughout the rest of the city, sometimes in the midst of, or adjacent to, residential neighborhoods.<sup>98</sup> The unregulated mixture of industrial and residential uses led to disastrous results: apartments abutting junkyards, schools and churches adjacent to manufacturing plants, and unrestrained backlot construction.

Cappel's work also largely fails to address the mixture of residential uses and commercial enterprises throughout New Haven's neighborhoods. Before zoning, it was not uncommon for a single-family home to be completely surrounded by shops and stores. The lack of zoning also created a number of outcomes that were criticized by New Haven's most prosperous citizens. Without minimum-lot-size requirements, large landowners could, and did, find themselves living next door to modest properties. Perhaps most importantly, the empirical evidence confirms the ability of industry to seep into a neighborhood and destroy its original character.

What follows in this Part is a detailed investigation of four working-class communities in pre-zoning New Haven. The analysis of each neighborhood focuses on overall patterns of land use, buildings heights, setbacks, and sideyards. The first Section examines Westville, the neighborhood that best supports Cappel's theory about the power of social norms and market forces. The second Section looks at City Point, an area with examples of both cooperative land use and serious failures of coordination. In the final two Sections, through an analysis of the Upper Hill and Wooster Square, this Note will demonstrate that the pre-zoning legal regime was capable of remarkable failures.

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97. *Id.* at 622 n.19 (explaining that 51 of 131 manufacturing firms were located outside of the five main industrial corridors).

98. *See, e.g.*, 1 SANBORN (1923), *supra* note 70, No. 86 (showing the Seamless Rubber Company sitting on the eastern edge of the primarily residential City Point neighborhood).

A. *The Case for Cappel: Westville*<sup>99</sup>

Figure 1.  
WESTVILLE STREETS<sup>100</sup>



1. *Overall Patterns of Land Use*

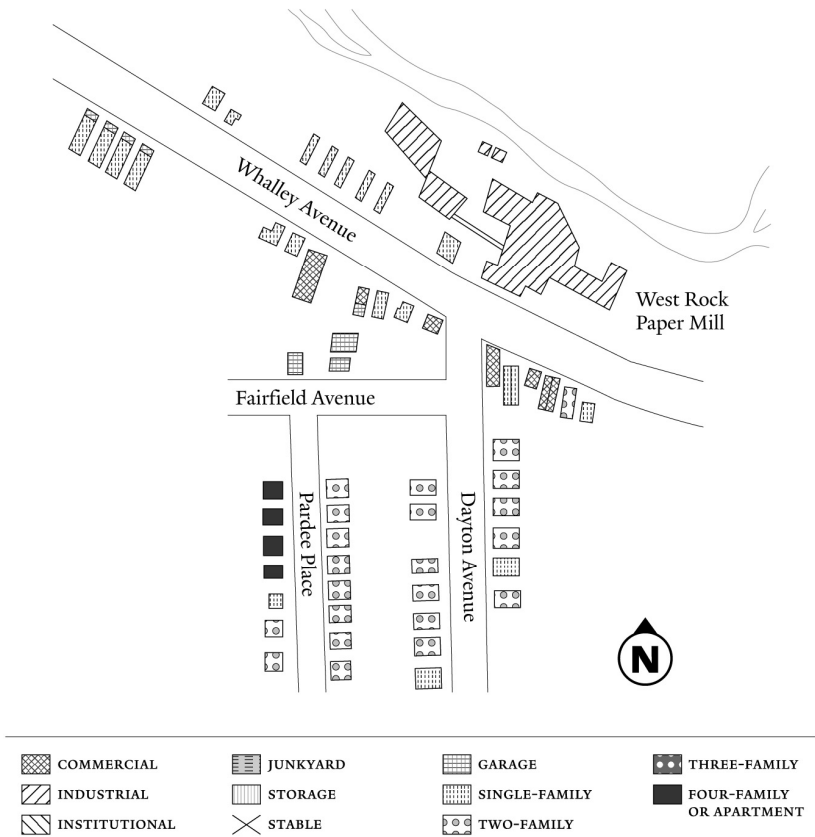
Even a cursory glance at maps of Westville exposes an intricate system of land use coordination with a surprising degree of uniformity. Perhaps the most arresting example of sophisticated coordination is the near-perfect segregation of incompatible land uses. Without any guidance from the government, the residents of Westville managed to arrange their community in a way that

99. The Westville area remained sparsely populated and isolated from the center of New Haven until the early nineteenth century. Donald Gordon Mitchell, a popular writer and landscape designer, apparently sparked development of Westville in the mid-nineteenth century when he bought over three hundred acres on the edge of the neighborhood. Mitchell intended to use the land as a pastoral escape from his home in New York City. Soon after, New Haven businessmen began exploring the community for ways to harness the power of the nearby West River. In time, Mitchell built a bridge over the West River and other private interests improved roads nearby. Ironically for Mitchell, his investments in infrastructure paved the way for industry to enter into his bucolic country estate. *NEW HAVEN COLONY HISTORICAL SOC'Y, INSIDE NEW HAVEN'S NEIGHBORHOODS 183-84* (1982).

100. THE PRICE & LEE CO., *MAP OF THE CITY OF NEW HAVEN CONNECTICUT* (1923).

promoted high property values and minimized nuisance. For example, the area immediately surrounding the factories along the West River was a mosaic of shops, garages, and small homes. These low-end uses provided a near perfect buffer against noise and pollution for the wealthy residential areas to the south (see Figure 2).

**Figure 2.**  
**LOW-END USES SHIELDING THE REMAINDER OF THE NORTHWEST WESTVILLE NEIGHBORHOOD FROM INDUSTRIAL NOISANCE<sup>101</sup>**



Occupants of the modest buildings surrounding the West Rock Paper Mill benefited from close proximity to the factories and would have had little reason to complain about the grime and noise produced by nearby industry. Laborers found cheap accommodations and walked to work, shops sold goods to the

<sup>101</sup>. See 4 SANBORN (1923), *supra* note 70, Nos. 466-67.



industrial workforce, and the garages could serve the more prosperous car owners who commuted from surrounding areas. Put another way, the costs of living next to an industrial nuisance were almost perfectly internalized.

Directly south of the shops and tiny one-floor flats on Whalley Avenue was a mixture of double-occupancy and single-family houses. Traveling further south, medium-sized single-family homes appeared, before finally giving way to the neighborhood's best properties.<sup>102</sup> The most affluent area of the Westville neighborhood was located four blocks south of the manufacturing plants and commercial center. On McKinley, between Willard and Elm, there was a stately row of large homes on generous lots.<sup>103</sup> In effect, between the industry of Whalley and the prosperity of McKinley, a near-perfect gradient of increasingly larger homes had been established.<sup>104</sup>

## 2. *Building Heights and Setbacks*

Another striking feature of the Westville neighborhood was the homogeneity of building heights. This is relevant because, according to Cappel, uniformly low building heights are evidence of sophisticated land use coordination in pre-zoning situations.<sup>105</sup> In fact, virtually all buildings in the Westville area were less than three stories high.

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102. See 4 *id.* Nos. 466, 470.

103. See 4 *id.* No. 479.

104. See *infra* App. tbls.1, 2, 3 & 4; see also 4 SANBORN (1923), *supra* note 70, Nos. 466-67, 469-70, 476-77, 479-81.

105. See Cappel, *supra* note 2, at 624, 626.

**Table 1.**  
**BUILDING HEIGHTS IN WESTVILLE (IN STORIES) (1923)<sup>106</sup>**

STREET	BLOCK	1 TO 1.5	2 TO 2.5	3 TO 3.5	4+
Whalley	West Prospect to Dayton	10	10	0	0
Whalley	Dayton to Emerson	6	27	0	0
Pardee	Fairfield to Fountain	0	15	0	0
Dayton	Fairfield to Fountain	0	15	0	0
Willard	Forest to Barnett	0	24	0	0
Willard	Barnett to Alden	0	4	0	0
Willard	Alden to Central	1	11	0	0
McKinley	Willard to West Elm	1	13	0	0
McKinley	West Elm to Woodbridge	0	15	0	0
McKinley	Woodbridge to Edgewood	0	18	0	0

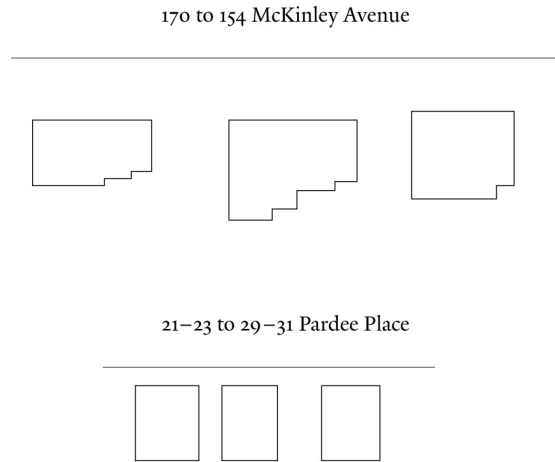
It appears that the social norm for building two-story structures was so strong that even most commercial buildings like the hotel and stores along Whalley conformed to the implicit restriction.<sup>107</sup> Setbacks were also generous throughout much of the neighborhood. With the exception of four homes, all buildings along the posh end of McKinley Street between Willard and Edgewood had setbacks of over twenty-five feet (see top of Figure 3).<sup>108</sup> Even on streets with more modest homes, like Pardee Place, setbacks remained ample and consistent: The vast majority of structures stood at least eleven feet from the street, and many buildings had setbacks over sixteen feet (see bottom of Figure 3).

<sup>106.</sup> See 4 SANBORN (1923), *supra* note 70, Nos. 466-67, 469-70, 475, 479-81.

<sup>107.</sup> See 4 *id.* This was not true in other sections of New Haven, where buildings were commonly three or four stories tall.

<sup>108.</sup> See 4 *id.* Nos. 479-80.

Figure 3.  
WELL-COORDINATED SETBACKS IN WESTVILLE<sup>109</sup>



### 3. Sideyards

Throughout the neighborhood, homebuilders established generous distances between structures to allow abundant air and light to flow into homes. Along Whalley Avenue, in the area immediately surrounding the West Rock Paper Mill, few residences were constructed within ten feet of other buildings.<sup>110</sup> On the more prosperous blocks, the average distance between homes was well over twenty-one feet.<sup>111</sup>

### 4. Coordination Failures

Even in an area as well coordinated as Westville, however, land use organization was not perfect. A church and a school were constructed within one hundred yards of the Geometric Tool Company.<sup>112</sup> Moreover, the neighborhood library was within two hundred yards of the same factory.<sup>113</sup> In

109. See 4 *id.* Nos. 466, 480.

110. See 4 *id.* Nos. 466-67.

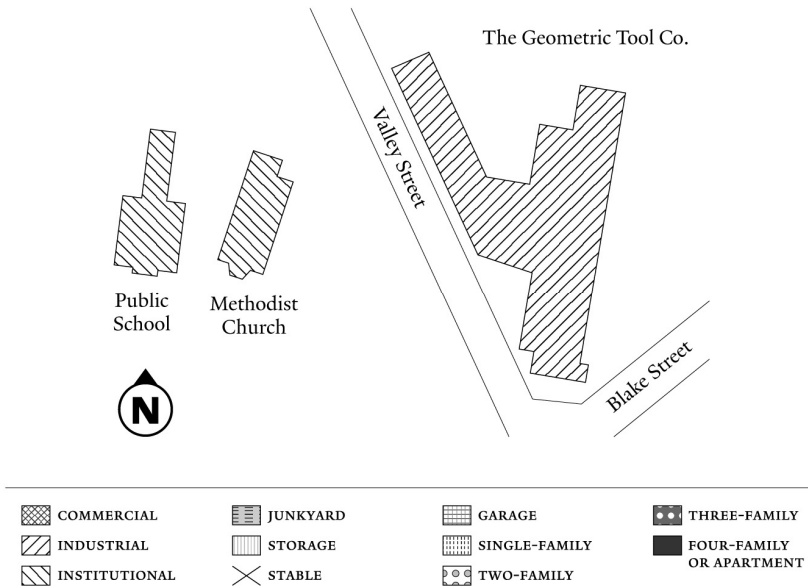
111. See 4 *id.* No. 480.

112. See 4 *id.* No. 471. In fairness, the effects of noise and pollution were probably lessened by the topography of this area. The tool company was separated from the two institutional uses by a very steep hill. Nonetheless, the distance separating the factory and church was so small that it seems fair to critique this arrangement.

113. 4 *id.*

late-nineteenth- and early-twentieth-century New Haven, industrial ills such as noise and smoke posed a serious threat to the quiet contemplation necessary for both worship and study (see Figure 4).<sup>114</sup>

Figure 4.  
EXAMPLE OF LAND USE COORDINATION FAILURES<sup>115</sup>



In the poorest area of Westville, immediately surrounding the factories, the uniformity of the setbacks broke down. Nearly twenty structures sat within five feet of the street.<sup>116</sup> The haphazard setbacks would have made widening this stretch of Whalley nearly impossible and given the street a disordered appearance.<sup>117</sup>

114. Douglas Rae described New Haven’s manufacturing plants as “noisy with the grinding and stamping of metal parts, the roar of steam-driven machinery, the incessant hum of whirring belts.” RAE, *supra* note 13, at 78.

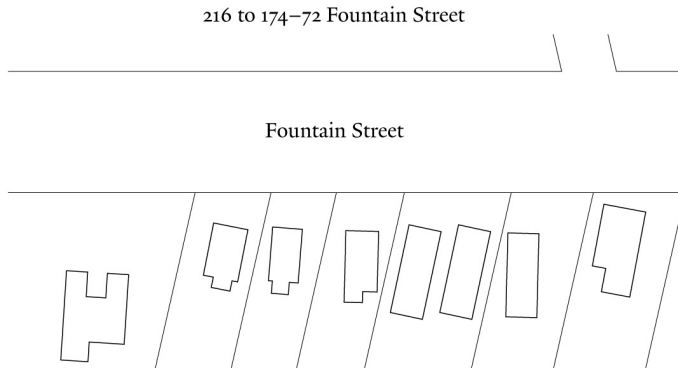
115. See 4 SANBORN (1923), *supra* note 70, No. 471.

116. See 4 *id.* Nos. 466-67.

117. The widening of streets was a real concern in early-twentieth-century New Haven. Increased automobile traffic and growing concern about fire safety prompted city officials to consider widening and repaving many of New Haven’s busiest thoroughfares. See, e.g., *Church Street Folk Opposed to Widening*, NEW HAVEN J.-COURIER, Oct. 3, 1925, at 1; *Proposed Plan To Widen and Extend Orange St. from Crown to Meadow St.*, NEW HAVEN EVENING REG., Dec. 10, 1924, at 1.

Parts of Westville also suffered from a poorly designed street grid, contributing to land use coordination problems. The presence of curved and diagonal streets made it impossible to divide all the land into the rectangular lots preferred by most homebuyers.<sup>118</sup> The irregular street layout also made it difficult for neighbors to establish uniform setbacks. On Fountain Street (a diagonal thoroughway in the middle of the neighborhood), there were multiple examples of setback coordination problems. On one section of Fountain, the setbacks varied because homebuilders did not construct their houses parallel to the street (see Figure 5). Farther along the street, the land use coordination broke down again as builders constructed homes at wildly different distances from the roadway (see Figure 6).

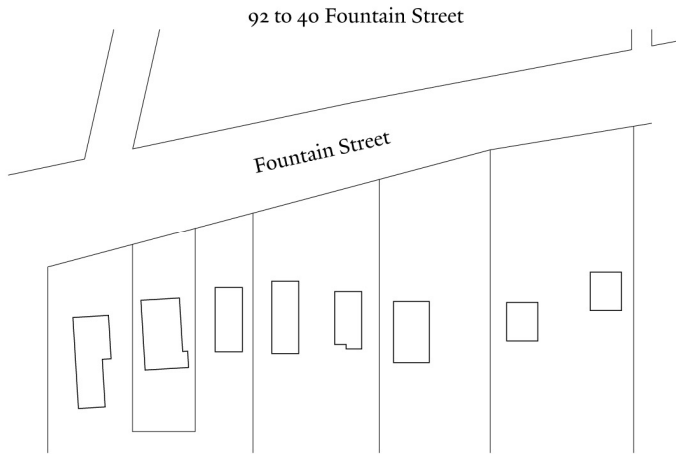
**Figure 5.**  
**HOMEBUILDERS FAILED TO ALIGN THEIR HOUSES PARALLEL TO FOUNTAIN STREET<sup>119</sup>**



<sup>118</sup>. See Cappel, *supra* note 2, at 630.

<sup>119</sup>. See 4 SANBORN (1923), *supra* note 70, No. 469.

Figure 6.  
IRREGULAR SETBACKS IN WESTVILLE<sup>120</sup>



Although zoning does not directly address the street grid, increased government oversight could have prevented some of these coordination failures.<sup>121</sup> For example, municipal ordinances could have regulated the remarkably divergent setbacks along Fountain Street. Additionally, subdivision controls could have been used to standardize lot lines and sizes, making it easier for landowners to construct their houses parallel to one another.

##### 5. Summary

Despite the occasional breakdown in organization, the data from Westville largely support Cappel's thesis that an unzoned legal regime is capable of producing highly coordinated land use in the most humble of neighborhoods. Industry was, by and large, concentrated in small areas. More often than not, homebuilders in this industrial district managed to coordinate the space between their homes, the height of buildings in their neighborhoods, and the distance their houses were set back from the street. Most surprisingly, the more upscale residential streets were protected from heavy manufacturing concerns through remarkably intricate buffers of open spaces, small homes, and apartments. Without guidance from government rulebooks or the city's powerful elite, the working-class people of Westville spontaneously

<sup>120</sup>. See 4 *id.* No. 475.

<sup>121</sup>. Changing an existing street grid would require the government to seize private property, which is beyond the purpose and scope of zoning laws.

constructed an orderly community of homes, small shops, and well-contained industry. However, as the following Sections demonstrate, the land use coordination in Westville was not representative of all of New Haven's industrial neighborhoods.

*B. Mixed Messages: City Point*<sup>122</sup>

Figure 7.  
CITY POINT STREETS<sup>123</sup>



1. *Overall Patterns of Land Use*

The City Point neighborhood offers the first clue that the story of land use coordination in New Haven is more complicated than the narrative Cappel fashioned in *A Walk Along Willow*. While the pre-zoning era produced real triumphs of coordination in parts of City Point, it led to notable failures in

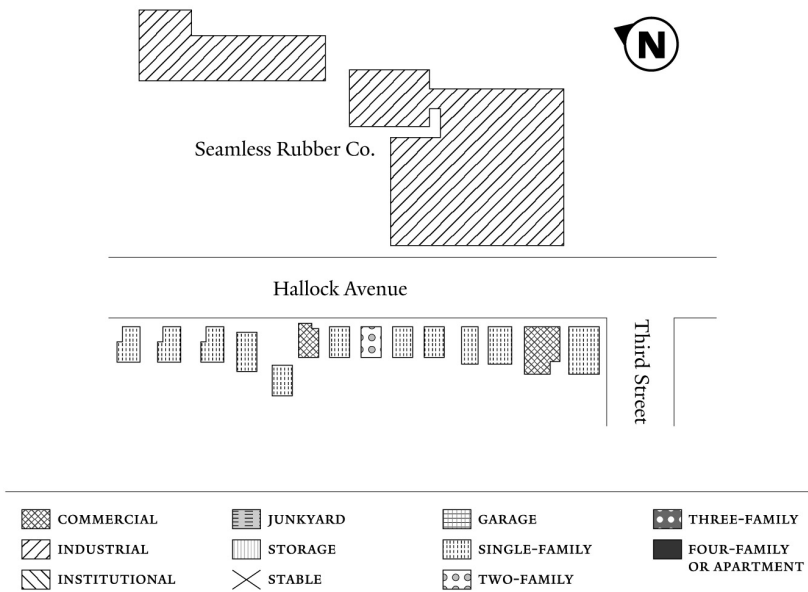
122. Oyster farmers established homes in the City Point neighborhood in the early nineteenth century. The salinity and shallow depth of New Haven's harbor made it ideal for shellfish cultivation, and the area earned the title "Oyster Capital of the Northeast" by the late nineteenth century. NEW HAVEN COLONY HISTORICAL SOC'Y, *supra* note 99, at 140. City Point's location along the harbor also made it an attractive location for industry.

123. THE PRICE & LEE CO., *supra* note 100.

other areas of the neighborhood. These mixed results make it difficult to draw any definitive conclusions about the success of the pre-zoning legal regime, but they begin to suggest that Cappel’s conclusions are distorted by his decision to examine only the Willow-Canner strip.

With the exception of the Seamless Rubber Company on the eastern side of the community, City Point was a largely residential neighborhood. Looking at the data, Cappel and Siegan would no doubt point out that, here again, the one large industrial concern was “fenced off” from the center of the housing district by a row of very small dwellings (see Figure 8).

**Figure 8.**  
HALLOCK AVENUE FROM SECOND STREET TO THIRD STREET<sup>124</sup>



The recurring pattern of surrounding factories with a row of small, seemingly inexpensive homes suggests that even in New Haven’s modest neighborhoods the housing market did an exceptional job of separating incompatible residential and industrial uses.<sup>125</sup> Although this layout did much to maximize property values, a consistent pattern of situating industrial plants next to low-cost housing might trouble environmental justice activists who maintain that racial minorities and the poor are exposed to more

124. See 1 SANBORN (1923), *supra* note 70, No. 86.

125. See *infra* App. tbl.5.



environmental toxins than affluent whites as a result of discrimination in the construction of locally undesirable land uses.<sup>126</sup> According to the movement's proponents, industrial facilities are either intentionally constructed in minority communities or, at the very least, placed in a way that results in impoverished neighborhoods accommodating an unequal share of noxious uses.<sup>127</sup>

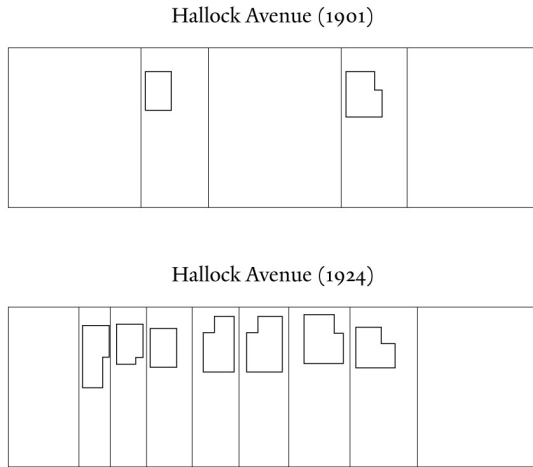
The history of New Haven's industrial neighborhoods should ease some of these concerns. In New Haven, manufacturing plants arose largely in upscale and middle-class areas—not the city's slum regions. City Point was a prosperous oystering community, Wooster Square was New Haven's first quasi-suburb, and Westville was largely undeveloped land. Only over time, as immigrants and the working poor arrived in search of jobs and cheap housing, did industrial areas become home to significant numbers of lower-class residents. The City Point community illustrates this pattern quite clearly. Industry first established itself on the narrow strip of land between Hallock Avenue and New Haven Harbor. In 1901, the stretch of Hallock between First and Second Streets, immediately across from the community's most industrial area, was virtually undeveloped (see Figure 9). Yet despite the presence of a rail yard and a rubber manufacturer, Hallock was teeming with small houses by 1924 (see Figure 9). It appears that, at least for some, the dream of home ownership outweighed the harmful effects of nearby industry. Thus, while some may find fault with much of New Haven's pre-zoning regime, it does not appear that there was any recurring pattern of racism or classism in the siting of industrial nuisances.

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126. See, e.g., ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* (2d ed. 1994); Luke W. Cole, *Empowerment as a Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619 (1992).

127. See ELLICKSON & BEEN, *supra* note 10, at 904-05 (discussing the environmental justice movement).

Figure 9.  
HALLOCK AVENUE, OPPOSITE THE RAILROAD AND THE SEAMLESS RUBBER COMPANY<sup>128</sup>



## 2. Building Heights and Setbacks

On the eve of zoning there were other examples of significant land use coordination in City Point. Building heights throughout the neighborhood remained remarkably uniform.<sup>129</sup> Mirroring Cappel's findings in the Willow-Canner strip,<sup>130</sup> setbacks, too, appeared noticeably consistent, with the vast majority of homes sitting more than ten feet from the street and many beyond the fifteen-foot mark (see Figure 10).<sup>131</sup>

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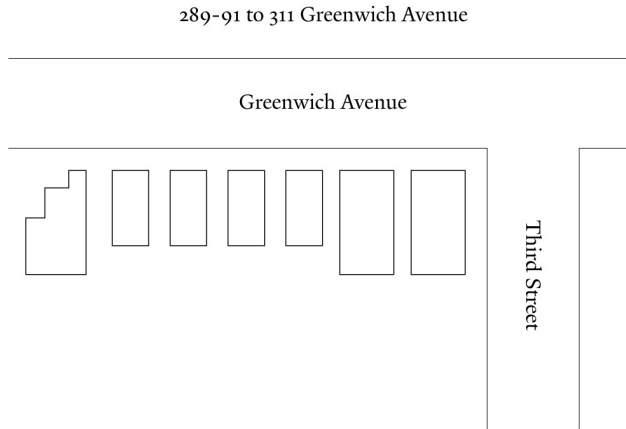
128. Compare 2 SANBORN (1901), *supra* note 70, No. 113, with 1 SANBORN (1923), *supra* note 70, No. 82.

129. See 1 SANBORN (1923), *supra* note 70, Nos. 81-82, 85-86. Only 9 of the 155 buildings examined on Greenwich and Howard were taller than two-and-one-half stories.

130. Cappel, *supra* note 2, at 624-26.

131. See 1 SANBORN (1923), *supra* note 70, Nos. 81-82, 85-86.

Figure 10.  
CONSISTENT SETBACKS IN CITY POINT<sup>132</sup>



### 3. Sideyards

Despite these many successes, ultimately, the City Point neighborhood does not support Cappel's theory that zoning was unnecessary in New Haven. First, sideyard coordination in the City Point area was far from perfect. As shown below in Table 2, many lots were less than forty feet wide, and almost eight percent of buildings fell within five feet of each other, making it difficult for adequate light and fresh air to reach many homes.

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<sup>132</sup>. See 1 *id.* No. 85.

**Table 2.**  
**SIDEYARDS IN CITY POINT (1923)<sup>133</sup>**

STREET	BLOCK	DISTANCE IN FEET TO NEAREST BUILDING				
		0-5	6-10	11-15	16-20	21 +
Greenwich	Lamberton to First	2	3	2	0	1
Greenwich	First to Second	1	15	4	0	0
Greenwich	Second to Third	2	11	3	2	2
Greenwich	Third to Fourth	7	13	3	0	1
Howard	Lamberton to First	2	8	4	2	2
Howard	First to Second	0	3	8	2	3
Howard	Second to Third	0	6	5	5	2
Howard	Third to Fourth	3	4	6	0	4

Additionally, unlike the Willow-Canner strip, lots in the City Point community were not ordered according to size or use. Developers built small homes directly across from the area’s largest properties. This is notable because, according to Cappel, “[o]ne of the most striking features of the pre-zoning regime was the segregation of lots according to size.”<sup>134</sup> Throughout the neighborhood, multifamily dwellings and single-family homes were also mixed together haphazardly.<sup>135</sup> For example, the block along Howard Street between First and Second Streets mixed ten single-family homes, four two-family homes, two three-family homes, two apartment buildings, and one store.<sup>136</sup>

#### 4. Summary

In at least some important respects, the degree of uniformity in City Point did not match the remarkable order of the Willow-Canner strip or of Westville. The small coordination failures throughout City Point begin to expose some of

<sup>133.</sup> See 1 *id.* Nos. 81-82, 85-86.

<sup>134.</sup> Cappel, *supra* note 2, at 623.

<sup>135.</sup> 1 SANBORN (1923), *supra* note 70, Nos. 81-82.

<sup>136.</sup> 1 *id.*

the flaws in Cappel's bold conclusions about the levels of land use coordination in New Haven. Any modern-day land use planner could conceive of a set of regulations that would have improved the neighborhood's overall organization and boosted real estate values across the community. Put simply, increased regulation might indeed have been desirable in City Point.

C. Coordination Failures: Upper Hill<sup>137</sup>

Figure 11.  
UPPER HILL STREETS<sup>138</sup>



137. The Upper Hill became a residential neighborhood in the mid-nineteenth century when groups of small houses were built near the manufacturing centers along New Haven's harbor. The main construction boom in the Hill came in the last third of the nineteenth century with the introduction of the horsecar railway, which allowed residents to live farther from the economic heart of the city. Immigrants also poured into New Haven during this period, looking for factory jobs and business opportunities, and many settled in the Upper Hill. For years, the neighborhood was the heart of New Haven's Jewish community. NEW HAVEN COLONY HISTORICAL SOC'Y, *supra* note 99, at 134.

138. THE PRICE & LEE CO., *supra* note 100.

### 1. Overall Patterns of Land Use

In contrast to the relative order observed in some New Haven neighborhoods, the Upper Hill neighborhood was a city planner's worst nightmare. The community was an overcrowded maze of poorly planned streets and odd-shaped lots. Yet opponents of zoning would argue that even here, in New Haven's poorest neighborhood, there were examples of subtle and complex land use coordination. A quick glance at the land use maps of the Upper Hill reveals that industry and commerce were principally confined to a few well-defined areas. Cappel might note that the majority of shops and stores were located on a handful of major thoroughways, including Oak Street and Congress Avenue.<sup>139</sup> Similarly, the largest manufacturing and industrial uses were clustered together in the eastern half of the neighborhood. Moving west along Oak and George Street, the community slowly became more residential. A mixture of multifamily flats and small single-family dwellings sprang up around the large industrial operations and, farther west, a series of rowhouses appeared.<sup>140</sup> Finally, five blocks from the industrial sector, an area of large single-family homes built on generous lots emerged.<sup>141</sup> This progressive, east-west change in lot size and dwelling type roughly mirrors Cappel's analysis of northeast New Haven and this study's findings in Westville. At the very least, critics of zoning can argue that the Upper Hill community demonstrates that some form of complex land use coordination occurs during the development of the poorest, most working-class areas.

However, despite the rough gradient separating heavy industry from the neighborhood's largest homes, the Upper Hill should not be seen as an example of successful land use coordination. A closer look at the streets of the Upper Hill provides formidable evidence that an unzoned legal regime is capable of spectacular land use failures. Unlike the Willow-Canner strip, the general east-west progression of land use was not a precisely ordered gradient of industry followed by apartments, small houses, and large homes. Rather, in the heart of the neighborhood, incompatible uses mixed freely. On George Street, the Zunder Public School sat surrounded by a machine shop, auto repair business, industrial-sized oven, and furniture manufacturer (see Figure 12).<sup>142</sup> An equally incompatible mosaic of business and industry encircled the

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139. 1 SANBORN (1923), *supra* note 70, Nos. 17-18.

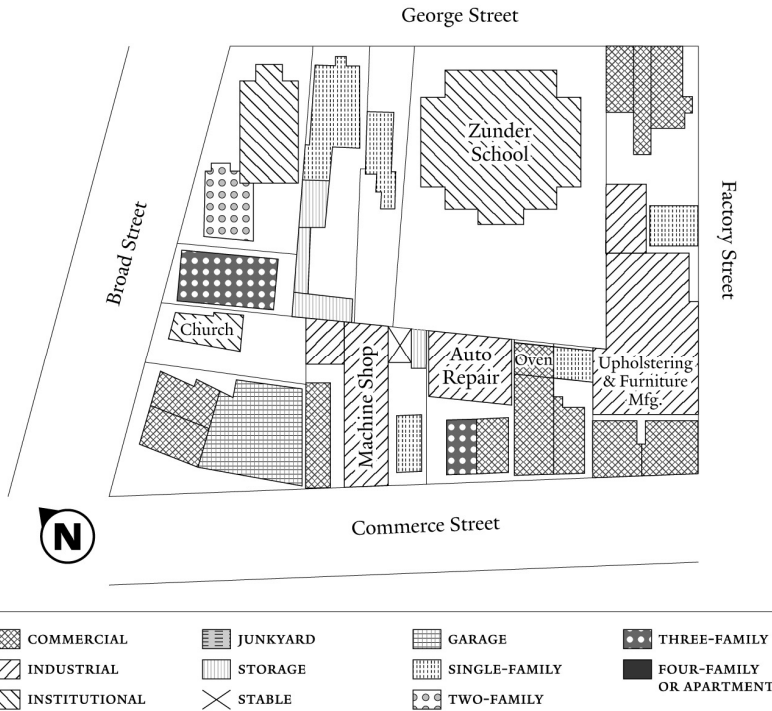
140. 1 *id.* Nos. 16-18.

141. 1 *id.* Nos. 15-18.

142. See 1 *id.* No. 17.

First German Baptist Church on Broad Street.<sup>143</sup> For zoning proponents, this jumble of assorted uses presents a clear signal that the Upper Hill community required government intervention.

Figure 12.  
NEGATIVE EXTERNALITIES SURROUND INSTITUTIONAL USES IN THE UPPER HILL<sup>144</sup>



However, not all scholars would agree that the neighborhood required regulation. Some, like Jane Jacobs, might argue that this type of small-scale, mixed-use development brings vitality and energy to urban neighborhoods.<sup>145</sup> The New Urbanist thinkers, a group of loosely affiliated city planners and architects concerned with building walkable communities, would also take pleasure in the fine-grain development in the Upper Hill.<sup>146</sup> In this instance,

143. 1 *id.*

144. See 1 SANBORN (1923), *supra* note 70, No. 17.

145. See JACOBS, *supra* note 26, at 152-54.

146. See generally CALTHORPE, *supra* note 26, at 62-64 (arguing that city planners should build communities that are centered around public transportation, encourage walking, and contain a mix of housing densities, public spaces, and businesses); DUANY ET AL., *supra* note

however, zoning advocates get the better of the argument: Concerns about industrial noise interfering with school and church activities, and the general wisdom of placing a schoolyard next to an industrial-sized oven, seem to trump any benefits in increased social capital that may arise from a mixed-use neighborhood. Put differently, the evidence from this neighborhood vindicates zoning advocates because the costs of nuisances were not completely internalized.

Homeowners in the Upper Hill faced similar challenges from encroaching business and industry. Abraham Silverman, a longtime resident of Oak Street, recalls that by 1921 his block already contained:

six clothing stores, five shoe makers, . . . two fish markets, nine grocers, . . . one pawnbroker, one hardware dealer, four bakeries, three meat markets (all kosher), . . . one jeweler, one fruit and vegetable market, one tailor, four dairy product dealers, three furniture stores, three delicatessens, the legendary wurst gescheft of Max Wax, one painter, one tinsmith, one sheet metal contractor . . . [and] three saloons . . .<sup>147</sup>

The residents of Spruce Street between George and Oak had even greater problems with which to contend: Their homes were threatened by the odor, filth, and disease produced by four neighboring junkyards.<sup>148</sup> Open garbage pits proved fertile breeding grounds for mosquitoes and flies, which were known carriers of malaria and typhoid fever.<sup>149</sup> One New Haven health survey described the condition of a typical block in the Oak Street neighborhood:

[G]arbage, papers, cans, etc., thrown in the yard and ash heap, and covered with flies; at No. —, garbage spilled in the yard causing smell; at No. —, garbage spilled about the can and garbage, cans, etc., in the ash heap, with flies very numerous; at No. —, garbage thrown in the ash heap in large amount and drawing flies; the yard, especially the ash heap, very dirty and smelly. The large number of flies in all the yards on this street was remarkable.<sup>150</sup>

In sum, the center of the Upper Hill neighborhood was a swirl of grime and mixed uses (see Figure 12). In contrast, *A Walk Along Willow* describes an

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26, at 155-56 (claiming that city neighborhoods are healthiest when they contain a mix of residential, commercial, and recreational uses).

147. Abraham Silverman, *Oak Street, New Haven—A Portrait from the Past* (Mar. 13, 1984) (unpublished manuscript, on file with the New Haven Colony Historical Society).

148. WINSLOW ET AL., *supra* note 93, at 40-45 (describing health problems resulting from poor garbage collection in New Haven).

149. *Id.* at 43, 45.

150. *Id.* at 41.



orderly east to west segregation of single and multifamily dwellings, and an “unmistakable pattern” of separating residential and commercial uses.<sup>151</sup> The system of social norms and private contracts that controlled organization in the Willow-Canner strip broke down in the Upper Hill.

## 2. *Building Heights and Setbacks*

Moreover, in the Upper Hill neither government regulation nor social norms restrained developers from constructing large apartment buildings next to single-family homes, as seen below in Table 3. One block of York Street, for example, contained four apartments, nine three-family homes, and eight single-family homes, in addition to eleven stores and five industrial uses.

**Table 3.**  
PROPERTY USES IN THE UPPER HILL<sup>152</sup>

STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
Broad	George to Oak (west side)	4	1	2	0	7	0
Dow	George to Oak	13	1	3	0	1	3
York	George to Oak	8	1	9	4	11	5
Spruce	George to Oak	11	0	9	4	1	4
Park	George to Oak	19	0	0	0	0	0

All across the neighborhood, three- and four-story structures bumped up against one- and two-story single-family homes.<sup>153</sup> The residents of the Upper Hill also failed to coordinate adequate setbacks for their houses and stores. Despite some variation, most of the structures in the neighborhood were crammed against the street line.<sup>154</sup> On Dow Street between George and Oak, no

151. Cappel, *supra* note 2, at 621, 623.

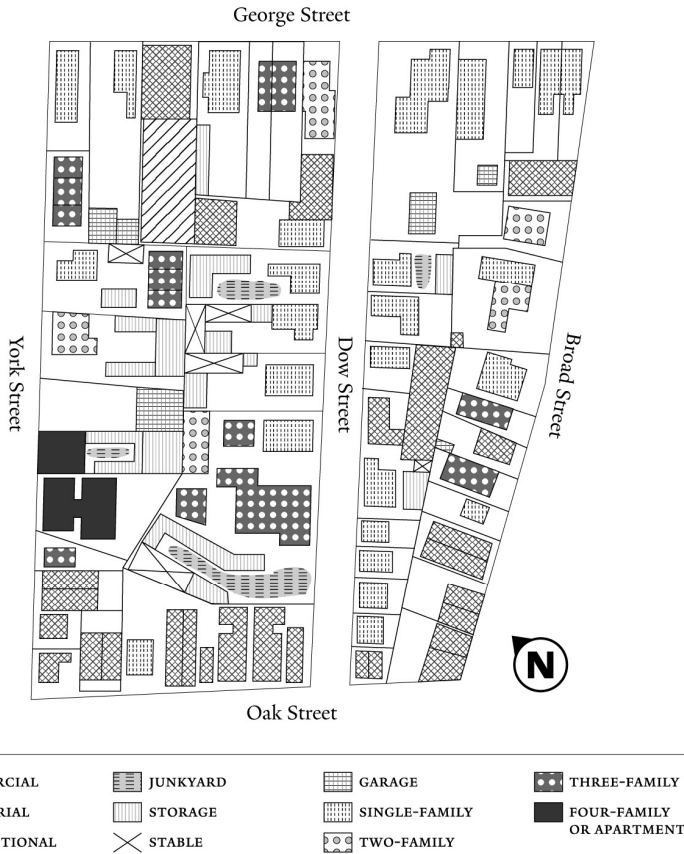
152. See 1 SANBORN (1923), *supra* note 70, Nos. 16-17.

153. See, e.g., 1 *id.* Nos. 16-17.

154. See *infra* App. tbl.6. Some difference in setbacks is to be expected between more suburban communities and neighborhoods closer to the downtown business district. Land adjacent to the center of the city is generally more expensive and, as a result, higher building densities are expected. Even taking these differences into account, no other neighborhood in New

structure was set back more than ten feet. Indeed, almost half of the buildings abutted the street, making it impossible for the city government to widen the neighborhood’s avenues and boulevards (see Figure 13).<sup>155</sup> Along Oak Street between Broad and Factory, almost ninety percent of the buildings sat directly on the street.<sup>156</sup>

**Figure 13.**  
**INCOMPATIBLE USES MIXED FREELY IN THE UPPER HILL**<sup>157</sup>



Haven, no matter how close to the central business district, was as crammed and crowded with buildings as the Upper Hill.

155. See also *infra* App. tbl.6.

156. 1 SANBORN (1923), *supra* note 70, No. 17.

157. See 1 *id.*

### 3. *Sideyards*

The Upper Hill also suffered from unhealthy overcrowding. Homes were built extremely close together—forty-one percent of dwellings examined in this neighborhood were within five feet of another structure.<sup>158</sup> Maps of the neighborhood also reveal an epidemic of backlot building. Absent any legal restrictions, many property owners converted spacious backyards into vast tenement apartment complexes and junkyards.<sup>159</sup> The resulting density of buildings and people, coupled with the filth and noise of industry, made the Upper Hill a notoriously unhealthy and unpleasant place to live.<sup>160</sup>

### 4. *Summary*

The conditions in the Upper Hill community suggest that, contrary to the predictions of law-and-economics scholars, adequate land use coordination does not always occur in unzoned legal regimes. Moreover, the data from the Upper Hill reveal that while *A Walk Along Willow* remains an important analysis of a particular neighborhood, it oversimplifies the story of land use coordination in pre-zoning New Haven.

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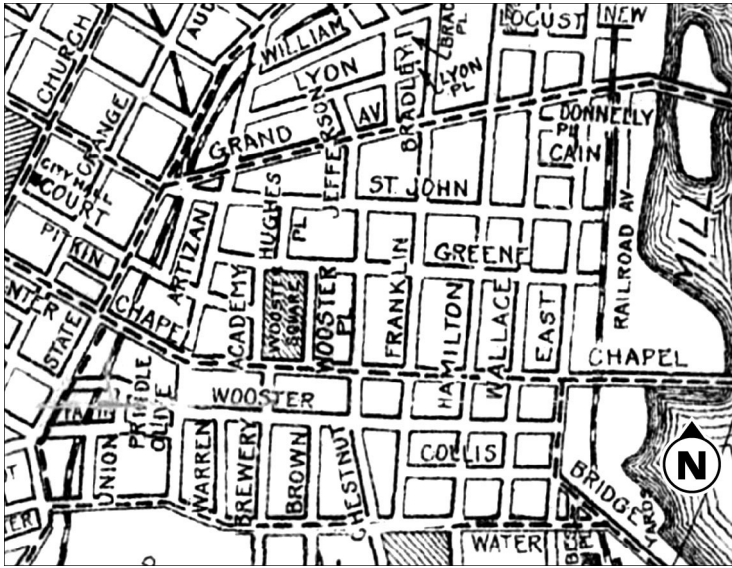
158. See *infra* App. tbl.7. Twenty-one of fifty-one buildings fell within five feet of the closest neighboring structure.

159. 1 SANBORN (1923), *supra* note 70, No. 17. For a detailed discussion of the sanitation problems in New Haven, see WINSLOW ET AL., *supra* note 93, at 39-45.

160. By the late 1940s, the reputation of the Upper Hill was so poor that city planners felt “housing should be eliminated” from the area. Yale professor and New Haven planning consultant Maurice Rotival called the area a “diseased . . . rat’s nest of small streets . . . which has prevented healthy growth of [the city].” See G. WILLIAM DOMHOFF, WHO REALLY RULES?: NEW HAVEN AND COMMUNITY POWER REEXAMINED 71, 80 (1978).

*D. Coordination Failures: Wooster Square*

Figure 14.  
WOOSTER SQUARE STREETS<sup>161</sup>



1. *Overall Patterns of Land Use*

Wooster Square also exemplifies many failures of the pre-zoning legal regime. The maps of the area reveal an obvious breakdown in land use coordination: Most industrial and commercial uses were mixed into the community’s main residential district. The Dante Public School ended up directly across from a carpentry shop, a foundry, and the large Cowles Company.<sup>162</sup> Residential uses also abutted an auto body repair shop, a sheet metal plant, and a rubber manufacturer.<sup>163</sup> In fact, no house in the neighborhood was more than two blocks from a major noise- and pollution-causing manufacturing concern.<sup>164</sup> The negative externalities created by early-nineteenth-century industry should not be underestimated. The Connecticut Supreme Court found that the noise and vibrations generated by the Seward &

<sup>161</sup> THE PRICE & LEE CO., *supra* note 100.

<sup>162</sup> 1 SANBORN (1923), *supra* note 70, No. 22 (showing 38–50 Chestnut Street).

<sup>163</sup> 1 *id.* Nos. 22, 25–26.

<sup>164</sup> 1 *id.* Nos. 22–23, 25–26.

Son Company cracked the plaster of a nearby house, damaged its plumbing, and made it impossible for the residents to carry on conversation in an ordinary tone. Moreover, pollution from the factory ruined clothes hung in the yard and dirtied furniture inside the house.<sup>165</sup> Perhaps even more so than today, mixing incompatible uses in the early twentieth century had tangible effects on the quality of people's lives.

### 2. *Building Heights and Setbacks*

The citizens of Wooster Square had trouble establishing consistent building heights. On one block of Chapel, between Franklin and Hamilton Streets, there were six four-story buildings, five three-story buildings, ten two-story buildings, and two one-story structures. Setbacks also lacked uniformity. In contrast to the "generous[]" setbacks in Cappel's Willow-Canner strip,<sup>166</sup> landowners in Wooster Square often built all the way to their property lines, usually to construct a store or tenement flats.

To be sure, in stretches of the neighborhood with only single-family homes, a fair amount of land use coordination did occur. Where single-family homes predominated, setbacks were aligned and building heights remained consistent. Land use coordination in Wooster Square suggests that while residential neighbors could successfully exert social pressure on each other, they were far less effective in encouraging commercial enterprises to conform to community norms.

### 3. *Sideyards*

In *A Walk Along Willow*, Cappel described the informal process that individual homebuyers used to establish uniform sideyards.<sup>167</sup> According to Cappel, "[w]hen an early buyer on a block placed his house near the lot edge, the subsequent purchaser of an adjacent lot would often place his house at the extreme opposite edge of his own lot, setting a pattern followed by subsequent purchasers."<sup>168</sup> Relying completely on social norms, the residents of Cappel's Willow-Canner strip coordinated their sideyards to ensure that adequate light and air reached all buildings.<sup>169</sup> Examples of this type of cooperation among neighbors can be found in some areas of Wooster Square. Between 512 and 504

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165. *Hoadley v. M. Seward & Son Co.*, 42 A. 997, 997 (Conn. 1899).

166. Cappel, *supra* note 2, at 624.

167. *Id.* at 625-26.

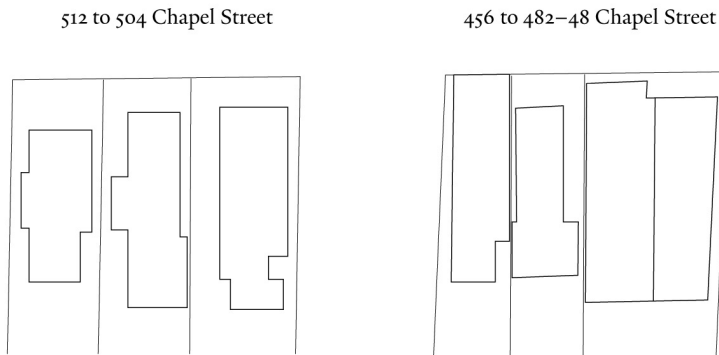
168. *Id.* at 625.

169. *Id.* at 625-26.

Chapel Street, the placement of houses seems to have proceeded exactly as Cappel described (see Figure 15).<sup>170</sup>

However, this model of sideyard coordination did not prevail throughout most of Wooster Square. For example, farther along Chapel Street, residents failed to optimize the distance between their homes. Some landowners built houses in the middle of their property and others constructed homes on the edge of their property (see Figure 15),<sup>171</sup> which resulted in homes being constructed within five feet of each other.<sup>172</sup>

**Figure 15.**  
**EXAMPLES OF ADEQUATE COORDINATION (LEFT) AND A SERIOUS COORDINATION FAILURE (RIGHT)<sup>173</sup>**



This examination of Wooster Square suggests that the coordination of sideyards and building placement was more difficult in industrial neighborhoods in part because lot sizes were smaller. Along the Willow-Canner strip, where lot sizes were routinely over seven thousand square feet, varying the placement of a house by five or six feet had little effect on the overall distance between two homes.<sup>174</sup> In most of Wooster Square, the margin for error was much smaller. Because lot sizes rarely exceeded thirty feet in width, if one unneighborly builder placed his home in a slightly

170. See 1 SANBORN (1923), *supra* note 70, No. 22.

171. See 1 *id.* No. 23.

172. See 1 *id.*

173. See 1 *id.* Nos. 22-23.

174. Cappel, *supra* note 2, at 623.

unconventional location on his property, the uniformity dictated by the social norm was ruined and houses ended up too close together.<sup>175</sup>

#### 4. *Change Over Time*

The history of Wooster Square illuminates other, deeper problems with the pre-zoning legal regime. Comparing land use maps from 1886 and 1923 shows how a neighborhood unprotected by zoning could be rapidly transformed by the spread of commerce and industry. In 1886, the five-block stretch of Wooster Street from Brewery to Wallace was almost exclusively residential. Over sixty well-built, single-family homes lined both sides of the street, with six stores and small shops integrated among the housing tracts.<sup>176</sup> By 1923, the neighborhood looked very different. The number of commercial uses jumped from six to forty-three,<sup>177</sup> and the number of industrial uses tripled.<sup>178</sup> The sharp increase of manufacturing and commerce was not isolated to Wooster Street. Industrialization swept the entirety of Wooster Square in the forty years between 1886 and 1923, scarring the beauty of the neighborhood and changing the complexion of the community forever (see Figure 16).<sup>179</sup>

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175. See, e.g., 1 SANBORN (1923), *supra* note 70, No. 26 (showing typical lot sizes in Wooster Square).

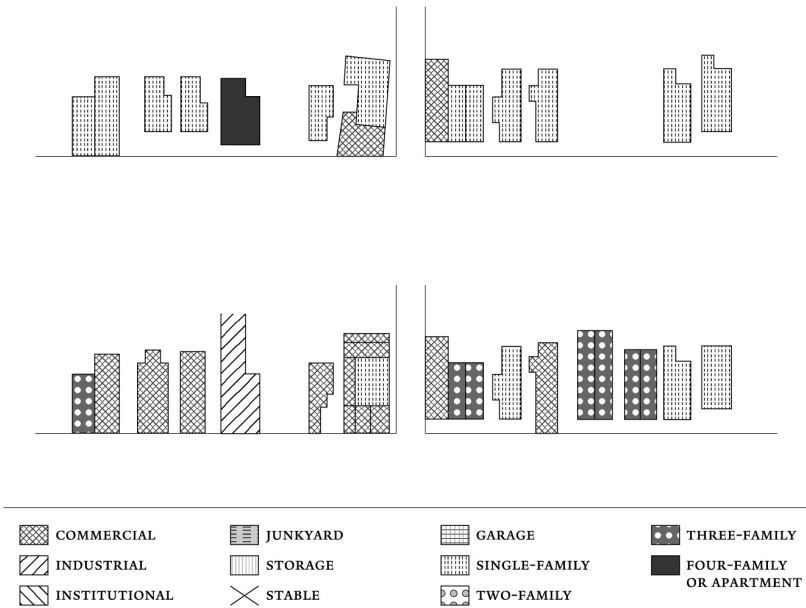
176. See *infra* App. tbl.8; see also 1 SANBORN MAP CO., INSURANCE MAPS OF NEW HAVEN, CONNECTICUT, Nos. 6-8 (1886) [hereinafter SANBORN (1886)].

177. Compare App. tbl.8, with App. tbl.9.

178. Compare App. tbl.8, with App. tbl.9.

179. According to the New Haven Colony Historical Society, the growth of industry “brought drastic change and decay” to Wooster Square. The founders of the neighborhood poured money into lavish homes creating a “harmonious” landscape known as the city’s “most beautiful and fashionable neighborhood.” Yet during the early part of the twentieth century, “overcrowding, industrial pollution, and lack of money to maintain Wooster Square’s older buildings caused the neighborhood to deteriorate physically.” By the late 1930s the city designated Wooster Square a blighted area. NEW HAVEN COLONY HISTORICAL SOC’Y, *supra* note 99, at 40-42.

Figure 16.  
157 TO 103 WOOSTER STREET IN 1901 (TOP) AND 1924 (BOTTOM)<sup>180</sup>



### 5. Summary

The condition of land use coordination in Wooster Square, as in the Upper Hill and City Point, casts serious doubt on Cappel's conclusions in *A Walk Along Willow*. In multiple neighborhoods, social norms, market forces, and contractual agreements failed to establish a successful system of land use organization, suggesting the limits of non-zoning legal regimes in the most humble of neighborhoods. The data from the industrial neighborhoods also reveal how remarkably unrepresentative the Willow-Canner strip was of 1920s New Haven. Whether by coincidence or design, Cappel chose to examine the neighborhood most suited to advancing the idea that zoning is largely unnecessary.

<sup>180</sup>. Compare 1 SANBORN (1901), *supra* note 70, No. 10, with 1 SANBORN (1923), *supra* note 70, No. 22.



### III. WHY ZONING MATTERS: A HISTORY OF COURT STREET

So far, this Note has used empirical data to argue that *A Walk Along Willow* distorts the history and reality of land use coordination in pre-zoning New Haven. This Part extends that criticism by providing a brief historical account of one city block during the unzoned legal regime. How quickly could neighborhoods change without zoning laws? How were the lives of city residents affected by these transformations? Looking at empirical and historical evidence, is it possible to determine if New Haven's decision to adopt zoning was worthwhile? Cappel's position is clear. He concluded *A Walk Along Willow* by arguing that zoning was unnecessary because market forces, social norms, and contractual agreement created a well-ordered land use system.<sup>181</sup> Again, I argue that Cappel oversimplified a complicated and contentious issue.

Perhaps nowhere better reveals the complexities of the unzoned regime, and personifies the rapid period of change between 1880 and 1920, than a strip of rowhouses built on Court Street, near the western edge of Wooster Square.<sup>182</sup> Court Street was representative of the small-scale development that took place throughout New Haven at the turn of the twentieth century. Along Court Street, developers built a strip of modest-sized homes in the midst of one of the city's more fashionable neighborhoods.<sup>183</sup> Like most areas of New Haven in the late nineteenth century, encroaching industrial development also threatened the Court Street district. The history of this area highlights some of the strongest arguments both for and against government land use regulation. In the end, the story of Court Street reveals that New Haven's citizens did need more protection from externalities than they received under the unzoned legal regime. Conversely, however, the flexibility of the pre-zoning legal regime conferred real benefits on the community's working-class residents. The citizens of New Haven, and especially the poorest ones, would have been best served by a land use system that both protected them from industrial nuisance and provided the greatest variety of housing options.

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181. Cappel, *supra* note 2, at 636-37.

182. See *supra* Figure 14. For an extended discussion of this area of New Haven, see Gabrielle Brainard, *Party Walls: Understanding Urban Change Through a Block of New Haven Row Houses, 1870-1979*, J. NEW HAVEN COLONY HIST. SOC'Y, Fall 2001, at 3.

183. The houses on Court Street were built at the end of the nineteenth century, so changes in the neighborhood cannot be attributed to the normal downward filtering of old homes. For empirical evidence supporting the presence of filtering in the housing market, see JOHN C. WEICHER, *HOUSING: FEDERAL POLICIES AND PROGRAMS* 25-26 (1980); and Brian J.L. Berry, *Ghetto Expansion and Single-Family Housing Prices: Chicago, 1968-1972*, 3 J. URB. ECON. 397, 416-17 (1976) (arguing that new housing developments in the Chicago suburbs created lower housing costs in the inner city).

Advocates of zoning would argue that the story of the rowhouses on turn-of-the-century Court Street not only demonstrates the threat that unregulated land use posed to New Haven property owners, but also suggests why zoning was so warmly embraced by the city's elites. As discussed earlier, zoning proponents often insist that land use regulation is essential to protect property values and preserve the character of individual neighborhoods. Without zoning, they argue, industry will creep into residential neighborhoods and deflate real estate prices. At best, the empirical evidence on this issue is vague.<sup>184</sup> However, a history of the Wooster Square neighborhood shows the danger that industry posed to urban residential neighborhoods. In a forty-year period, not much longer than the average modern mortgage, industrialization transformed Court Street from a string of prosperous single-family homes into a row of boarding houses for lower-class and immigrant renters.

During the mid-nineteenth century, Wooster Square was home to some of New Haven's wealthiest citizens.<sup>185</sup> These men, who had made fortunes in the booming industrial economy, built large, elegant homes throughout the western half of the neighborhood. The rows of stately Federal-style homes, stucco Italianate villas, and ornate brownstones were the physical embodiment of the city's newly earned wealth.

New Haven's elite were not the only residents of Wooster Square, however. The rising industrial middle class also sought quality housing in peaceful neighborhoods. The construction of the Court Street rowhouses was specifically targeted to capture the growing purchasing power of these skilled workers of the new economy.<sup>186</sup> The Home Insurance Company, a firm specializing in fire insurance and real estate investment, constructed the houses in the late 1860s.<sup>187</sup> For the time, the homes were well-built and spacious. Each stood three stories high, twenty feet wide, and thirty feet deep. The individual lots were seventy feet deep and each had a small backyard. Inside the homes,

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184. See generally WILLIAM A. FISCHER, DO GROWTH CONTROLS MATTER?: A REVIEW OF EMPIRICAL EVIDENCE ON THE EFFECTIVENESS AND EFFICIENCY OF LOCAL GOVERNMENT LAND USE REGULATION 9-29 (1990). Fischer found that zoning's effect on the prices of single-family homes is inconclusive. While there is evidence that zoning works well in segregating developments with significant negative externalities, it has not been fully established that zoning results in higher property values. Cf. Nicole Stelle Garnett, *Trouble Preserving Paradise?*, 87 CORNELL L. REV. 158, 164 (2001) ("Both economic theory and empirical research suggest that limits on development drive up property values and therefore deprive low-income individuals of affordable housing opportunities.").

185. THE NEW HAVEN PRES. TRUST, AN INTRODUCTION TO THE HISTORY OF WOOSTER SQUARE AND ITS ARCHITECTURE 1825-1880, at 4 (1969).

186. Brainard, *supra* note 182, at 3.

187. *Id.* at 7.

large, well-lit rooms anchored the front and back of each floor, with two smaller rooms off to the sides.<sup>188</sup>

The developer's ideal homebuyer was probably an upwardly mobile small business owner, skilled craftsman, or professional manager who worked in a nearby store or factory. As the developer hoped, the original residents of the rowhouses were largely middle-class families. The first occupants included a real estate broker, a bookkeeper, and the owner of a men's clothing store.<sup>189</sup> Little changed in the next ten years. In 1880 most residents were still native-born, middle-class families.<sup>190</sup> The men worked as accountants, attorneys, factory clerks, engineers, and skilled craftsmen, while most of the women stayed home.<sup>191</sup> Many households also included a male boarder or live-in domestic help, but the total number of occupants rarely exceeded five or six persons per home.<sup>192</sup> By all accounts, the rowhouses of Court Street were a thriving middle-class enclave in one of New Haven's most upscale neighborhoods.

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188. The original floor plans are unavailable, but can be deduced from rehabilitation blueprints and historic photos. *See, e.g.*, Photographs: Untitled Early-Twentieth-Century Photographs of Residences from Court Street and Surrounding Area (on file with New Haven City Plan Department Library, Shelves 19 & 20).

189. I cross-referenced the relevant land records against the city directory to determine occupations. *See* Deeds of Sale from Home Insurance Company to Various Purchasers (recorded Nov. 4, 1870) (on file with New Haven Hall of Records, Land Records, vol. 250, pp. 71-79); *see also* 31 BENHAM'S NEW HAVEN DIRECTORY AND ANNUAL ADVERTISER FOR 1870-71 (New Haven, J.H. Benham 1870).

190. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, TENTH CENSUS OF THE UNITED STATES—POPULATION: 1880, enumeration No. 83, sheets 17-23 (1880) (schedules for New Haven County). Surprisingly, complete census records have not been compiled in an accessible electronic database. The data employed in this study were gathered from microfilm records of the Connecticut portion of the relevant censuses. However, early census data were not conveniently organized according to the modern "census tract." Instead, residents were recorded by "enumeration district"—large regions corresponding only to the surveying responsibilities of individual census-takers. After identifying the appropriate enumeration districts for this research, I scanned thousands of handwritten entries for information on Court Street. Complicating this process was the fact that the entries for Court Street were not recorded in address order, despite the street's small size, but were instead often intermingled with data from surrounding streets and avenues. Although difficult to compile, the census data provide a wealth of information. For each residence, the census provides the number of occupants, head of household name, and the residents' age, sex, relation to the head of household, marital status, occupation, and place of birth. In sum, the information presented in this Note represents my best efforts to compile an accurate portrait of Court Street around the turn of the twentieth century.

191. *Id.*

192. A few scattered homes on Court Street did shelter larger numbers. For example, the house at 17 Court Street contained nine people—a family of four, and their five boarders. *Id.*

Despite rosy beginnings for the Court Street development, by 1900 the area began a slow decline. Unrestrained by zoning restrictions, the industrial district, once confined to the eastern half of the Wooster Square neighborhood, began a steady crawl toward the residential western edge. Between 1880 and 1900, single-family homes were torn down to make way for commercial shops, old mansions were subdivided into flats, and buildings sprang up in crowded backlots.<sup>193</sup> Even the posh properties facing the Wooster Square Green were not immune from the change. For example, a large single-family home at the corner of Wooster and Green Streets was converted into a multifamily housing unit.<sup>194</sup> All across the neighborhood, an increased number of industrial and commercial uses threatened to lower property values across the neighborhood.

Changes in the urban landscape were mirrored by changes within the homes on Court Street. Professionals began leaving the area and a wave of lower-class workers and immigrants rushed to fill the vacant homes that were left behind.<sup>195</sup> While a majority of residents were still Connecticut-born, the average resident of Court Street would not have been surprised to hear his neighbor speaking German or Swedish.<sup>196</sup> The arrival of a growing number of immigrants and laborers coincided with the appearance of a variety of new living arrangements on the street. Bowing to increasing demand for cheap housing, some owners converted their large single-family units into two-family homes or rooming houses.<sup>197</sup> By 1900, many rowhouses accommodated ten or more people, and the socioeconomic makeup of the residents had declined.<sup>198</sup> Instead of attorneys, accountants, and small business owners, Court Street was filled with office clerks, cigar makers, and factory workers. These changes made Court Street a more crowded, more working-class place. In the absence of zoning restrictions, these transformations would have happened quickly and without the consent of neighboring residents.

The changes in Wooster Square and on Court Street accelerated in the next twenty years. By 1920, manufacturing was firmly entrenched throughout the neighborhood. Industries grew, consolidated their land holdings, and constructed new buildings—sometimes pushing construction to the edge of

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193. Compare 1 SANBORN (1886), *supra* note 176, Nos. 4-10, with 1 SANBORN (1901), *supra* note 70, Nos. 5, 7, 9-10, 15-16.

194. Compare 1 SANBORN (1886), *supra* note 176, No. 5, with 1 SANBORN (1901), *supra* note 70, No. 15.

195. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, TWELFTH CENSUS OF THE UNITED STATES—POPULATION: 1900, enumeration No. 364, sheets 18-20 (1900) (schedules for New Haven County).

196. *Id.*

197. *Id.*

198. *Id.*

their lot lines.<sup>199</sup> New commercial and manufacturing enterprises also began to flourish, while old mansions were subdivided into apartments to accommodate the growing labor force.<sup>200</sup> The social and economic changes that had taken hold in the early twentieth century transformed the entire area: Court Street had become a full-blown rooming house district. The average house packed in over fifteen renters—almost four per floor—the majority of whom were now laborers employed in local industries.<sup>201</sup> In only forty years the dream of Court Street's original developer was lost. The upscale townhouses designed for middle-class families had become crowded rooming houses for transient men, single mothers, and poor childless couples.<sup>202</sup>

Arguably, zoning's ability to separate incompatible uses and control density could have saved Wooster Square from being overrun by inappropriate construction, dirt, and decay. After New Haven passed its first zoning law, the number of newly constructed apartment buildings in the city fell from one hundred in 1926 to thirty-four in 1928.<sup>203</sup> In the same period, the number of building permits granted for garage construction fell from 518 to 353.<sup>204</sup> At the very least, it seems zoning could have slowed the pace of apartment subdivision and the introduction of negative externalities into the community.

The story of the transformation of Wooster Square between 1880 and 1920 reveals the appeal of zoning to the residents of New Haven. The original owners of the homes on Court Street imagined they were buying property in a stable, upscale neighborhood. However, unforeseen changes in the economy prompted industry to spread quickly throughout the neighborhood. Unrestrained by government regulation, manufacturers gobbled up land, tore down single-family homes, and built new factories. Nuisance law was powerless to prevent the construction boom. The new manufacturing concerns and commercial shops lured hundreds, if not thousands, of newcomers in

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199. Compare 1 SANBORN (1901), *supra* note 70, No. 15, with 1 SANBORN (1923), *supra* note 70, No. 25. The Peck Brothers Manufacturing Company, located one block from Wooster Square, expanded significantly between 1901 and 1923.

200. Wooster Square, once home to the neighborhood's finest housing, now contained thirteen multifamily dwellings. 1 SANBORN (1923), *supra* note 70, Nos. 10, 22, 25.

201. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, FOURTEENTH CENSUS OF THE UNITED STATES—POPULATION: 1920, enumeration No. 339, sheet 3 (1920) (schedules for New Haven County).

202. *Id.*

203. Compare Report of the Building Inspector (1928), in CITY YEAR BOOK OF THE CITY OF NEW HAVEN 686 (1928), with Report of the Building Inspector (1926), in CITY YEAR BOOK OF THE CITY OF NEW HAVEN 508 (1926).

204. Compare Report of the Building Inspector (1928), in CITY YEAR BOOK OF THE CITY OF NEW HAVEN 686 (1928), with Report of the Building Inspector (1926), in CITY YEAR BOOK OF THE CITY OF NEW HAVEN 508 (1926).

search of jobs. Concerns about the additional noise and pollution that the new residents added to the community were ignored as apartments were constructed and old homes subdivided into cramped housing. Looking back, we can see that the original residents of Court Street needed protection from the intrusion of factories into their neighborhoods and the rapid conversion of single-family homes into boarding houses. While zoning could have helped them, nuisance law did not.<sup>205</sup>

Yet as this Note has argued, the saga of zoning is always more layered and complex than it first appears. Despite strong evidence that the original residents of Wooster Square were harmed by industrial externalities, opponents of government land use regulation can make a strong case that the history of Court Street should be celebrated as an example of an active and fully functional housing market.

By the beginning of the twentieth century, Wooster Square was one of New Haven's oldest neighborhoods and found itself situated at the very center of the city's major rail and shipping facilities. A modern-day city planner could not have chosen a better location for New Haven's large manufacturing plants. Industrial giants like the Sargent Company and the New Haven Clock Company both established themselves in the heart of Wooster Square during the latter half of the nineteenth century.<sup>206</sup> Almost immediately these factories required labor well beyond what the New Haven area could supply, and for decades they attracted European immigrants to fill the grueling factory jobs. On a global scale, these jobs were prize positions that promised rewards far greater than anything attainable in the old country.<sup>207</sup> Consequently, between 1850 and 1920, the city's foreign-born white population rose from 3697 to 45,686.<sup>208</sup>

These new workers needed a place to live, and the ever-expanding industrial sector needed room to build. The most logical space for new apartments and new factories was the western half of Wooster Square, where Court Street was located. This area was close to other factories, the port, many of New Haven's important rail lines, and already-established immigrant communities. The real estate men soon realized that this unique location made the western half of Wooster Square more valuable for industrial and

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205. See *supra* Subsection I.B.3.

206. The Sargent Company factory was opened in 1864. The plant burned 15,000 tons of coal and coke every year, and produced more than 50,000 different products. See RAE, *supra* note 13, at 102-04. The New Haven Clock Company was founded in the 1850s and became a global leader in the production of low-cost clocks. *Id.* at 108-09.

207. New Haven industry offered taxing jobs with lengthy hours. Most laborers worked between forty-eight and sixty hours per week in dirty, deafening, and dangerous conditions. See *id.* at 78.

208. *Id.* at 15.

multifamily uses than for high-end single-family dwellings. Then, as described above, older residents chose to leave the changing neighborhood, while industrialists and immigrants poured into the space they left behind.

As wealthy residents moved out of central New Haven to the fast-growing semi-suburban communities, the subdivision of the rowhouses and old mansions into apartments provided newly arrived immigrants with increased housing opportunities. Living in these cramped and crowded conditions next to the noise and pollution of industry was unquestionably difficult. Nonetheless, it would be a mistake to let modern sensibilities overwhelm our ability to see the significant benefits that people derived from living in places like Wooster Square. Dirty, inexpensive, and crammed neighborhoods provided generations of immigrants and unskilled workers with an avenue into the lower levels of the middle class. The availability of low-cost living quarters helped immigrant workers save money, provide for the education of their children, and send financial assistance to the families they left behind.

Had a zoning regime been in place in the late nineteenth century, the wealthy and well-connected residents of western Wooster Square could have lobbied for their small pocket of upscale housing to be zoned for single-family use. This in turn would have decreased housing options for newly arrived immigrant workers. Either the laborers would have been forced to incur the cost of moving to neighborhoods farther from their jobs or they could have packed themselves into the eastern half of Wooster Square, resulting in even higher densities and greater squalor.

The flexibility of the unzoned system also provided the residents of Wooster Square with important economic opportunities. Without usage restrictions, property owners could easily add small stores to the front of their buildings. This happened throughout the neighborhood during the 1910s—even the General Wooster house, former home of the Revolutionary War hero and namesake of the neighborhood, was converted to commercial use.<sup>209</sup> One reporter, dismayed by the growing Italian immigrant population, described the transformation of the area's structures: "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."<sup>210</sup> Thus, while the city's aristocrats may have bemoaned the loss of a high-end housing district, the immigrants of Wooster Square were busy fashioning a new and dynamic community. Residents of other low-end neighborhoods in New Haven also recall the vitality of these communities before the advent of zoning. A Jewish immigrant

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209. Morty Miller, *New Haven: The Italian Community* 68-69 (Apr. 30, 1969) (unpublished manuscript, on file with the New Haven Colony Historical Society).

210. *Id.* at 68 (quoting a report in the *New Haven Register*).

resident of Oak Street in the Upper Hill recalled that “the immediate neighborhood . . . wasn’t exactly a model of attractive architecture, design or amenities.”<sup>211</sup> That said, “there was no questioning the vitality, energy and activity that permeated both sides of the street.”<sup>212</sup> He also noted that the community “was enjoying a prosperity undreamed of in the shtetlich and towns that these Jewish immigrants – my first friends, neighbors and spiritual peers – had left behind in Europe and [where] more often than not, [they had been] victimized or threatened by poverty, persecution or pogroms.”<sup>213</sup>

Astute scholars like Cappel and Siegan might also point out that New Haven neighborhoods like Wooster Square were not spared from further de-gentrification after the city enacted zoning. In 1958, the city government reported that the neighborhood contained 512 substandard residential buildings, 336 rat-infested dwellings, and 137 antiquated factory structures.<sup>214</sup> In the end, large swaths of Wooster Square were leveled during New Haven’s urban renewal projects in the 1950s and 1960s.<sup>215</sup> Thus, the story of Court Street provides more evidence for what many others have already argued: Zoning imposes real costs on everyday people and offers no absolute guarantees of long-term neighborhood stability.

In the end, the contentious history of Court Street before the advent of zoning reveals yet again that Cappel’s conclusions about zoning are, perhaps, somewhat overstated. As described above, an unzoned system provides significant benefits to city dwellers in the form of increased housing options, lower housing costs, and flexibility. However, Cappel never acknowledged that zoning, at its best, protects all residents of a municipality from the encroachment of industrial nuisance and the unwanted effects of overcrowding.

## CONCLUSION

This Note has been, perhaps, overly ambitious in its attempt to both describe the patterns of land use across industrial New Haven and summarize the city’s initial encounter with zoning. Nonetheless, I have tried to provide a deeper understanding of both the successes and failures of the pre-zoning system, while fairly criticizing *A Walk Along Willow*, Andrew Cappel’s

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211. Silverman, *supra* note 147, at 3.

212. *Id.*

213. *Id.*

214. NEW HAVEN CITIZENS ACTION COMM’N, WOOSTER SQUARE NEIGHBORHOOD RENEWAL COMM., THE WOOSTER SQUARE NEIGHBORHOOD BUILDS FOR ITS FUTURE (1958).

215. In total, 2710 households were displaced in Wooster Square between 1954 and 1968. RAE, *supra* note 13, at 339.



influential contribution to the land use literature. Specifically, this study was designed to answer three questions: First, are Cappel's findings about the Willow-Canner strip truly representative of the degree of land use coordination in pre-zoning New Haven? Second, did Cappel correctly assess the city's initial embrace of zoning? And third, was the implementation of zoning in New Haven worthwhile?

As a whole, this Note concludes that *A Walk Along Willow* ignores many of the complexities of land use regulation in pre-zoning New Haven. The critical weakness of Cappel's work is that the patterns of land use found in the Willow-Canner strip were not characteristic of 1920s New Haven. In fact, Cappel focused his research on the most exclusive and well-ordered neighborhood in the city. By concentrating solely on this privileged area, Cappel overstated the degree of organization in pre-zoning New Haven. The industrial neighborhoods, as a group, scarcely resembled the utopia of coordinated land use that *A Walk Along Willow* describes. Significant failures of land use organization occurred in multiple working-class areas: Schools and churches mixed with industry, small lot sizes and untidy street grids negatively impacted sideyards, and many residents were directly exposed to the filth and disease of unregulated junkyards.<sup>216</sup> The center of the Upper Hill neighborhood was a particularly gritty hodgepodge of mixed uses that called out for someone to impose order.

*A Walk Along Willow* also fails to provide a balanced and in-depth account of New Haven's decision to adopt its first zoning ordinance. Cappel's piece never emphasizes that uncontrolled economic growth and the emergent threats of industrial nuisance, apartments, and garages were sources of considerable uncertainty for many of New Haven's citizens. At the time, New Haven's residents saw the explosion of apartment and garage construction as an intensely acute threat to the character of their neighborhoods. Looking back, we should not be surprised that concerned landowners sought to impose order on an increasingly ineffective and disorganized system of land use coordination.

While there is much to criticize in *A Walk Along Willow*, Cappel's conclusion that zoning in New Haven was an entirely vain and unnecessary endeavor is most worrying. A reader of *A Walk Along Willow* could easily conclude that aggressive deregulation is the answer to all of a city's land use problems. Unfortunately, such one-sided analysis is widespread in the zoning literature. Too often, ideologues on both sides of the debate have pretended that there are no tradeoffs in the choice between government regulation and unrestricted land markets. This study, however, suggests otherwise. While a zoned legal regime might have curtailed housing options for the working class,

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216. See WINSLOW ET AL., *supra* note 93, at 40-45.

it would also have prevented the worst of New Haven's coordination failures. And although land use regulation may have caused distortions in the real estate market, such laws would have slowed the de-gentrification process. In the face of these difficult tradeoffs, what is the proper amount of land use regulation? How can a contemporary urban planner presented with similar choices go about fashioning a solution?

It seems that the ideal system of land use controls lies somewhere between the modern zoning scheme and the largely unregulated system of the early twentieth century. Advocates of zoning are right to worry about the health and safety effects of densely packed buildings, backlot construction, and the presence of heavy industry in the midst of residential communities. In response, any system of land use regulation must be founded on the vigorous enforcement of realistic health and building codes: Municipal governments must devote sufficient resources to eradicating the squalor and unsanitary overcrowding that is too common in urban neighborhoods. Setback and sideyard requirements can also be justified as a cost-effective way to prevent the spread of fire and reduce dangerous overcrowding. Additionally, evidence from this study suggests that heavy manufacturing often finds its way into the midst of the poorest neighborhoods. Zoning can be an effective, if paternalistic, way to ensure that the most noxious industry causes the least amount of long-term human suffering.

On the other hand, proponents of deregulation make a strong case that free markets in land are more responsive to human needs. The ingenious adaptation of old homes to new stores that occurred in Wooster Square could not have transpired under zoning. Market adherents also correctly point out the disparate effect of land use regulation on working-class neighborhoods. To compensate, zoning laws should be crafted to allow more opportunities for apartment construction and for the incorporation of small businesses in residential areas. This does not mean that all lot size, height, and use restrictions should be eliminated. However, there should be some mechanism to allow for the conversion of an aging mansion into a boarding house, or a townhouse parlor into a used bookstore. The strict separation of residential and commercial uses, common in many zoning regulations, forces too many potential entrepreneurs out of the market. While perhaps unappealing to more sophisticated consumers, check-cashing operations, hair salons, bodegas, immigrant clubs, pawnshops, and ethnic restaurants perform a vital role in underserved communities and should not be legislated out of existence through zoning regulations.

Throughout this Note I have attempted to show that the lives of people in communities like Wooster Square and the Hill were shaped by the absence of land use regulation. Too often, the unzoned legal regime failed working-class citizens by neglecting to provide orderly and safe neighborhoods. Current

zoning laws, it seems, have overcompensated for these flaws, driving up housing prices and preventing those with little capital from starting small-scale, locally based businesses. Modern city planners must be more conscious of these tradeoffs between widespread regulation and the increased difficulties imposed on the working class. While the benefits derived from modern zoning do not necessarily justify the costs, this Note shows that some strong baseline of government land use regulation is needed to protect working-class citizens from the worst land use coordination failures.

**APPENDIX**

Due to certain limitations of the Sanborn maps, selected measurements could not be taken for all sites. As a result, tables describing the same street may indicate different numbers of structures. When calculating sideyards, rowhouses were considered one structure. Streets are listed by block. All Appendix tables are available at <http://www.yalelawjournal.org>.

**Table 1.**  
**PROPERTY USES IN WESTVILLE: ADJACENT TO INDUSTRIAL CENTER (1923)**

STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
Whalley (north side)	West Prospect to Dayton	7	1	0	0	0	1
Whalley (south side)	West Prospect to Dayton	8	0	0	0	1	0
Whalley (north side)	Dayton to Emerson	2	1	0	0	6	1
Whalley (south side)	Dayton to Emerson	9	2	0	0	8	0

**Table 2.**  
**PROPERTY USES IN WESTVILLE: ONE BLOCK FROM INDUSTRIAL CENTER (1923)**

STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
Pardee (west side)	Fairfield to Fountain	1	2	0	4	0	0
Pardee (east side)	Fairfield to Fountain	0	8	0	0	0	0
Dayton (west side)	Fairfield to Fountain	1	6	0	0	0	0
Dayton (east side)	Fairfield to Fountain	2	6	0	0	0	0

A WALK ALONG WILLARD

**Table 3.**  
**PROPERTY USES IN WESTVILLE: WILLARD STREET (1923)**

STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
Willard (north side)	Forest to Barnett	9	1	0	0	0	0
Willard (south side)	Forest to Barnett	5	4	0	0	4	0
Willard (north side)	Barnett to Alden	0	1	0	0	0	0
Willard (south side)	Barnett to Alden	1	2	0	0	0	0
Willard (north side)	Alden to Central	5	2	0	0	0	0
Willard (south side)	Alden to Central	5	0	0	0	0	0

**Table 4.**  
**PROPERTY USES IN WESTVILLE: CENTER OF THE RESIDENTIAL NEIGHBORHOOD (1923)**

STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
McKinley (west side)	Willard to West Elm	6	1	0	0	0	0
McKinley (east side)	Willard to West Elm	6	1	0	0	0	0
McKinley (west side)	West Elm to Woodbridge	6	2	0	0	0	0
McKinley (east side)	West Elm to Woodbridge	6	1	0	0	0	0
McKinley (west side)	Woodbridge to Edgewood	9	0	0	0	0	0
McKinley (east side)	Woodbridge to Edgewood	9	0	0	0	0	0

A WALK ALONG WILLARD

**Table 5.**  
PROPERTY USES IN CITY POINT (1923)

STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
Greenwich (west side)	Lamberton to First	0	0	0	0	4	0
Greenwich (east side)	Lamberton to First	3	2	0	0	2	0
Greenwich (west side)	First to Second	6	2	0	0	0	0
Greenwich (east side)	First to Second	11	0	0	1	1	0
Greenwich (west side)	Second to Third	9	2	0	0	1	0
Greenwich (east side)	Second to Third	8	1	0	0	0	0
Greenwich (west side)	Third to Fourth	8	5	0	0	1	0
Greenwich (east side)	Third to Fourth	6	3	2	0	0	0
Howard (west side)	Lamberton to First	5	3	0	0	1	0
Howard (east side)	Lamberton to First	5	1	1	3	0	0
Howard (west side)	First to Second	3	3	0	3	0	0
Howard (east side)	First to Second	6	1	0	0	1	0
Howard (west side)	Second to Third	6	2	0	0	0	0



STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
Howard (east side)	Second to Third	8	2	0	0	0	0
Howard (west side)	Third to Fourth	6	3	0	0	1	0
Howard (east side)	Third to Fourth	5	3	0	0	0	0

**Table 6.**  
SETBACKS IN THE UPPER HILL (IN FEET) (1923)

STREET	BLOCK	0-5	6-10	11-15	16-20	21-25	26+
Broad (west side)	George to Oak	7	3	1	4	0	0
Dow (west side)	George to Oak	3	4	0	0	0	1
Dow (east side)	George to Oak	7	2	0	0	0	0
York (west side)	George to Oak	10	9	0	0	0	0
York (east side)	George to Oak	7	4	1	0	0	0
Spruce (west side)	George to Oak	7	2	0	0	0	0
Spruce (east side)	George to Oak	6	2	0	8	0	0
Park (west side)	George to Oak	0	2	3	0	0	5
Park (east side)	George to Oak	0	0	1	4	3	2

A WALK ALONG WILLARD

**Table 7.**  
**SIDEYARDS IN THE UPPER HILL (1923)**

STREET	BLOCK	DISTANCE IN FEET TO NEAREST BUILDING				
		0-5	6-10	11-15	16-20	21+
Broad (west side)	George to Oak	4	1	0	1	0
Dow (west side)	George to Oak	1	1	2	1	1
Dow (east side)	George to Oak	5	2	1	0	0
York (west side)	George to Oak	3	2	1	0	0
York (east side)	George to Oak	3	0	2	0	1
Spruce (west side)	George to Oak	1	2	2	0	0
Spruce (east side)	George to Oak	4	1	0	0	0
Park (west side)	George to Oak	0	2	3	1	1
Park (east side)	George to Oak	0	4	2	2	1

**Table 8.**  
**PROPERTY USES ON WOOSTER STREET (1886)**

STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
Wooster (north side)	Brewery to Chestnut	9	0	0	0	4	0
Wooster (south side)	Brewery to Chestnut	18	0	0	0	0	0
Wooster (north side)	Chestnut to Franklin	7	0	0	0	2	0
Wooster (south side)	Chestnut to Franklin	6	0	0	0	0	0
Wooster (north side)	Franklin to Hamilton	8	0	0	0	0	0
Wooster (south side)	Franklin to Hamilton	9	0	0	0	0	0
Wooster (north side)	Hamilton to Wallace	4	0	0	0	0	0
Wooster (south side)	Hamilton to Wallace	1	0	0	0	0	1

A WALK ALONG WILLARD

**Table 9.**  
**PROPERTY USES IN WOOSTER SQUARE (1923)**

STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
Wooster (north side)	Brewery to Chestnut	1	0	1	0	12	2
Wooster (south side)	Brewery to Chestnut	3	0	6	0	14	0
Wooster (north side)	Chestnut to Franklin	3	0	6	0	2	0
Wooster (south side)	Chestnut to Franklin	4	1	1	0	5	0
Wooster (north side)	Franklin to Hamilton	3	1	3	1	5	0
Wooster (south side)	Franklin to Hamilton	8	1	0	0	1	0
Wooster (north side)	Hamilton to Wallace	1	0	2	0	3	0
Wooster (south side)	Hamilton to Wallace	1	0	0	2	1	1
Chapel (north side)	Brewery to Chestnut	1	0	1	1	1	0
Chapel (south side)	Brewery to Chestnut	7	0	3	5	0	1
Chapel (north side)	Chestnut to Franklin	2	0	2		4	1

STREET	BLOCK	ONE-FAMILY	TWO-FAMILY	THREE-FAMILY	APARTMENT	COMMERCIAL	INDUSTRIAL
Chapel (south side)	Chestnut to Franklin	4	0	0	0	4	0
Chapel (north side)	Franklin to Hamilton	1	3	1	0	2	1
Chapel (south side)	Franklin to Hamilton	2	0	1	0	10	1
Chapel (north side)	Hamilton to Wallace	0	0	0	0	0	1
Chapel (south side)	Hamilton to Wallace	3	2	1	0	1	0