The Privilege of a Spot Zoning Claim

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Imagine walking through a suburban neighborhood when, suddenly, you spot a power plant situated between two homes. This disruption of a uniform zoning scheme is rare, as nearby residents could have claimed the zoning decision permitting this power plant's construction constituted "spot zoning." Claims of spot zoning, defined as the detrimental rezoning of a small piece of land contrary to its uniform surroundings, protect uniform residential and rural communities from environmentally harmful industries. However, uniformly zoned areas are overwhelmingly wealthy and white due to racist and classist land use policies that concentrate polluting industries in low-income communities of color. This Article therefore posits that spot zoning claims, as utilized today, effectively push harmful industries away from wealthier, whiter communities to these frontline communities.

We support this assertion by analyzing every electronically available spot zoning claim—an overdue and imperative effort given the unprecedented number of spot zoning claims litigated in the past five years. The results indeed indicate that spot zoning claims are overwhelmingly brought in whiter, wealthier communities to keep out polluting industries and, accordingly, leave frontline communities without the same legal redress. We do not advocate for outright elimination of spot zoning claims, as they prevent the siting of heavily polluting industries in populous areas. Instead, we explore the underlying implications of all spot zoning claim criteria to explain how land use practitioners and reviewing courts could curb these trends without violating stare decisis. Relaxing the uniformity requirement for historically marginalized communities, contextualizing a rezoned

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parcel's size based on its rural or urban environment, and other substantive changes to the doctrine could allow spot zoning claims in areas traditionally excluded from these considerations.

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INTRODUCTION

In 2007, a coal-fired power plant threatened to pollute the pristine mountain air of Great Falls, Montana, with lead, mercury, and other carcinogenic air pollutants.[1] The Highwood Generating Station was to be built fifteen miles east of Great Falls, Montana—a city of picturesque streams surrounded by rolling mountains.[2] From the moment Southern Montana Electric proposed the

1. *See* Plains Grains Ltd. P'ship. v. Bd. of Cnty. Comm'rs of Cascade Cnty., 357 Mont. 61, 64 (2010). Although litigation surrounding the Highwood Generating Station stretched past 2010, Duane and Mary E. Urquhart and Scott and Linda Urquhart submitted the underlying rezoning request to permit the construction and operation of the Highwood Generating Station on October 30, 2007, on behalf of Southern Montana Electric. This request to rezone their land from Agricultural to Heavy Industrial, if approved, would have permitted industrial operations in this rural farming community. *Id.*

2. EPA, *FRS Facility Detail Report: Highwood Generating Station*, https://frs-public.epa.gov/ords/frs_public2/fii_query_detail.disp_program_facility?p_registry_id=110037276195 (last visited Jan. 18, 2025) (listing the Highwood Generating Station's address, 369 Salem Road,

Highwood Generating Station, it faced considerable opposition from community members and environmental allies alike.[3]

The land encompassing the Highwood Generating Station was previously zoned as Agricultural, consistent with all surrounding properties.[4] Due to this zoning scheme, the owners of the site sought to rezone the property to Heavy Industrial to allow for the construction and operation of the power plant.[5] Despite approximately 1,900 citizens submitting comments in opposition, the Board of Commissioners of Cascade County approved the rezoning.[6] In response, surrounding community members filed a complaint in District Court requesting the rezoning be set aside as impermissible spot zoning.[7]

Spot zoning is the rezoning of a relatively small parcel of land to a unique zoning designation that negatively impacts surrounding residents.[8] The Highwood Generating Station spot zoning claim reached the Montana Supreme Court, which determined in 2010 that designating the Highwood Generating Station as a Heavy Industrial district amongst a landscape of Agricultural uses—in other words, a facility surrounded by farms—was indeed impermissible spot zoning.[9] Facing extraordinary public pressure and litigation expenses, the owners of the proposed Highwood Generating Station decided to forego construction of the planned coal-fired plant.[10] Instead, they built a less harmful natural gas facility that "rarely operated."[11] Ultimately, the owners declared bankruptcy in 2011 and subsequently dismantled the facility in 2015.[12]

The victory achieved by the residents of Great Falls, Montana, in the Highwood Generating Station case exemplifies numerous spot zoning victories across the country, where surrounding residents challenged the placement of polluting industries in their communities.[13] However, not all neighbors of

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Great Falls, MT 59405, which is located in the rural community of Salem, Montana, fifteen miles northeast of Great Falls).

3. *See Plains Grains Ltd. P'ship*, 357 Mont. at 64.

4. *Id.* at 64-65 ("The Staff Report described the surrounding land uses as agricultural for more than twenty acres in every direction.").

5. *Id.* The Board of County Commissioners of Cascade County initially opined that a special use permit would forego the need for the rezoning, but further communications between the Board and Southern Montana Electric allowed the rezoning request to proceed. *Id.* at 65.

6. *Id.* at 66. Plaintiff Plain Grains Limited Partnership claimed the Board of County Commissioners of Cascade County failed to follow public notice and participation procedures. *Id.*

7. *See id.* at 66 (describing Plain Grains Limited Partnership filing on behalf of the surrounding community).

8. *See* Appendix (listing spot zoning criteria utilized by state courts across the United States).

9. *See Plains Grains Ltd. P'ship*, 357 Mont. at 83.

10. Karl Puckett, *Power Plant's Fall Comes Five Years After Rise*, GREAT FALLS TRIB. (Oct. 15, 2015), https://www.greatfallstribune.com/story/news/2015/10/15/power-plant-fall-comes-five-years-after-rises/74019606.

11. *Id.*

12. *Id.*

13. The intersectional fight against the Highwood Generating Station cannot solely be attributed to land use litigation, as air permit challenges and critical organizing efforts further exemplify the power

polluting industries are able to fulfill the criteria necessary for a spot zoning claim.[14] In fact, during the same time period as the Highwood Generating Station, a different coal-fired power plant in Montana was fully approved and constructed.[15]

The Hardin Generator Project was built in 2006, forty miles east of Billings, Montana,[16] in a small town called Hardin.[17] Hardin is located in Cascade County, Montana, where almost two-thirds of the population identifies as American Indian or Alaskan Native.[18] Residents make, on average, less income than those in Great Falls,[19] but nevertheless thrive as a diverse community of Montanans who admire their historic community and mountainous surroundings.[20] Unfortunately, the Hardin Generator Project has now polluted Hardin air for approximately fifteen years and even plans to ramp up operations due to rising energy demands from the emerging cryptocurrency market.[21] The contrast between the Highwood Generating Station and the Hardin Generator Project is representative of America's history of siting polluting industries in frontline communities.[22] Why couldn't the Hardin residents bring the same spot zoning claim as the Great Falls residents?

For the Hardin residents to succeed on a spot zoning claim, they would have needed to prove in court that a *rezoning* allowing the Hardin Generator Project's

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of coordinated environmental advocacy. *See* Jenny Harbine, *Troubled Montana Coal Plant Proposal Faces Fresh Challenge*, EARTHJUSTICE (July 2, 2008), https://earthjustice.org/press/2008/troubled-montana-coal-plant-proposal-faces-fresh-challenge.

14. *See* Appendix. Spot zoning criteria vary in stringency, but even the broadest application of spot zoning criteria may marginalize communities already inundated with industrial uses. *See infra* Part III.

15. *See infra* notes 16-22 and accompanying text.

16. Billings is approximately 200 miles southeast of Great Falls.

17. Ed Kimmick, *Hardin Power Plant May Close in Early 2018; Market Price of Electricity Too Low*, MISSOULA CURRENT (Nov. 17, 2017), https://missoulacurrent.com/hardin-power-plant.

18. *Our Changing Population: Big Horn County, Montana*, USAFACTS (last updated July 2022), https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/montana/county/big-horn-county/#racial-ethinic-population-change.

19. *Compare Great Falls*, CENSUS REP., https://datausa.io/profile/geo/great-falls-mt (last visited Jan. 25, 2026), *with Hardin, MT*, CENSUS REPORTER, https://datausa.io/profile/geo/great-falls-mt (last visited Jan. 18, 2025).

20. *See, e.g.*, VISIT SOUTHEAST MONTANA, *Hardin*, https://southeastmontana.com/community/hardin (last visited Jan. 18, 2025).

21. Brian Spegele & Caitlin Ostroff, *Bitcoin Miners Are Giving New Life to Old Fossil-Fuel Power Plants*, WALL ST. J. (May 21, 2021), https://www.wsj.com/articles/bitcoin-miners-are-giving-new-life-to-old-fossil-fuel-power-plants-11621594803 (finding that energy demand has risen with the emergence of cryptocurrency, as cryptocurrency mining requires an immense amount of energy, which necessitates increased power plant operations).

22. *See, e.g.*, Carolyn Holland, *Centering Frontline Communities*, ECOTRUST (last updated Feb. 16, 2023), https://ecotrust.org/centering-frontline-communities (defining frontline communities as "those that experience 'first and worst' the consequences of climate change. These are communities of color and low-income, whose neighborhoods often lack basic infrastructure to support them and who will be increasingly vulnerable as our climate deteriorates").

construction and operation—from its Rural zoning designation to a Heavy Industrial zoning designation, for example—contravened the *uniform* zoning designations around it, akin to a dot on a map.[23] However, historically marginalized communities often do not exist as uniformly zoned areas;[24] the United States' history of discriminatory land use policies and practices frequently pushed polluting industries to these frontline communities, even next to their homes, denying their potential for uniformly zoned communities.[25] In contrast, whiter, wealthier communities are more likely to live in single-family residential areas with uniform zoning, undisturbed by harmful industries nearby.[26] Due to this persistence of systemic racism in zoning practices, we posit that spot zoning claims—which protect communities from harmful industries—are brought more often in whiter, wealthier communities, where uniformly zoned areas are more likely to exist. This protection of historically shielded communities from pollution therefore perpetuates a history of discriminatory land use decisions.

Our analysis supports this argument: Almost every spot zoning claim involves a local unwanted land use,[27] and most of these claims are brought in wealthier, whiter, communities.[28] In fact, our analysis shows that approximately four-fifths of spot zoning claims are brought in majority-white communities.[29] Because spot zoning claims continue to increase in frequency,[30] close evaluation of spot zoning's underlying effects and a reevaluation of spot zoning criteria is long overdue.

We do not oppose spot zoning as a doctrine. When properly applied, spot zoning claims prevent the siting of heavy industry in densely populated communities where their negative externalities[31] would harm the greatest

23. They also would need to argue that the parcel was small relative to its surroundings, depending on the reviewing court's interpretation of the spot zoning size requirement. *See infra* Part III.A; Appendix; *see also Plains Grains Ltd. P'ship*, 357 Mont. at 80.

24. *See, e.g.*, CITY OF HARDIN, *Hardin 2019 Zoning Map*, http://www.hardinmontana.info/8-2019-zoning.pdf (last visited July 19, 2025).

25. *See* CLIFFORD VILLA, ET AL., ENVIRONMENTAL JUSTICE: LAW, POLICY, AND REGULATION 397 (3d ed. 2020).

26. *Id.* (*citing* Alice Kaswan, *Distributive Justice and the Environment*, 81 N.C. L. REV. 1031, 1110-11 (2003)).

27. *See infra* Part II.B.1 (finding that the vast majority of spot zoning cases are brought against local unwanted land uses).

28. *See infra* Part II.B.2 (finding that the majority of spot zoning claims are brought to oppose rezonings in whiter, wealthier communities).

29. *Infra* Part II.B.2. Additionally, only one-third of spot zoning claims are brought in communities that qualify as low-income. *Infra* Part II.B.2.

30. *"Spot Zoning*,*"* LEXISNEXIS, https://perma.cc/66VM-A3GN (last visited January 18, 2025) (graphing spot zoning case frequency by year).

31. Negative externalities are the negative effects generated from production. In environmental terms, LULUs impose negative externalities on their surrounding communities, such as air and water pollutants, that are difficult, if not outright impossible, to quantify. Inadequate environmental protections fail to quantify the cost of these externalities and, as a result, force frontline communities to literally pay

number of individuals in a community. However, our theory and corresponding analysis indicate that judges and practitioners should not perform a rote evaluation of spot zoning criteria when faced with a spot zoning claim. Instead, spot zoning should be evaluated within its broader context to prevent spot zoning from shifting environmentally burdensome industry from whiter, wealthier communities to sacrifice zones that continue to face the cumulative impacts of a legacy of environmental racism, discriminatory development policies, and other measures that entrenched pollutive development in predominantly communities of color. This closer evaluation necessitates an investigation of the burdens of the proposed infrastructure, the availability of less cumulatively impactful sites, the overall necessity of the project, and, critically, the locality's history of discriminatory land use practices.

This Article proceeds as follows. Part I provides a historical backdrop to explain how the United States' racist land use policies and practices allow seemingly harmless land use doctrines, such as spot zoning, to cause underlying harm to frontline communities with limited opportunities for legal regress. Part II analyzes spot zoning cases through data collection and mapping, thereby revealing how spot zoning claims overwhelmingly allow privileged communities to keep harmful industries out of their otherwise uniform neighborhoods. Part III closely evaluates spot zoning criteria to exemplify how a more equitable approach to spot zoning claims could be achieved without drastic changes in jurisprudence that would otherwise violate principles of stare decisis. We further offer this information in hopes of creating a dialogue concerning the necessity of closely examining land use practices to prevent the perpetuation of disparate treatment of communities based on race and income.

I. SPOT ZONING IN HISTORICAL AND PLANNING CONTEXTS

Land use planning dates back to the Neolithic period (6500 B.C.), when ancient Greek societies designated areas for pasturage and crop cultivation.[32] Hippodamus of Miletus, a figure from Ancient Greece, is considered the father of urban planning for developing grid planning techniques for cities.[33] Land use designations continued to evolve, with cities in the Roman Empire developing sanitation systems and designating spaces for grand public structures.[34] Today,

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the consequence. *See generally* Eric Dodge et al., *Environmental Protection and Negative Externalities*, *in* PRINCIPLES OF ECONOMICS 3E (2022) (describing externalities, their costs, and the pricing of pollution in U.S. policy).

32. *See* Erika Weiberg et al., *Mediterranean Land Use Systems from Prehistory to Antiquity: A Case Study from Peloponnese (Greece)*, 14 J. LAND USE SCI. 1, 9 (2019).

33. Ashley Gardini, *Urban Planning, Then and Now*, JSTOR DAILY (Oct. 10, 2023), https://daily.jstor.org/urban-planning-then-and-now.

34. See Gigi Fiori, *The Eternal Influence of Ancient Rome in Urban Planning: Santa Maria del Fiore and Chicago*, MEDIUM (May 14, 2023), https://medium.com/ginervasgarden/the-enduring-influence-of-ancient-rome-in-urban-planning-santa-maria-del-fiore-and-chicago-4cf90d03d18c.

modern planning techniques aim to guide land development and usage to address community needs and values, as ancient societies once did.[35]

One of the primary modern methods of achieving land use cohesion is through the implementation of zoning codes.[36] Zoning is the designation of land for certain permissible land uses—residential, industrial, or commercial, for example—as laid out in the local zoning code.[37] For example, a city may designate each parcel of land in a residential neighborhood as Residential, meaning all properties within that area are only permitted to be used for residential housing.[38] Typical zoning designations include Industrial, Commercial, Single-Family Residential, and Multi-Family Residential.[39]

In theory, zoning codes prevent certain land uses from interfering with other land uses. Without these zoning codes, the operations of a commercial business that operate at night, such as a cocktail bar, could disturb the sleep of its residential neighbors. Along these lines, zoning codes proactively prevent the placement of locally unwanted land uses ("LULUs"), such as landfills and power plants, in residential communities where their negative externalities would harm these densely populated areas.[40] Despite their adverse impacts on neighboring properties, however, LULUs are considered by some to be beneficial to society at large, as they typically represent a solution to a local problem.[41] For example, the energy sector justifies the construction and operation of methane gas power plants, despite their pollution output, due to their reliability for supplying energy to the grid quickly.[42] Who determines the net value of that LULU, however, is inextricably linked with political and social influence, both of which have been withheld from marginalized communities throughout the United States' sordid history of land use planning.[43]

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35. *See supra* notes 32-33.

36. Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 139 n.2 (1978).

37. *See* Kenneth Stahl, *Neighborhood Empowerment and the Future of the City*, 161 U. PA. L. REV. 939, 950 (2013).

38. *See, e.g.*, DURHAM UNIFIED DEVELOPMENT ORDINANCE, CITY OF DURHAM 4.2 (last updated June 1, 2025), https://udo.durhamnc.gov/udo/4_02_Residential%20District%20Intent.htm#4.2.

39. *NC Zoning Toolkit*, S. COAL. FOR SOC. JUST. https://southerncoalition.org/resources/nc-zoning-toolkit (last visited July 2, 2025).

40. *See, e.g.*, Residential Zone District, Town of Telluride Code § 3-204 (2023).

41. *See* Vicki Been, *What's Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001, 1001 (1993); *see also* Robert Lake, *Planners' Alchemy Transforming NIMBY to YIMBY*, 59 AM. PLAN. ASS'N J. 87, 88 (1993) (framing LULUs as sacrificing communities to minimize capital costs).

42. See Mark Morey & Scott Jell, *Use of Natural Gas-Fired Generation Differs in the United States by Technology and Region,* U.S. ENERGY INFO. ADMIN. (Feb. 22, 2024), https://www.eia.gov/todayinenergy/detail.php?id=61444.

43. We do not purport to offer a comprehensive overview of the United States' discriminatory land use practices and policies, as collecting and detailing the expansive entirety of America's racist and classist land use actions is functionally impossible. For an overview of this history, however, *see generally* RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR

In 1908, Los Angeles passed an ordinance prohibiting industrial uses in residential areas—the first local zoning law in the United States; just two years later, Baltimore passed the first racially restrictive zoning ordinance, explicitly restricting certain racial or ethnic groups from living in certain neighborhoods.[44] This discriminatory land use policy foreshadowed the state-sponsored community segregation and deprivation of minority-owned land to come. Redlining,[45] racist zoning codes,[46] and racially restrictive covenants,[47] amongst other land use practices, systemically grouped and marginalized communities of color.

LULU siting decisions build literally and figuratively on the foundations of these discriminatory practices. Power plants were, and continue to be, disproportionately sited in formerly redlined communities of color.[48] According to a 1983 study, three-quarters of landfill sites in eight southeastern states were located in low-income communities of color;[49] today, more than half of people who live next to hazardous waste across the United States are people of color.[50]

GOVERNMENT SEGREGATED AMERICA (2017) (detailing the U.S. government's utilization of land use planning to segregate localities over the past century).

44. *1900-1929: The Rise of Local Zoning and Housing Policies*, ENTERPRISE, https://www.enterprisecommunity.org/housing-policy-timeline/1900-1929#:~:text=While%20the%20first%20local%20zoning,policies%20to%20enforce%20racial%20segregation (last visited Jan. 18, 2025) (under the heading 1910: First Racially-Restrictive Zoning Ordinance in Baltimore, MD).

45. Redlining originally described the 1930s-era governmental practice of drawing municipal maps based on race to deny home loans to people of color. The term "redlining" was coined to represent the communities that were shaded red, representing hazardous areas, to discourage lending to those communities of color. The term has evolved to broadly represent state-sponsored segregation policies and practices. Candace Jackson, *What is Redlining?*, N.Y. TIMES (Aug. 17, 2021), https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html; *Mapping Inequality: Redlining in New Deal America*, UNIV. OF RICHMOND (last visited Jan. 18, 2025), https://dsl.richmond.edu/panorama/redlining (digitizing the redlining maps for public viewership).

46. STEPHEN SILLS, UNC GREENSBORO CTR. FOR HOUS. & CMTY. STUDS., ENDURING IMPACT OF RACIALIZED PLANNING IN SOUTHERN CITIES 9, https://chcs.uncg.edu/wp-content/uploads/2022/01/EPU-White-Paper-Dr.-Sills-FINAL-1.pdf ("Between 1900 and 1917, 27 cities had passed zoning restrictions based on race and designated many neighborhoods as white only.").

47. *See, e.g.*, Larry Santucci, *Documenting Racially Restrictive Covenants in 20th Century Philadelphia*, 22 CITYSCAPE 241, 242 (2020), https://www.huduser.gov/portal/periodicals/cityscpe/vol22num3/ch11.pdf ("Evidence of racial covenants in property deeds is present in cities throughout the country.").

48. Lara J. Cushing, et al, *Historical Red-Lining is Associated with Fossil Fuel Power Plant Siting and Present-Day Inequalities in Air Pollutant Emissions*, 8 NATURE ENERGY 52, 52 (2023), https://doi.org/10.1038/s41560-022-01162-y.

49. Renee Skelton & Vernice Miller, *The Environmental Justice Movement*, NAT. RES. DEF. COUNCIL (Aug. 22, 2023), https://www.nrdc.org/stories/environmental-justice-movement.

50. Robert Bullard et al., *Toxic Wastes and Race at Twenty: Why Race Still Matters After All of These Years*, 38 ENVT'L. L. 371, 396 (2008); *The Segregation of Pollution*, THE BLACK SHEEP AGENCY (Feb. 18, 2022), https://theblacksheepagency.com/blog/the-segregation-of-pollution.

Furthermore, landfills and other LULUs continue to target low-wealth communities and communities of color for their operations.[51]

This discriminatory siting of LULUs has caused a litany of health issues for frontline communities. These LULUs expose frontline communities to higher levels of air pollutants, including nitrous oxides, sulfur dioxide, and fine particulate matter.[52] Frontline communities face higher rates of premature death and chronic disease as a result of this pollution exposure.[53] Power plants also dump more pollutants into U.S. waters than the next nine industries combined,[54] causing impacted communities to suffer through higher rates of neurological damage and cancer, amongst other devastating effects.[55] Further, the cumulative impacts from multiple LULUs create multiplicative health issues in communities, for which legal redressability is difficult due to the near impossibility of establishing causation from one LULU alone.[56]

Spot zoning, as a doctrine, aims to prevent inundation of these harmful industries within communities.[57] Spot zoning is typically defined as a rezoning that is environmentally detrimental to neighbors and contravenes the uniform zoning scheme around it.[58] Claims of spot zoning are therefore brought to counteract a rezoning that threatens a community of uniformly zoned properties. So, a single-family residential community may file a spot zoning claim to oppose a detrimental rezoning. These communities, though, are overwhelmingly whiter and wealthier.[59]

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51. Sharon Nunn, *Many Factors Contribute to Trend of Landfills in Low-Income Areas*, WRAL (May 18, 2017, at 12:44 PM), https://www.wral.com/story/many-factors-contribute-to-trend-of-landfills-in-low-income-areas/16709240.

52. Cushing, et al., *supra* note 48, at 52.

53. JAMES N. WEINSTEIN, ET AL., COMMUNITIES IN ACTION: PATHWAYS TO HEALTH EQUITY 59 (2017).

54. *Cleaning Up Power Plant Water Pollution*, EARTHJUSTICE (May 14, 2014), https://earthjustice.org/case/cleaning-up-power-plant-water-pollution.

55. Stacy Kika, *EPA Proposes to Reduce Toxic Pollutants Discharged into Waterways by Power Plants*, EPA (Apr. 19, 2019), https://www.epa.gov/archive/epapages/newsroom_archive/newsreleases/8f5ef6c6955f6d2085257b52006dd32f.html (finding that pollution from power plants also damages the circulatory system, kidneys, and liver).

56. CLIFFORD VILLA, ET AL., ENVIRONMENTAL JUSTICE: LAW, POLICY, AND REGULATION 113 (3d ed. 2020).

57. *See* SPOT ZONING, WEST VIRGINIA UNIV. SCH. OF L. (Spring 2020), https://landuse.law.wvu.edu/files/d/dc62345c-6cd8-4c00-a6a7-7581453a30fe/spot-zoning.pdf.

58. *See infra* Appendix (listing spot zoning criteria by state). Spot zoning is cemented in American jurisprudence, even dating back to the early 1900s. *See generally* Mueller v. C. Hoffmeister Undertaking & Livery Co., 343 Mo. 430 (1938) (holding that the reclassification from residential to commercial was unjustifiable).

59. *See* Lydia Lo, *Jurisdictions Dominated by Single-Family Zoning Hoard Opportunities, but Bans Aren't the Only Fix*, URBAN INST. (July 13, 2023), https://www.urban.org/urban-wire/jurisdictions-dominated-single-family-zoning-hoard-opportunities-bans-arent-only-fix.

On the other hand, low-income communities of color frequently contain multiple zoning designations.[60] As such, these frontline communities face greater obstacles from a detrimental rezoning through a spot zoning claim.[61] We therefore posit that spot zoning, as utilized today, shields these whiter, wealthier communities from the LULU siting that communities of color have had to endure for over a century in America. Our analysis of this claim follows.

II. Analysis

Our fundamental question was whether spot zoning, as a doctrine, currently allows privileged communities to shield themselves from LULUs in a way that other communities cannot. Answering this requires two separate analyses. Our preliminary question was whether spot zoning claims are typically brought to oppose environmentally harmful industries. After all, are these claims even brought to shield against LULUs? After this initial analysis, we needed to find the properties involved in these claims to identify demographic trends amongst the areas surrounding these disputed rezonings. To do so, we researched whether these claims are truly brought in more privileged areas to, in effect, push LULUs towards frontline communities. This Part begins by describing the methodologies used to investigate these questions. Then it discusses the results in detail, along with their associated implications.

A. Methodologies

To answer these questions, we combed through spot zoning cases electronically available via LexisNexis as of November 25, 2024.[62] We began by analyzing every electronically available spot zoning case to determine what percentage of these cases discuss LULUs. Once we determined that most spot zoning cases are indeed brought to fight LULUs, we closely examined geographic information from all spot zoning cases published between November 25, 2023, to November 25, 2024 to identify demographic trends. This Subpart expands upon these methodologies.

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60. *See* Jonathan Rothwell & Douglas S. Massey, *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, 44(6) URBAN AFF. REV. THOUSAND OAKS CAL. 1, 13 (2009), https://pmc.ncbi.nlm.nih.gov/articles/PMC4083588/pdf/nihms453809.pdf.

61. *Id.*

62. We utilized LexisNexis in our analysis based on its ability to sort through cases with complex search algorithms and its status as the legal case software with the greatest volume of caselaw. *See Top Six Reasons Small Law Firms Prefer Lexis+™ to Westlaw Edge*, LexisNexis (May 26, 2021), https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/top-six-reasons-small-law-firms-prefer-lexis-to-westlaw-edge.

1. Do most spot zoning cases involve local unwanted land uses?

To ascertain whether most spot zoning cases involve industries that harm nearby residents, we needed to assess the sheer volume of all spot zoning cases before narrowing the cases based on subject matter. While it was not feasible to systematically evaluate every spot zoning claim or every electronically available case that discussed a polluting industry, we were able to determine the proportion of spot zoning cases that address LULUs through effective LexisNexis search functions and evaluating trends in the results.

As one may expect, the most straightforward method of finding cases that engage with spot zoning in a preliminary search is by using "spot zoning" as search criteria, with quotation marks included to ensure the term is collectively mentioned in the case.[63] However, a small proportion of resulting cases simply mentioned "spot zoning" once or twice without truly evaluating a spot zoning claim.[64] Our initial piecemeal search revealed that cases with more frequent mentions of spot zoning are more likely to genuinely evaluate a spot zoning claim.[65] Cases that mentioned spot zoning once or twice were more likely to only briefly mention spot zoning in passing or in a footnote.[66] We were hesitant to include those cases in our analysis, at risk of skewing the results, but we did not want to eliminate genuine spot zoning cases from our evaluation; even cases that mention spot zoning once or twice usually engaged with a spot zoning claim.[67] Further, removing cases that only mention spot zoning once or twice eliminated half of the search results.[68]

Although tedious, we found it necessary to conduct our search with cases that mentioned spot zoning at least once, at least twice, and so on, until the results

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63. Using quotation marks allows the search engine to return any cases where spot zoning was mentioned collectively; cases that only mention the word "spot" or "zoning" without the two words grouped together in that order are therefore excluded from these results.

64. *See, e.g.*, Stucki v. Plavin, 291 A.2d 508 (Me. 1972) (mentioning spot zoning once in a case illustration without genuinely evaluating spot zoning itself); *see also* W. Old Town Neighborhood Ass'n v. City of Albuquerque, 122 N.M. 495, 503 (1996) (discussing spot zoning briefly in its conclusion, but declining to address the spot zoning arguments raised).

65. For an extreme example of this point, *see generally* Chrismon v. Guilford, Cnty., 322 N.C. 611 (1988). The North Carolina Supreme Court in *Chrismon* mentioned spot zoning over eighty times—the greatest amount of any case. The Court thoroughly evaluated this spot zoning claim against a rezoning that permitted chemical sales in a rural area. *Id.* Additionally, every case where spot zoning was mentioned more than seventy times heavily evaluated the doctrine. *See, e.g.*, Heard v. Cnty. Council of Prince George's Cnty., 260 Md. App. 417 (2024); Foothill Cmtys. Coal. v. Cnty. of Orange, 222 Cal.App.4th 1302 (2014); Atherton Dev. Co. v. Twp. of Ferguson, 29 A.3d 1197 (Pa. Commw. Ct. 2011).

66. *See, e.g.*, Binkowski v. Shelby, 46 Mich. App. 451, 469 (1973) (referring to a separate case's evaluation of spot zoning even though the parties in *Binkowski* did not bring a spot zoning claim).

67. *See, e.g.*, Save S. Park, Inc. v. Bd. of Cty. Comm'rs of the Cty. of Park, 2018 Colo. Dist. LEXIS 1263, at *7 (2018); Penning v. Owens, 340 Mich. 355, 367 (1954).

68. Approximately 2,600 cases returned on a basic LexisNexis search of "spot zoning," whereas searching ATLEAST2("spot zoning") and ATLEAST3("spot zoning") returned approximately 1,800 and 1,400 results, respectively. *See* Table 1.

were consistent regardless of the frequency of the term's appearance; Table 1 illustrates this point.[69] We have included the results of each of these analyses, as the consistency and trends validate our methodology and highlight key themes in spot zoning jurisprudence, although the proportions are admittedly more accurate as term incidence increases. Regardless, we were able to proceed with our qualitative analysis of cases to confidently assess whether most spot zoning cases involve LULUs.

Once we found the number of cases that involve spot zoning, we read countless cases to identify how to capture the proportion that involved LULUs. During our piecemeal evaluation, we found that spot zoning cases almost always discuss the substance of the industry being opposed. Specifically, spot zoning cases involving LULUs almost entirely discuss the details of the LULU itself (gas stations, facilities, quarries, etc.) or their associated externalities (emissions, pollution, waste, etc.). For instance, a spot zoning claim against a gas station would typically discuss the gas station and its associated harms.[70] In theory, we could evaluate what proportion of those spot zoning cases involve a LULU by using these LULU search criteria alongside our spot zoning search.[71]

To ensure the accuracy of these search criteria, we researched common LULUs, along with their externalities and other co-occurring terms. We sifted through articles on local unwanted land uses to ascertain the most common LULUs, along with their externalities, and included these results in our search criteria.[72] Depending on the locality, for example, even apartment complexes and hospitals could be seen as unwanted land uses to nearby neighbors; despite their potential lack of negative externalities, these land uses are speculated to depress neighboring property values.[73] After identifying a search term that captured LULU spot zoning cases, we combed through the results to ensure unrelated

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69. The search criteria "ATLEAST" allows this type of search. For instance, using the search term ATLEAST3("spot zoning") would return any cases that mention spot zoning at least three times.

70. *See, e.g.*, Freeman v. Yonkers, 205 Misc. 947, 955 (N.Y. 1954) (referring to the proposed project as both a "gas station" and a "gasoline service station," allowing our search terms to capture this spot zoning claim where a proposed gas station was alleged to effect nearby property values); Quick Chek Corp. v. Howell Twp. Zoning Bd. of Adjustment, 2014 N.J. Super. Unpub. LEXIS 2644 (2014) (involving a spot zoning dispute against a gas station where "spot zoning" and "gas station" were both mentioned numerous times).

71. The "AND" function in Lexis allows this type of search, wherein only cases mentioning both spot zoning and one of these LULU search terms would appear.

72. *See, e.g.*, Vicki Been, *What's Fairness Got to Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001 (1993), https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2495&context=clr; Emma Kaufman, *To License a LULU: Scaling Preemption-Driven Responses to the Regulation of Recovery Homes*, 135 HARV. L. REV. 733, 735 (2021), https://harvardlawreview.org/print/vol-135/a-license-a-lulu-scaling-preemption-driven-responses-to-the-regulation-of-recovery-homes.

73. *See* Yuqing Pan, *The Neighborhood Features That Drag Down Your Home Value—Ranked*, REALTOR.COM (Mar. 28, 2016), https://www.realtor.com/news/trends/things-that-affect-your-property-value/.

results were not accidentally included.[74] Ultimately, we identified seventeen search terms that would capture whether a case discussed a LULU or its externalities.[75]

2. Are most spot zoning cases brought in privileged communities?

Vital to our thesis is whether these spot zoning claims are truly brought to oppose rezonings in whiter, wealthier communities. To answer this question, we could not simply evaluate which courts spot zoning cases were brought to; the location of courts themselves does not reveal detailed information about where spot zoning, or alleged spot zoning, occurs. Courts serve a wide range of localities, so assessing demographic trends in these results would not be accurate. Additionally, the sheer volume of spot zoning claims per state is highly dependent on a state's spot zoning criteria—Connecticut, a relatively small state, has more than twice the amount of spot zoning cases as California. So, focusing on state courts would not reveal much information about the implications of these claims.

We therefore needed to evaluate individual cases to identify if these rezonings actually occur in traditionally whiter and wealthier communities. Because of the sheer amount of spot zoning cases in American jurisprudence, we needed a random sample (while excluding cases where exact location information was not mentioned). Conducting this search with a truly random sample of cases, however, presented one problem.

If we mapped a random sample of spot zoning claims brought throughout U.S. history, the results would not accurately identify meaningful demographic trends. Demographics change over time, so mapping a collection of rezonings, without closely examining the demographic shifts in each area and discussing the history and nuances of each community, would not accurately capture demographic trends. Accordingly, the most accurate way to assess whether spot zoning claims are brought in privileged communities, while utilizing a sample size with associated demographic data, is mapping the most recent spot zoning claims brought across the United States.[76] Because these claims were all brought

74. For example, using the search term "facility" and "facilities" (along with "spot zoning") captured cases that involve LULUs that impose externalities, and that communities overwhelmingly oppose. Ordinarily, the search term "facilit!" would capture both "facility" and "facilities," as the exclamation point in LexisNexis returns any case with a word that begins with the aforementioned letters (e.g., "facilit!" would return any cases that mention a facility or facilities). However, this search term has the unintended consequence of including cases that use the words "facilitate" or "facilitation." We opted for individually searching for "facility" and "facilities" as a result.

75. *See* Table 1.

76. We utilized 2020 Decennial Census data in this analysis. *See supra* note 62 and accompanying text. However, we opted not to analyze a 2020 sample of spot zoning claims due to unknown and varying jurisprudential impacts from the coronavirus. We believe this four-year difference from claim to census collection will not drastically alter the results, especially considering the drawn-out process of 2020 census data collection. *See 2020 Census Timeline of Important Milestones*, U.S.

around the same time, we could confidently map the rezonings with associated census data to assess demographic trends. The results of this analysis, and the qualitative analysis discussed above, are elaborated upon below.

We conducted a search in LexisNexis using the query AT LEAST3("spot zoning") to identify cases that substantially addressed spot zoning, rather than mentioning it incidentally.[77] The search covered the period from November 25, 2023, to November 25, 2024, to include cases from the previous year at the time of our research. This timeframe was chosen to ensure selected cases utilize current spot zoning criteria while maintaining a manageable scope of review and preventing postCOVID-19 pandemic effects on results.[78] Since LexisNexis lacks a feature to export search results directly into a spreadsheet, we manually extracted geographic information and conducted external research to determine the addresses of the cases. Once we removed any cases lacking sufficient geographic details, we were left with fifteen cases for analysis over the past year.

The geographic data for these fifteen cases were geocoded using MAPCITE in Excel. The resulting geocoded CSV file was then uploaded to ArcGIS Online as a layer, using the coordinates to map the case locations. To incorporate demographic and economic context, we added 2020 Decennial Census data on race, ethnicity, and median household income.[79] Additionally, we incorporated qualified low-income tract data, defining "low-income communities" as census tracts with median household incomes at or below 80 percent of the statewide median income. This approach helps localize income levels within the context of each state, providing a clearer picture of economic conditions specific to the areas involved in the cases. By layering this data, we visualized how race and income intersect with the geographic locations of the fifteen spot zoning cases from the past year that met our criteria.

CENSUS BUREAU, https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/timeline.html (last visited Jan. 18, 2025).

77. We found from our piecemeal searches, as well as our qualitative analysis for LULU cases, that cases mentioning spot zoning only once or twice often failed to genuinely engage with spot zoning claims, whereas cases mentioning spot zoning three times or more overwhelmingly engaged with an actual spot zoning claim. *See* Table 1.

78. Temporary changes in address noticeably altered during the pandemic as a large portion of the population temporarily moved home, thereby affecting the reliability of census demographic information at the time. *See* Riordan Frost, *Have More People Moved During the Pandemic?*, HARV. UNIV.: JOINT CTR. FOR HOUS. STUD. (Nov. 19, 2021), https://www.jchs.harvard.edu/blog/have-more-people-moved-during-pandemic. We additionally wanted to ensure the state-by-state response to pandemic case delays did not inadvertently include disproportionate levels of caselaw brought in jurisdictions better equipped to bounce back from pandemic effects. *See, e.g.*, *Court Operations and Pandemic Response–Annual Report 2020*, U.S. COURTS, https://www.uscourts.gov/data-news/reports/annual-reports/directors-annual-report/annual-report-2020/court-operations-and-pandemic-response-annual-report-2020 (last visited July 19, 2025).

79. *2020 Census Data*, https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census-results.html (last visited Jan. 18, 2025).

B. Results

1. The vast majority of spot zoning cases are brought against local unwanted land uses.

When analyzing our qualitative search results, we found overwhelming evidence that spot zoning cases are brought to oppose local unwanted land uses ("LULUs"). Of the 2,590 cases litigated in U.S. courts and electronically available via LexisNexis that mention spot zoning,[80] we estimate that 80 percent involve LULUs—an overwhelming percentage that we firmly believe is an underestimation, as shown in the results below.[81]

Table 1: LULU Term Frequency within Spot Zoning Cases, Compared by Incidence of the Term "Spot Zoning"

LULU Term	"Spot Zoning"	ATLEAST2 ("Spot Zoning")	ATLEAST3 ("Spot Zoning")	ATLEAST4 ("Spot Zoning")	ATLEAST5 ("Spot Zoning")
Hazard	7% (178)	7% (123)	7% (96)	7% (78)	7% (71)
Hazardous	4% (94)	4% (67)	4% (55)	4% (49)	4% (45)
Facility	19% (501)	20% (362)	21% (299)	22% (259)	23% (234)
Facilities	34% (873)	36% (636)	37% (515)	38% (445)	38% (395)
Gas Station	5% (123)	4% (79)	5% (69)	5% (63)	6% (59)
Gasoline	8% (209)	8% (139)	8% (107)	7% (86)	7% (76)
Industrial	34% (887)	37% (656)	38% (530)	40% (469)	40% (416)
Pollution	9% (245)	11% (192)	12% (165)	12% (142)	12% (122)
Waste	8% (202)	8% (146)	8% (115)	8% (100)	9% (88)

80. As of November 25, 2024. The actual number of spot zoning claims brought before U.S. courts is likely much higher, as settlements and lack of electronic availability excludes many results from our analysis. Additionally, the proportion of true spot zoning cases that involve LULUs is much higher, due to the plethora of cases discussing niche LULUs that were difficult to capture with search terms.

81. Many LULUs were not included in our search criteria and are therefore excluded from this number. For instance, cemeteries, hospitals, and airports are all overwhelmingly viewed as LULUs. However, they were excluded from our analysis based on the rarity of their siting. Individually, they were not significant enough to include. But, in the aggregate, these terms represent a larger share of spot zoning cases that involve uncommon LULUs.

Wastewater	2% (43)	2% (31)	2% (25)	2% (20)	2% (18)
Landfill	3% (67)	3% (46)	3% (37)	3% (33)	3% (29)
Disposal	7% (171)	6% (113)	7% (93)	6% (76)	6% (65)
Apartment	22% (558)	22% (388)	22% (313)	23% (267)	23% (234)
Hospital	8% (209)	8% (150)	9% (127)	9% (110)	10% (98)
Quarry	3% (89)	4% (67)	4% (56)	4% (51)	5% (47)
Concrete	10% (251)	9% (153)	8% (114)	8% (93)	8% (85)
Asphalt	3% (89)	4% (72)	4% (60)	4% (52)	4% (44)
Any LULU Term	74% (1928)	76% (1363)	78% (1093)	79% (933)	80% (818)
TOTAL	2590	1784	1405	1185	1028

Of the 2,590 cases that mention spot zoning at all, 7 percent (178) use the term hazard. Additionally, 9 percent (245) and 8 percent (209) of the cases involve pollution and gasoline, respectively and 5 percent (123) of the cases specifically mention a gas station. Quarries, asphalt plants, and landfills each comprise 3 percent (89, 89, and 67, respectively) of cases mentioning spot zoning. An overwhelming amount of these cases, 34 percent (873), mention facilities, and 34 percent (887) mention industrial operations. Although not traditionally considered environmentally polluting, 22 percent (558) of cases specifically mention an apartment and 8 percent (209) mention a hospital. Seventy-four percent (1,928) of these cases include at least one of these LULU terms. These percentages generally trend higher when limiting search results to cases that mention spot zoning more frequently, indicating the validity of our conclusion that spot zoning cases are indeed brought to oppose LULUs.

After evaluating a subset of these results to ensure they were accurate, we individually reviewed numerous cases that involve spot zoning but did not include our chosen LULU terms. Certain cases involve niche LULUs that our search did not capture, such as pawn shops,[82] liquor stores,[83] or shopping centers.[84] Others failed to disclose the subject matter of the proposed rezoning, so no LULU search terms could have captured whether they truly involved a

82. *See, e.g.*, Litton v. City of Phoenix, 2013 Ariz. App. Unpub. LEXIS 280 (Ct. App. Mar. 14, 2013).
83. *See, e.g.*, City of Montgomery v. D&L Enters., 308 So.3d 46 (Ala. Civ. App. 2019).
84. *See, e.g.*, King's Mill Homeowners Ass'n v. Westminster, 192 Colo. 305 (1976).

LULU.[85] Overall, however, our results instilled confidence that the vast majority of these cases involve local unwanted land uses. Again, we believe these estimations are conservative.[86]

2. The majority of spot zoning claims are brought to oppose rezonings in whiter, wealthier communities.

The analysis of cases within the last year reveals meaningful trends regarding their geographic and socioeconomic contexts. Out of fifteen recent cases, twelve (80 percent) occurred in census tracts with predominantly white populations, defined as a census tract where the percentage of white residents exceeds 50 percent.[87] The analysis of these spot zoning cases suggests these claims are more likely to be brought in whiter areas, further suggesting a connection between racial demographics and the prevalence of spot zoning cases.

Ten out of the fifteen cases (67 percent) occurred in census tracts that do not qualify as low-income.[88] According to Tax Code Section 45D(e) in the Internal Revenue Code, a census tract qualifies as low-income if the poverty rate is at least 20 percent, or the median family income does not exceed 80 percent of the statewide median family income—in metropolitan areas, metropolitan median family income can be substituted for statewide family median income.[89]

For example, *Lime Lounge, LLC v. City of Des Moines* was brought in a non-qualifying tract within Polk County, Iowa.[90] The spot zoning claim in question concerned a rezoning in a majority white census tract with a poverty rate of 11 percent and a median family income of $122,664, far exceeding the thresholds identified.[91] Another case, *Marsh Sanctuary, Inc. v. Town of Mount Kisco* in Westchester County, New York, concerned a rezoning where the census tract had a poverty rate of just 4.5 percent and a median family income of $149,904.[92]

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85. *See, e.g.*, Bobo v. Cherokee Cnty., 248 Ga. 554 (1981) (mentioning briefly a convenience store but otherwise neglecting to discuss the substance of the business allowed by the rezoning).

86. *See infra* note 67 and accompanying text.

87. *See* Table 2.

88. *Id.*

89. 26 U.S.C. § 45D(e)(1).

90. Lime Lounge, LLC v. City of Des Moines, 4 N.W.3d 642, 647 (Iowa 2024) (describing the exact location of the property at issue); American Community Survey 2016-2020 5-year Estimates, Census Tract 51.02, U.S. Census Bureau, https://www.arcgis.com/apps/mapviewer/index.html?url=https://services.arcgis.com/jIL9msH9OI208GCb/ArcGIS/rest/services/Low_Income_Tracts_ACS_2020/FeatureServer&source=sd (last visited Mar. 31, 2026). Census data accessed via ArcGIS layers.

91. Census Tract 51.02, supra note 90.

92. Marsh Sanctuary, Inc. v. Town of Mount Kisco, No. 60669/2020, 2023 N.Y. Misc. LEXIS 36678, at *2 (Westchester Cnty. Dec. 7, 2023) (describing the exact location of the property at issue); American Community Survey 2016-2020 5-year Estimates, Census Tract 130, U.S. Census Bureau, https://www.arcgis.com/apps/mapviewer/index.html?url=https://services.arcgis.com/jIL9msH9OI208

On the other hand, only five of the fifteen cases (33 percent) occurred in Census tracts qualifying as low-income. These include *TMS Enterprises v. City of Cleveland Board of Zoning Appeals*, in a Census tract with a poverty rate of 36.4 percent and a median family income of $38,750.[93] Another case, *29 E 29 St. Holdings, LLC v. City of Bayonne*, concerned a rezoning where the poverty rate was 30.7 percent and the median family income was $33,859.[94] While 33 percent of cases occurring in low-income communities may appear relatively high to some, the absolute number remains relatively low considering the disproportionate siting of environmentally harmful industries in low-income communities.[95]

The overrepresentation of predominantly white, higher-income census tracts in these spot zoning cases suggests that these disputes are less likely to occur—or less likely to be pursued through litigation—in low-income, racially diverse areas. This disparity raises important questions about systemic inequities in how land-use conflicts are initiated, addressed, and resolved, and the roles race and class play in these processes.

Table 2: Cases in the Last Year with Spot Zoning Claims (Organized by Date)

Case	**Date**	**Location**	**Percentage White (%)[96]**	**Median Family Income[97]**	**Population Below Poverty Level[98]**

GCb/ArcGIS/rest/services/Low_Income_Tracts_ACS_2020/FeatureServer&source=sd (last visited Mar. 31, 2026).

93. TMS Enters. v. Cleveland Bd. of Zoning Appeals, 2024-Ohio-1888, at *P1 (Oh. Ct. App. 8th Dist. 2024) (describing the exact location of the property at issue); American Community Survey 2016-2020 5-year Estimates, Census Tract 1219, U.S. Census Bureau, https://www.arcgis.com/apps/mapviewer/index.html?url=https://services.arcgis.com/jIL9msH9OI208 GCb/ArcGIS/rest/services/Low_Income_Tracts_ACS_2020/FeatureServer&source=sd (last visited Mar. 31, 2026).

94. 29 E 29 St. Holdings, LLC v. City of Bayonne, No. A-3316-21, 2024 WL 762248, at * 3 (N.J. Super. Ct. App. Div. Feb. 26, 2024) (describing the exact location of the property at issue); American Community Survey 2016-2020 5-year Estimates, Census Tract 107.02, U.S. Census Bureau https://www.arcgis.com/apps/mapviewer/index.html?url=https://services.arcgis.com/jIL9msH9OI208 GCb/ArcGIS/rest/services/Low_Income_Tracts_ACS_2020/FeatureServer&source=sd (last visited Mar. 31, 2026).

95. *See supra* notes 48-56 and accompanying text.

96. 2020 Decennial Census of Population and Housing, Decennial Census Data Products, U.S. Census Bureau, https://services.arcgis.com/P3ePLMYs2RVChkJx/arcgis/rest/services/USA _Census_2020_DHC_Race_and_Ethnicity/FeatureServer (last visited Mar. 31, 2026).

97. American Community Survey 2016-2020 5-year Estimates, U.S. Census Bureau accessed via https://services.arcgis.com/jIL9msH9OI208GCb/arcgis/rest/services/Low_Income_Tracts_ACS _2020/FeatureServer (last visited Mar. 31, 2026).

98. Id.

Chaffier v. Hellertown Borough Zoning Hearing Bd.[99]	1/9/2024	Census Tract 179.01, Northampton County, Pennsylvania	84.1%	$77,750	8.7%
Heard v. Cnty. Council of Prince George's Cnty.[100]	2/1/2024	Census Tract 8028.03, Prince George's County, Maryland	2.4%	$83,460	12.1%
Matter of 301 E. 66th St. Condominium Corp. v. City of New York[101]	2/5/2024	Census Tract 118, New York County, New York	79.8%	$250,000+	7%
Lime Lounge, LLC v. City of Des Moines[102]	2/19/2024	Census Tract 51.02, Polk County, Iowa	66%	$122,664	11%
29 E 29 St. Holdings, LLC v. City of Bayonne[103]	2/25/2024	Census Tract 107.02, Hudson County, New Jersey	45.1%	$33,859	30.7%
Lipton v. Twp. Council of Berkeley Twp.[104]	4/1/2024	Census Tract 7251, Ocean County, New Jersey	75%	$93,281	4.8%
Pyznar v. Plan. & Zoning Comm'n Town of Windsor Locks[105]	5/14/2024	Census Tract 4763 in Hartford County, Connecticut	72.6%	$90,917	9.3%
TMS Enters. v. City of Cleveland Bd. of Zoning Appeals[106]	5/15/2024	Census Tract 1219, Cuyahoga County, Ohio	2.1%	$38,750	36.4%

99. Chaffier v. Hellertown Borough Zoning Hearing Bd., 313 A.3d 471 (Pa. Commw. Ct. 2024).

100. Heard v. Cnty. Council of Prince George's Cnty., 260 Md. App. 417 (2024).

101. In re 301 E. 66th St. Condo. Corp. v. City of New York, 224 A.D.3d 423 (N.Y. App. Div. 2024).

102. Lime Lounge, LLC v. City of Des Moines, 4 N.W.3d 642 (Iowa 2024).

103. 29 E 29 St. Holdings, LLC v. City of Bayonne, No. A-3316-21, 2024 WL 762248 (N.J. Super. Ct. App. Div. Feb. 26, 2024).

104. Lipton v. Twp. Council of Berkeley Twp., No. A-2933-21, 2024 WL 1399412 (N.J. Super. Ct. App. Div. Apr. 2, 2024).

105. Pyznar v. Plan. & Zoning Comm'n Town of Windsor Locks, No: LND CV-22-6160413-S, 2024 Conn. Super. LEXIS 934 (May 15, 2024).

106. TMS Enters. v. Cleveland Bd. of Zoning Appeals, 2024-Ohio-1888 (Oh. Ct. App. 8th Dist. 2024).

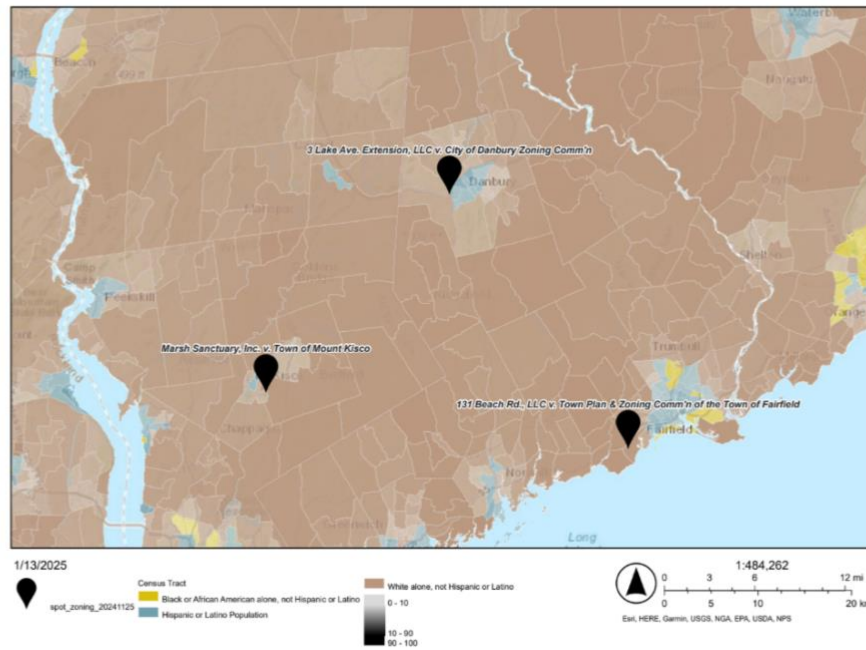
Robinson v. Linn Cnty. Bd. of Supervisors[107]	6/4/2024	Census Tract 1.03, Linn County, Iowa	84.2%	$77,206	32.9%
Jostock v. Mayfield Twp.[108]	6/30/2024	Census Tract 3335, Lapeer County, Michigan	90.8%	$66,542	9%
131 Beach Rd., LLC v. Town Plan & Zoning Comm'n of the Town of Fairfield[109]	7/10/2024	Census Tract 615, Fairfield County, Connecticut	83.7%	$192,639	7.4%
New Cingular Wireless P C S L L C v. City of Jennings La.[110]	10/15/2024	Census Tract 5, Jefferson Davis Parish, Louisiana	79.5%	$84,432	13.4%
Matter of Bennett v. Troy City Council[111]	10/23/2024	Census Tract 401, Rensselaer County, New York	61.7%	$44,917	28.6%
3 Lake Ave. Extension, LLC v. City of Danbury Zoning Comm'n[112]	11/30/2023	Census Tract 2108, Fairfield County, Connecticut	57%	$114,531	6.1%
Marsh Sanctuary, Inc. v. Town of Mount Kisco[113]	12/7/2023	Census Tract 130, Westchester County, New York	54.2%	$149,904	4.5%

For visual reference, we have depicted this graphical analysis through a series of maps below. The *3 Lake Ave Extension*,[114] *Marsh Sanctuary*,[115] and *131*

107. Robinson v. Linn Cty. Bd. of Supervisors, 10 N.W.3d 251 (Iowa Ct. App. 2024).
108. Jostock v. Mayfield Twp., 15 N.W.3d 552, 554 (Mich. 2024).
109. 131 Beach Rd., LLC v. Town Plan & Zoning Comm'n of Fairfield, 321 A.3d 382 (Conn. 2024).
110. New Cingular Wireless P C S L L C v. City of Jennings La., No. 2:23-CV-01769, 2024 U.S. Dist. LEXIS 188611 (W.D. La. Oct. 16, 2024).
111. *In re* Bennett v. Troy City Council, 219 N.Y.S.3d 800 (N.Y. App. Div. 2024).
112. 3 Lake Ave. Extension, LLC v. City of Danbury Zoning Comm'n, No. DBD CV-226041619-S, 2023 Conn. Super. LEXIS 3165 (Nov. 30, 2023).
113. Marsh Sanctuary, Inc. v. Town of Mount Kisco, No. 60669/2020, 2023 N.Y. Misc. LEXIS 36678 (Westchester Cnty. Dec. 7, 2023).
114. 2023 Conn. Super. LEXIS 3165.
115. No. 60669/2020, 2023 N.Y. Misc. LEXIS 36678 (Westchester Cnty. 2023).

Beach Road[116] cases were selected for closer analysis due to their geographic proximity, allowing for a focused comparison within the maps. This grouping provided the most cases situated near each other, making it practical to zoom in and highlight localized patterns of racial and income demographics.

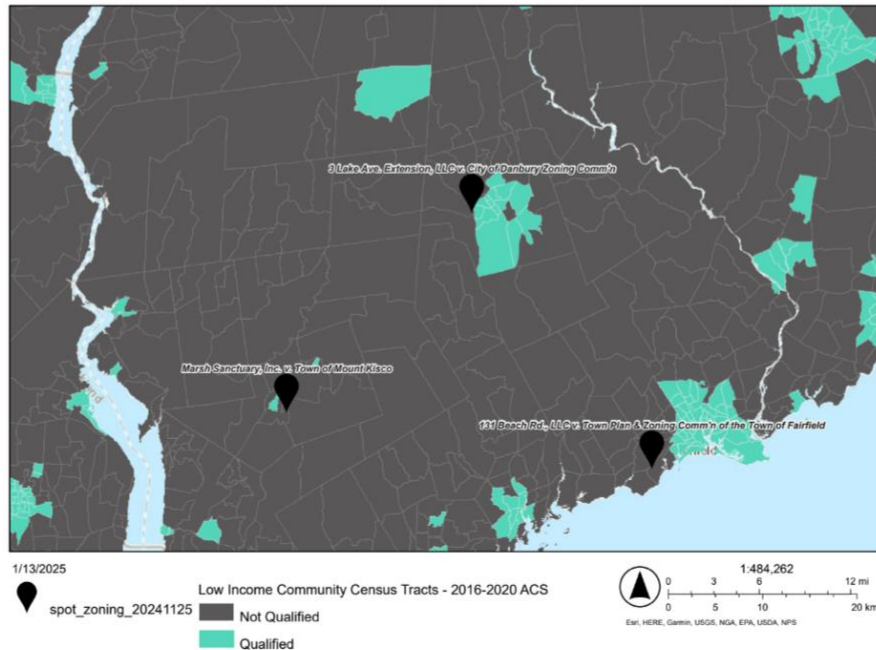
Map 1: Racial Predominance by Census Tract



Map 1 illustrates the racial composition of the census tracts where these three cases are located. Specifically, it shows the predominance of "White alone, not Hispanic or Latino" populations, marked in brown. Each of the three tracts falls within these predominantly white areas, reflecting the broader dataset trend that zoning disputes tend to occur in majority white communities.

Map 2: Low-Income Community Census Tracts

116. 321 A.3d 382 (Conn. 2024).



Map 2 focuses on whether the Census tracts containing these cases qualify as low-income communities based on Tax Code Section 45D(e) in the Internal Revenue Code.[117] Tracts that do not meet the low-income criteria are displayed in dark gray, as indicated in the legend. The tracts for all three cases are not classified as low-income communities, further illustrating the pattern that zoning disputes are concentrated in higher-income areas.

By zooming into these three cases, the maps visually reinforce key trends: Spot zoning disputes are disproportionately located in predominantly white and higher-income areas. The three cases mapped above are located close to low-income communities of color, though, and these communities may become targets of these LULUs if claims of spot zoning succeed. Overall, these patterns highlight how access to legal recourse in zoning matters may intersect with broader issues of racial and economic privilege.

III. Issues with Current Spot Zoning Criteria and Proposed Solutions

While spot zoning is generally understood as the rezoning of a small parcel in a way that is detrimental to neighbors and contrary to its surrounding zoning designations, courts vary state-to-state in the criteria they use to assess whether a rezoning constitutes spot zoning. We collected and analyzed the spot zoning

117. 26 U.S.C. § 45D(e)(1).

criteria from all fifty states to identify common trends in evaluation criteria.[118] Closer examination of these criteria aligned with our thesis—the application of the vast majority of these criteria has the potential to implicitly marginalize frontline communities if applied without necessary considerations of equity.

We expand upon the potential consequence of utilizing each criterion below to highlight the importance of evaluating spot zoning claims with a critical eye. We have identified four common spot zoning criteria and propose interpretations which are more protective of frontline communities. First, whether a parcel is "small" should be determined based on parcel sizes in the surrounding area. Second, application of the "uniform area" prong should be relaxed when appropriate. Third, the extent to which a rezoning aligns with a "Comprehensive Plan" depends on the contents thereof. Fourth, consideration of community input needs to holistically solicit and consider the opinions of everyone affected.

A. A "Small" Parcel of Land

First, spot zoning criteria commonly define spot zoning as involving one small parcel of land being rezoned.[119] However, one court's definition of "small" may not align with another's. Urban parcels of land are typically much smaller than rural parcels of land, and typical parcel size varies greatly by state.[120] One may expect that the rezoning of a sizeable parcel may nevertheless constitute spot zoning when surrounded by other large parcels in a rural community. This is not always the case.

Countless courts fail to view parcel size in the context of their surroundings, thereby failing to extend spot zoning protection to rural communities. In *Arcadia Development Co. v. City of Morgan Hill*, a California court declined to hold that the rezoning of a tract of land was spot zoning, stating "[t]he Arcadia property is not a small parcel. It is nearly 70 acres in size."[121] One Ninth Circuit case similarly held a seventeen-acre parcel of land couldn't fulfill the size requirement.[122] Both cases were brought in rural communities.[123]

Other courts, however, contextualize parcel size based on their surroundings, thereby protecting rural landowners from harmful neighboring land uses through spot zoning claims. In *Little v. Winborn*, the Iowa Supreme Court evaluated whether rezoning a 223-acre parcel of land for the construction

118. *See infra* Appendix. We limited our collection to fifty states, excluding the Virgin Islands, Puerto Rico, and the District of Columbia. Due to the limited number of cases involved in each jurisdiction, the proportions represented in Part II are not meaningfully affected by this exclusion. *Id.*

119. *Id.*

120. *See* Kaitlyn Pacheco, *The 2022 U.S. Lot Size Index*, ANGI (last updated Aug. 5, 2022), https://www.angi.com/articles/lot-size-index.htm (recognizing differing trends in lot sizes based on rural or urban designations by state).

121. Arcadia Dev. Co. v. City of Morgan Hill, 197 Cal. App. 4th 1526, 1537 (2011).

122. Kawaoka v. City of Arroyo Grande, 17 F.3d 1227, 1237 (9th Cir. 1994).

123. *See id.*; *Arcadia Dev. Co.*, 197 Cal. App. 4th at 1537.

and operation of a shooting gallery, which was surrounded by farmland, was indeed spot zoning.[124] The court held, despite the large parcel size, that the rezoning was indeed spot zoning because "the size of the tract is not very important" in rural spot zoning claims.[125]

Given the prevalence of Black land loss over the past century and its disturbing exacerbation through modern land use law and zoning practices, it is critical that special attention is paid to the parcel size prong of this analysis for spot zoning claims that implicate Black rural landowners. Black farmers owned up to sixteen million acres of farmland in 1910; today, Black farmers own approximately three million acres.[126] Predatory lending practices,[127] heirs property,[128] and other anti-Black governmental and societal actions have all contributed to this staggering and unjust deprivation of rural Black-owned farmland.[129]

This systemic marginalization of Black farm owners has important implications for these spot zoning considerations. The vast majority of rural farm owners are white,[130] and spot zoning, as discussed throughout this paper, has historically protected white communities from unwanted neighboring land uses.

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124. Little v. Winborn, 518 N.W.2d 384, 387 (Iowa 1994).

125. *Id.*; *see also* Chrobuck v. Snohomish Cnty., 480 P.2d 489, 871, 873 (Wash. 1971) (invalidating the rezoning of a 635-acre parcel of land).

126. *Black Land Loss in the United States*, FOODPRINT, (last updated Jul. 29, 2025) https://foodprint.org/issues/black-land-loss-in-the-united-states; Dania V. Francis et al., *The Contemporary Relevance of Black Land Loss*, A.B.A. (Jan. 6, 2023), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/wealth-disparities-in-civil-rights/the-contemporary-relevance-of-historic-black-land-loss.

127. *See, e.g.*, Pigford v. Glickman, 185 F.R.D. 82, 113 (D.D.C. 1999) (settling a discrimination claim brought by Black farm owners against the U.S. Department of Agriculture for discriminatory lending practices); Dan Grossman, *Black Farmers Say Discriminatory Practices by USDA have Pushed Many Out of Business*, DENVER7 (last updated Feb. 1, 2021), https://www.denver7.com/news/national/black-farmers-say-discriminatory-practices-by-usda-have-pushed-many-out-of-business (including a first-hand account of discrimination against Black farm owners).

128. Heirs' property is when land is passed through multiple generations of heirs intestate and, as a result, the land faces legal vulnerabilities that may be exploited by those hoping to acquire the land. *See* Lizzie Presser, *Kicked Off the Land: Why So Many Black Families are Losing Their Property*, LAND TR. ALL. (last updated Aug. 24, 2023), https://landtrustalliance.org/resources/learn/explore/kicked-off-the-land-why-so-many-black-families-are-losing-their-property (defining heirs' property and listing related resources for further information); *Heirs' Property*, U.S. DEP'T OF AGRIC. NAT'L AGRIC. LIBR. (Jan. 23, 2025), https://web.archive.org/web/20250123123252/https://www.nal.usda.gov/farms-and-agricultural-production-systems/heirs-property.

129. For a more thorough discussion of racist land use policies and practices that shape America's property landscape, *see generally* ROTHSTEIN, *supra* note 43 (detailing societal and governmental actions in America over the past century).

130. White people own an estimated 98 percent of rural land. Tom Philpott, *White People Own 98% of Rural Land. Young Black Farmers Want to Reclaim Their Share*, GRIST (June 30, 2020), https://grist.org/justice/white-people-own-98-of-rural-land-young-black-farmers-want-to-reclaim-their-share; Antonio Moore, *Who Owns Almost All America's Land?*, INEQUALITY.ORG (Feb. 15, 2016), https://inequality.org/article/owns-land.

Even governmental programs continue to favor white farm owners—nearly 97 percent of coronavirus pandemic farm bailout funds went to white farmers.[131] Judges and practitioners, when evaluating spot zoning claims in rural communities, should be cognizant of this history to prevent yet another land use legal doctrine from further benefitting white farm owners and not affording Black farm owners that same protection. In particular, judges in Southern states should carefully consider the nuances of this "size" analysis in Southern states where Black-operated farmland is most concentrated,[132] especially when evaluating rural spot zoning claims involving Black farm owners.[133]

Rural Black communities are already targets for polluting industries—pork and poultry production are overwhelmingly sited in communities of color where they heavily pollute surrounding communities.[134] As a result, these areas may not exist as small parcels of uniformly zoned land.[135] In this scenario, contextualizing parcel size and uniformity within its surroundings is paramount for the just consideration of a spot zoning claim. Without careful consideration of the nuances of land use decisions on Southern frontline communities, rote application of this size criterion threatens to inundate the limited population of Black farm owners with even more polluting industries, thus perpetuating America's history of unfair treatment of rural Black communities.

B. Contradicts a "Uniform" Zoning Scheme

Second, these claims overwhelmingly require the parcel's new zoning designation to differ from its *uniform* surroundings.[136] Such a requirement effectuates the term "spot zoning" itself as a visualization of a spot on a map. However, liberal construction of a uniformity requirement is critical to prevent frontline communities from being further inundated with harmful industries, as frontline communities are often speckled with a multitude of non-uniform zoning designations due to intrusive industries co-located with residential housing or

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131. Jared Hayes, *USDA Data: Nearly All Pandemic Bailout Funds Went to White Farmers*, ENVT'L WORKING GRP. (Feb. 18, 2021), https://www.ewg.org/news-insights/news/2021/02/usda-data-nearly-all-pandemic-bailout-funds-went-white-farmers.

132. Katherine Lacy & Clayton P. Winters-Michaud, *2022 Census of Agriculture: Black-Operated Farm Size Continues to Grow*, U.S. DEP'T OF AGRIC. (June 18, 2024), https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=109325.

133. *See, e.g.*, Jennifer Hunt Murty, *SORA and 11 Minority Farmers File Suit Against Marion County*, OCALA GAZETTE (Apr. 15, 2022), https://www.ocalagazette.com/sora-and-11-minority-farmers-file-suit-against-marion-county/.

134. *See, e.g.*, Jamie Berger, *How Black North Carolinians Pay the Price for the World's Cheap Bacon*, VOX (Apr. 1, 2022), https://www.vox.com/future-perfect/23003487/north-carolina-hog-pork-bacon-farms-environmental-racism-black-residents-pollution-meat-industry.

135. *See, e.g.*, CANYON CNTY. IDAHO CODE OF ORDINANCES § 08-01-11(1)(A)(1) ("The new CAFO shall be within an area zoned A (agricultural), M-1 (light industrial), M-2 (heavy industrial) or IP (industrial park), where appropriate.").

136. *See* Appendix.

rural farmland.[137] How strictly courts apply the uniformity requirement heavily depends on the state where the claim arises.

North Carolina, Illinois, and Georgia all explicitly state that a spot zoning plaintiff must demonstrate the rezoning occurred in an area zoned "uniformly," but these courts nevertheless apply this uniformity requirement differently. In *Musi v. Town of Shallotte*, the North Carolina Court of Appeals addressed plaintiff's claim that rezoning a small area for higher housing density was impermissible spot zoning.[138] Plaintiffs submitted a map showing the zoning designations of all properties within one mile of the proposed rezoning. This was to address the court's inquiry of whether the property was indeed "surrounded by a much larger area uniformly zoned," as required for spot zoning claims in North Carolina.[139] The map revealed consistent residential designations, along with a commercial waterfront designation for land abutting the nearby Shallotte River.[140] However, the court held that the variety of residential zoning designations within one mile of the rezoning, despite the uniform residential character, was not a large enough area to satisfy spot zoning's uniformity requirement.[141]

In Illinois, however, courts construe the uniformity requirement more broadly. In *Concerned Citizens for McHenry, Inc. v. McHenry*, undeveloped land on the east side of a highway was rezoned from a residential designation to a commercial designation.[142] Plaintiffs brought suit, claiming the rezoning was impermissible spot zoning.[143] It seemed on the surface that the uniformity requirement could not be met for this claim—the west side of the highway was primarily commercial properties, and the east side of the highway, where the rezoned property was located, was not totally uniform.[144] However, the Illinois court held that the rezoning was indeed spot zoning.[145] The court noted that a "highway may serve as a proper demarcation between residential and business uses," and although the area surrounding the property on the east side of the

137. *See, e.g.*, Paul Mohai, et al., *Racial and Socioeconomic Disparities in Residential Proximity to Polluting Industrial Facilities: Evidence from the Americans' Changing Lives Study*, 99 AM. J. PUB. HEALTH 649, 654 (2009) (establishing that whiter, wealthier, more educated communities are less likely to be located near industrial operations).

138. *See* Musi v. Town of Shallotte, 200 N.C. App. 379, 384 (2009).

139. *Id.*

140. *Id.* ("The map reveals that the one-mile area around the subject property includes several zoning categories, including Brunswick County R-6000 and R-7500, and Shallotte Town R-10, RA-15, and Commercial Waterfront.").

141. *Id.*

142. Concerned Citizens for McHenry, Inc. v. McHenry, 76 Ill. App. 3d 798, 799 (2d Dist. 1979).

143. *Id.* Specifically, the owners applied for rezoning from an R-3 Single Family (residential) District to a B-1 Commercial Retail District, with accompanying variation to allow the operation of an auto dealership. *Id.*

144. *Id.* at 804.

145. *Id.* at 806.

highway was not uniformly zoned, it was all residential in nature.[146] In this way, an area with different zoning designations, such as multi-family residential housing and single-family residential housing, could nevertheless fulfill the uniformity requirement.[147]

Strict application of the uniformity requirement prevents frontline communities that are subject to nearby commercial and industrial operations to utilize spot zoning claims. As previously discussed, the uniformity requirement signals that communities already inundated with harmful industries may not benefit from spot zoning claims. These frontline communities are more likely to contain industrial operations, which require different zoning designations.[148] This uniformity requirement therefore has broad-reaching implications for spot zoning claims, as reflected in our analysis.

States other than North Carolina, Illinois, and Georgia also apply this "uniformity" requirement, although the terminology varies.[149] For example, Hawaiʻi courts assess whether the new zoning classification is "different from and inconsistent with the classification of the surrounding area,"[150] and Delaware asks whether the parcel being rezoned has "a new rating that disturbs the tenor of the community."[151] Kentucky asks if the rezoning allows the "reclassification of a site for a use not consistent with the *character* of the neighborhood or area."[152] The vast majority of states, in effect, apply this uniformity requirement through different language.[153] But usage of this vague language can facilitate harmful land use by entrenching an unjust status quo as the definition.

Evaluating land use decisions based on "character of the neighborhood" risks reinforcing racist and classist ideologies. Coded language such as "neighborhood character" and "historic preservation" are often applied by whiter, wealthier communities to prevent multi-family housing development in majority-white single-family residential neighborhoods.[154] A near century ago, the Supreme Court even described apartment buildings as "parasite[s]" that

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146. *Id.* at 804-05 (deciding a spot zoning claim where the only deviation from the residential zoning in the area was a small animal hospital operating within a building that resembled a single-family home).

147. *Id.*; *see also* Bossman v. Vill. of Riverton, 291 Ill. App. 3d 769, 779 (1997) ("Defendants' argument that the surrounding uses are not uniform is without merit. Schools, churches, and home occupations are generally permitted in residential areas.").

148. *See* David Pace, *Minorities Suffer Most from Industrial Pollution*, NBC NEWS (Dec. 13, 2005), https://www.nbcnews.com/id/wbna10452037.

149. *See infra* Appendix.

150. *Id.*; Save Sunset Beach Coal. v. City & Cnty. of Honolulu, 78 P.3d 1, 9 (Haw. 2003).

151. *See infra* Appendix; McQuail v. Shell Oil Co., 183 A.2d 572, 579 (Del. 1962).

152. *See infra* Appendix; Wells v. Fiscal Ct. of Jefferson Cnty., 457 S.W.2d 498, 500 (Ky. Ct. App. 1970).

153. *See infra* Appendix.

154. Gretchen Brown, *How Discussions of 'Neighborhood Character' Reinforce Structural Racism*, TWIN CITIES PUB. TELEVISION (May 25, 2023), https://www.tpt.org/post/discussions-neighborhood-character-reinforce-structural-racism.

threaten to disrupt the character of single-family residential neighborhoods.[155] Proper evaluations of spot zoning claims should not apply language weaponized by homogenous white communities to maintain the status quo; otherwise, evaluations will become dependent on those communities' definitions of "neighborhood character." Instead, evaluation of spot zoning claims should consider a locality's history of discriminatory land use decisions to evaluate how the proposed rezoning affects its most marginalized citizens. Inundation of pollutants upon frontline communities, instead of mere visualization of a dot on a map, should guide spot zoning's uniformity analysis.

C. "Antithetical" to the Comprehensive Plan

A court may determine that a rezoning was in fact spot zoning, but nevertheless allow the spot zoning to proceed as "permissible spot zoning"; this practice strikes down arbitrary spot zoning decisions, but sometimes upholds a spot zoning decision if it was in accordance with a locality's Comprehensive Plan.[156] A Comprehensive Plan (Comp Plan) is created by a city or county to provide a vision for future land use throughout the locality. Typically, a locality will solicit feedback to incorporate community principles and ideals within this development blueprint.[157] In many states, these community blueprints have legal implications, especially where localities are required to make decisions in accordance with this Comp Plan.

In Vermont, spot zoning is defined as an ordinance that "singles out a small parcel or perhaps even a single lot for a use classification different from the surrounding area and inconsistent with any comprehensive plan . . . ."[158] In 2008, a group of Vermont landowners argued that an amendment to a local ordinance, which allowed greater residential property use in a residential area, was spot zoning.[159] The court disagreed for multiple reasons, noting that the amendment did not incite anomalous use, nor did it contravene the Comp Plan.[160] Because the Comp Plan's historic preservation section encouraged the transition away from nonconforming uses towards residential uses, the court determined the amendment "complied with the city's municipal plan by encouraging an increase in residential development through the adaptive reuse of existing structures and gradually reducing nonconforming uses in the city."[161] Herein lies one of the

155. Euclid v. Ambler Realty Co., 272 U.S. 365, 394 (1926).

156. *See, e.g.*, East Lands, Inc. v. Floyd Cnty., 262 S.E.2d 51, 53 (Ga. 1979) (internal citations omitted).

157. *See, e.g.*, Anne Darby, *Why is Comprehensive Planning Necessary for Communities?*, SUMMIT (2021), https://summitde.com/why-is-comprehensive-planning-necessary-for-communities ("The best plans are shaped with significant input from the community.").

158. Granger v. Town of Woodford, 708 A.2d 1345, 1346 (Vt. 1998).

159. In re Hartland Grp. N. Ave. Permit, 958 A.2d 685, 693 (Vt. 2008).

160. *Id.*

161. *Id.*

issues with using Comp Plans as spot zoning criteria—the priorities vary widely, as some localities may wholly prioritize development, while others promote conservation.[162] This disparity invites the opportunity for disparate legal conclusions when faced with similar situations, solely because of a planning document.

Ironically, the absence of a Comp Plan can incidentally lead to a pro-development spot zoning analysis. In *Watson v. Town Council of Bernalillo*, a New Mexico court grappled with how to evaluate a spot zoning claim where the locality in question, Bernalillo, did not have a Comp Plan.[163] The district court found, and the appellate court agreed, that Bernalillo's development ordinance, extraterritorial jurisdiction development plan, and a development statement collectively functioned as a Comp Plan for Bernalillo.[164] As such, the reviewing court held that rezoning to allow a manufacturing plant did not violate Bernalillo's "comprehensive plan," and was therefore not impermissible spot zoning.[165]

Many states do not require local governments to maintain Comp Plans, which has major implications for spot zoning analyses.[166] Developing a Comp Plan requires large temporal and pecuniary investments through hiring land use experts and soliciting community feedback.[167] As such, localities with lower populations and less budgetary freedom are less likely to maintain Comp Plans.[168] Thus, in a spot zoning analysis, a court asking whether the rezoning complied with a Comp Plan may instead construe multiple development ordinances as a functional Comp Plan when the locality lacks one. Comp Plans frequently highlight principles of sustainability and conservation to ensure development efforts do not destroy a locality's rural appeal.[169] For this reason, relying on development ordinances instead of Comp Plans may incidentally

162. *Compare* MARICOPA COUNTY, VISION 2030 COMPREHENSIVE PLAN (May 27, 2023), https://web.archive.org/web/20230527092653/https://www.maricopa.gov/DocumentCenter/View/6756/Comprehensive-Plan---Vision-2030-Plan-PDF, *with County-Level Connectivity Policy Examples,* CONSERVATION CORRIDOR (Nov. 30, 2022), https://conservationcorridor.org/digests/2022/11/county-level-connectivity-policy-examples.

163. Watson v. Town Council of Bernalillo, 1991-NMCA-009, ¶ 27, 111 N.M. 374, 380, 805 P.2d 641, 647 (N.M. Ct. App. 1991).

164. *Id.*

165. *Id.* at 648.

166. *2022 Survey of State Planning Laws*, AM. PLAN. ASS'N. (Sept. 26, 2022), https://storymaps.arcgis.com/stories/142eec1ae7fe42be915b6767ac811e40.

167. *Comprehensive Planning - Frequently Asked Questions*, WASH. CNTY. COUNCIL OF GOV'TS (Dec. 4, 2024), https://web.archive.org/web/20241204235927/https://wccog.net/frequently-asked-questions.htm.

168. *See, e.g.*, DAVID OWENS, LAND USE LAW IN NORTH CAROLINA 436 (4th ed. 2023).

169. David Rouse, *The Future of the Comprehensive Plan*, 5 J. COMPAR. L. & POL'Y 299, 301; *see, e.g.*, PERSON COUNTY, JOINT COMPREHENSIVE LAND USE PLAN 29-30 (2021), https://www.personcountync.gov/home/showpublisheddocument/15165/637738658003970000.

encourage development in communities that cannot afford to obtain a Comp Plan.

Relying on a Comp Plan for spot zoning evaluation is heavily reliant on the substance of each individual plan. Despite the community input often sought for Comp Plans,[170] Comp Plans often fail to offer a community vision that remediates a history of discriminatory land use decisions.[171] Equity-based Comp Plans that detail a locality's history of land use discrimination, however, provide a meaningful step forward.[172] "Minneapolis 2040: The City's Comprehensive Plan" details the pervasive inequalities caused by racist policies in Minneapolis and centers an equity-based plan to combat health and income disparities across Minneapolis.[173] In this way, equity-based comprehensive planning could provide a meaningful lens for the evaluation of spot zoning claims, therefore discouraging rezonings that build upon a legacy of discriminatory land use siting and instead remediating a history of land use discrimination.[174]

D. Detrimental to the "Community"

Crucial to most spot zoning inquiries is the degree of harm that the rezoning threatens to impose on the surrounding community.[175] The true definition of "community" and the benefits associated, however, are not immediately clear. Does the community include adjacent property owners? Property owners who live five miles away? The government? And who speaks for the community? Two North Carolina Supreme Court spot zoning cases offer some clarity on assessing community benefits and detriments.

In *Chrismon v. Guilford County.*, a locality rezoned a rural parcel of land to allow chemical storage and sales in an otherwise rural community; the spot

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170. CENTRE REGION COUNCIL OF GOVERNMENTS, MODULE 2: INTRODUCTION TO THE COMPREHENSIVE PLAN 11-12 https://www.crcog.net/vertical/Sites/%7B6AD7E2DC-ECE4-41CD-B8E1-BAC6A6336348%7D/uploads/Introduction_to_the_Comprehensive_Plan.pdf (last visited Jan. 13, 2026).

171. *But see* Anne Olson, *Equity-Based Comprehensive Plans: Land Use Policies to Correct Past Disparities*, PACE UNIV. (Sept. 16, 2021), https://pelr.blogs.pace.edu/2021/09/16/equity-based-comprehensive-plans-land-use-policies-to-correct-past-disparities (discussing Comp Plans that discuss their locality's history of discriminatory land use practices and policies).

172. *Id.*

173. *Welcome to Minneapolis 2040*: *The City's Comprehensive Plan*, MINNEAPOLIS 2040, https://minneapolis2040.com (last visited Jan. 13, 2026). For Minneapolis' healthy housing plan, see *Healthy Housing*, MINNEAPOLIS 2024, https://minneapolis2040.com/policies/healthy-housing (last visited Jan. 27, 2026). For Minneapolis' mixed income housing plan, *see Mixed Income Housing*, MINNEAPOLIS 2024, https://minneapolis2040.com/policies/mixed-income-housing (last visited Jan. 27, 2026).

174. *See* Craig Anthony Arnold, *Land Use Regulation and Environmental Justice*, 30 ENV'T L. REP. 10395, 10414 (2000).

175. *See, e.g.*, Save a Valuable Env't (SAVE) v. Bothell, 89 Wn.2d 862, 868-69 (Was. 1978); Bobo v. Cherokee County, 248 Ga. 554, 556 (1981); Sullivan v. Town of Acton, 38 Mass. App. Ct. 113, 116 (1995).

zoning challenge that followed, brought by adjacent property owners, reached the North Carolina Supreme Court.[176] Despite the negative externalities associated with chemical sales, these were agricultural chemicals that could be sold to nearby farmers.[177] As such, surrounding property owners widely supported the project, with only the immediately adjacent property owners who brought the suit opposing it.[178] The court noted that it was "beyond question that the plaintiff's in this case, the Chrismons, [had] simultaneously sustained a detriment."[179] But because the proposed rezoning met a community need, the court declined to hold this rezoning was impermissible spot zoning.[180]

Fifteen years later, a similar rezoning was struck down as spot zoning in the same court.[181] In *Good Neighbors of South Davidson v. Town of Denton*, the North Carolina Supreme Court assessed whether rezoning a parcel of rural land for Piedmont Chemical Industries' chemical operations imposed enough detriments on the surrounding community to constitute spot zoning.[182] Although the Town of Denton seemed to benefit from increased business operations, new jobs, and tax revenue, the scope of the Court's inquiry was limited to "examining the ordinance's beneficial and detrimental effects on the property owner, his neighbors, and the surrounding community."[183] Instead of focusing on government tax benefits, the court properly highlighted neighborhood concerns.[184] Neighbors of the proposed rezoning widely opposed the project, as they would not benefit from the industrial operations and nearby property values would not increase from the development.[185] Instead, the potential for noxious odors, water contamination, and other health consequences for the surrounding community were sufficient for the court to conclude the rezoning's detriments outweighed the benefits.[186]

The disparate legal conclusions reached in *Chrismon* and *Good Neighbors of South Davidson* highlight the critical importance of soliciting community input when assessing benefits and detriments for a spot zoning claim.[187] However, classic community input processes typically amplify the voices of the privileged while marginalizing voices of those who may not have the time,

176. 370 S.E.2d 579, 591-92 (N.C. 1988).
177. *Id.*
178. *Id.* at 582.
179. *Id.* at 590.
180. *Id.*
181. Good Neighbors of S. Davidson v. Town of Denton, 559 S.E.2d 768, 769 (N.C. 2002).
182. *Id.*
183. *Id.* at 772.
184. *Id.*
185. *Id.*
186. *Id.* at 772-73.
187. *See id.*

means, or access to attend community events.[188] In fact, one qualitative case study concluded that low-income "citizens need continued support for their own health(care) and financial situation, better communication and accessibility from services, practical support (e.g., training and bus passes) and recognition for their input (e.g., monetary compensation)" if local governments hope to solicit their input.[189] For example, Allegheny County, Pennsylvania, offers half-price Pittsburgh Regional Transit fares for low-income residents, therefore providing greater opportunities for civic engagement.[190] Improving accessibility for greater community input is critical for ensuring spot zoning analyses involve the opinions of a statistically representative cross-section of community members through meaningful and inclusive engagement.

CONCLUSION

The United States' discriminatory land use decisions created a landscape of polluting industries located within frontline communities, disproportionately harming low-income people of color. Spot zoning is designed to prevent land uses that act contrary to its surroundings, so the claim is often brought to prevent the co-location of these harmful industries within communities. One would expect, then, that spot zoning prevents harmful industries from being sited within frontline communities. Our research has proven the opposite—spot zoning primarily prevents these harmful industries from being placed in the middle of privileged communities, but the same relief is not offered to frontline communities.

For a litigant to bring a successful spot zoning claim, most states require that the litigant establish a list of criteria that inherently favor privileged communities. For example, a spot zoning requirement that the rezoning occur in an area that is uniformly zoned is seemingly harmless, but the United States' history of environmental racism has created a landscape of frontline communities inundated with local unwanted land uses whose zoning designations already contradict the zoning designations of their residential neighbors.[191] Even the Comp Plans that some states rely upon, intended to guide a locality's land use decisions moving forward, often fail to remedy this history of discriminatory land use planning.

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188. *See, e.g.*, *How the Typical Community Input Process Amplifies NIMBYism, and How We Can Fix It*, ABUNDANT HOUS. LA (Dec. 9, 2021), https://abundanthousingla.org/community-input-nimbyism.

189. Esther De Weger et al., *'They Need to Ask Me First'. Community Engagement with Low-Income Citizens. A Realist Qualitative Case-Study*, 25 HEALTH EXPECT. 684, 684 (2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC8957733.

190. *See Allegheny Go*, ALLEGHENY CNTY., https://discountedfares.alleghenycounty.us/ (last visited July 19, 2025).

191. *See infra* note 147 and accompanying text.

Privileged communities are more likely to meet the criteria of a spot zoning claim; thus, spot zoning as a doctrine protects privileged communities from polluting industries, and particularly from LULU inundation. Because LULUs have disproportionately imposed negative externalities such as air pollution, water pollution, and noise upon frontline communities throughout American history, a doctrine that protects LULUs from expanding into other, more privileged, areas is fundamentally unjust. Our qualitative analysis supports this theory; the vast majority of spot zoning cases involve environmentally polluting industries. Most others involve LULUs that nevertheless face community opposition and depress property values.

Finally, most spot zoning claims are currently brought to oppose LULU rezonings in privileged communities. Our analysis of the most recent spot zoning cases brought in U.S. courts shows that these cases overwhelmingly fight against rezonings surrounding privileged communities with uniform zoning schemes.[192] Effectively, spot zoning shields privileged communities from the LULUs that harm frontline communities, thereby perpetuating America's history of discriminatory land use practices.

However, elimination of spot zoning claims is not the answer. Spot zoning claims, at their best, prevent polluting industries from cropping up next to housing, where they harm the greatest number of people. Instead, judges and practitioners should carefully apply existing spot zoning criteria and view spot zoning claims in both historical and modern contexts, especially when engaging with spot zoning claims in frontline communities. This includes, but is not limited to, evaluating the LULU's externalities, the availability of less cumulatively impactful sites, the necessity of the project, and, most of all, the locality's history of land use discrimination. This Article does not seek to opine on the necessity of LULUs as a whole, nor does it aim to establish a framework for individual evaluation of LULUs. Instead, this Article urges legal practitioners to consider the methods in which existing land use jurisprudence reinforces disproportionate placement of LULUs in frontline communities. Without these considerations in mind, rote application of spot zoning criteria in American jurisprudence threatens to unfairly inundate frontline communities with the cumulative impacts of additional burdensome infrastructure.

Jurisprudential evaluation of spot zoning claims will not shift overnight because of this analysis or advocacy. However, recognition of the implicit bias behind spot zoning criteria and the ways in which the doctrine perpetuates America's history of discriminatory land use practices should encourage practitioners and judges to view spot zoning in context and even reform spot zoning criteria altogether. Recognition of the implicit bias behind this doctrine is both imperative and just.

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192. *See infra* Part II.B.2.

APPENDIX: SPOT ZONING CRITERIA BY STATE[193]

Alabama: "[S]pot zoning is arbitrary and capricious. Spot zoning occurs when municipal officials attempt to partially zone a municipality or zone by piecemeal. As stated above, [a]n arbitrary and capricious ordinance [will] be set aside [and] . . . any theory of spot zoning would have to give way to the larger principle. Alabama's rule limits spot zoning to cases where no comprehensive plan exists."[194]

Alaska: "We have stated that the classic definition of spot zoning is the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners. In *Griswold v. City of Homer*, this court stated that it would consider the following three factors in determining whether a zoning ordinance constituted unconstitutional spot zoning: (1) the consistency of the amendment with the comprehensive plan; (2) the benefits and detriments of the amendment to the owners, adjacent landowners, and community; and (3) the size of the area rezoned."[195]

Arizona: "Spot zoning is not per se invalid and validity turns on the circumstances of the particular situation. Courts have held that there is not illegal spot zoning when the zoning ordinance is in accordance with the general or comprehensive plan designed to promote general welfare."[196]

Arkansas: "Spot zoning, by definition, is invalid because it amounts to an arbitrary, capricious and unreasonable treatment of a limited area within a particular district. As such, it departs from the comprehensive treatment or privileges not in harmony with the other use classifications in the area and without any apparent circumstances which call for different treatment. Spot zoning almost invariably involves a single parcel or at least a limited area."[197]

California: "First, spot zoning may occur whether a small parcel of property is subject to *more or less restrictive* zoning than the surrounding properties. Second, to determine whether *impermissible* spot zoning has occurred, a court is required to conduct a two-part analysis. After determining

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193. Determining the controlling spot zoning criteria in any state depends on one's interpretation of the case law in the aggregate. This subjective analysis, however, contains inherent guideposts that aided in our analysis. We selected cases that succinctly state spot zoning criteria with sufficient citing references and little negative treatment, therefore indicating jurisprudential recognition of the accuracy therein. All internal quotation marks and citations have been omitted.

194. Town of Gurley v. M & N Materials, Inc., 143 So. 3d 1, 32 (Ala. 2012).

195. Balough v. Fairbanks N. Star Borough, 995 P.2d 245, 264 (Alaska 2000).

196. Haines v. Phoenix, 727 P.2d 339, 344 (Ariz. 1986).

197. Riddell v. Brinkley, 612 S.W.2d 116, 117 (Ark. 1981).

that spot zoning has actually occurred, the court must determine whether the record shows the spot zoning is in the public interest."[198]

Colorado: "In determining whether spot zoning is involved, the test is whether the change in question was made with the purpose of furthering a comprehensive zoning plan or designed merely to relieve a particular property from the restrictions of the zoning regulations."[199]

Connecticut: "[S]pot zoning is the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood. Spot zoning is often considered impermissible because it benefits an individual property owner at the expense of the community's interest in a harmonious, comprehensive zoning plan. But not always. If the zoning would serve the best interests of the community as a whole to permit a use of a single lot or small area in a different way than was allowed in [the] surrounding territory, [a commission] would not be guilty of spot zoning in any sense obnoxious to the law."[200]

Delaware: "Spot-zoning is generally defined as an attempt to wrench a small lot or a small area from its environment and give it a new rating that disturbs the tenor of the community."[201]

Dist. Of Columbia: "To constitute illegal spot zoning, the Commission's action (1) must pertain to a single parcel or a limited area—ordinarily for the benefit of a particular property owner or specially interested part—and (2) must be inconsistent with the city's comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulation, i.e., the public health, safety, and general welfare. Petitioners have the burden of showing that both prongs of the spot zoning test are met."[202]

Florida: "Spot zoning is the name given to the piecemeal rezoning of small parcels of land to a greater density, leading to disharmony with the surrounding area. Spot zoning is usually thought of as giving preferential treatment to one parcel at the expense of the zoning scheme as a whole. Moreover, the term is generally applied to the rezoning of only one or a few lots."[203]

Georgia: "'The term 'spot zoning' is used by the courts to describe a zoning amendment which is invalid because it is not in accordance with a comprehensive or well-considered plan. The uniform rule as set out in all of the

198. Foothill Cmntys. Coal. v. Cnty. of Orange, 222 Cal.App.4th 1302, 1307 (2014).
199. Clark v. Boulder, 146 Colo. 526, 531 (1961).
200. 131 Beach Rd., LLC v. Town Plan & Zoning Comm'n of Fairfield, 321 A.3d 382, 399 (Conn. 2024).
201. McQuail v. Shell Oil Co., 183 A.2d 572, 579 (Del. 1962).
202. Daro Realty, Inc. v. District of Columbia Zoning Comm'n, 581 A.2d 295, 299 (D.C. 1990).
203. Sw. Ranches Homeowners Ass'n v. Cnty. of Broward, 502 So. 2d 931, 935 (Fla. 1987).

cases is that consistency between the treatment accorded the parcel rezoned and the scheme of zoning set out in the general or comprehensive plan is the essential test."[204]

Hawai'i: "[A]n arbitrary zoning action by which a small area within a large area is singled out and specially zoned for a use classification different from and inconsistent with the classification of the surrounding area and not in accord with [a] comprehensive plan."[205]

Idaho: "There are two types of 'spot zoning.' Type one spot zoning may simply refer to a rezoning of property for a use prohibited by the original zoning classification. The test for whether such a zone reclassification is valid is whether the zone change is in accord with the comprehensive plan. Type two spot zoning refers to a zone change that singles out a parcel of land for use inconsistent with the permitted use in the rest of the zoning district for the benefit of an individual property owner. This latter type of spot zoning is invalid."[206]

Illinois: "Spot zoning is unlawful when the change violates a zoning pattern that is homogenous, compact, and uniform. However, not every reclassification of a single tract of land is void. The test for determining unlawful spot zoning is whether the change is in harmony with a comprehensive plan for use of property in the locality."[207]

Indiana: "Spot zoning is the singling out of one piece of property for a different treatment from that accorded to similar surrounding land which is indistinguishable from it in character, all for the economic benefit of the owner of the lot or area so singled out. Spot zoning is not illegal per se in Indiana. Rather, we must consider whether the zoning action bears a rational relation to the public health, safety, morals, convenience or general welfare."[208]

Iowa: "Spot zoning results when a zoning ordinance creates a small island of property with restrictions on its use different from those imposed on the surrounding property. Spot zoning is not automatically invalid. If it is germane to an object within the police power and there is a reasonable basis to treat the spot-zoned property differently from the surrounding property, the spot zoning is valid."[209]

Kansas: "Spot zoning generally refers to the singling out of a small parcel of land for use classified differently from the surrounding area, primarily for the

204. East Lands, Inc. v. Floyd Cnty., 262 S.E.2d 51, 53 (Ga. 1979).
205. Save Sunset Beach Coal. v. City & Cnty. of Honolulu, 78 P.3d 1, 9 (Haw. 2003).
206. Neighbors for the Pres. of the Big & Little Creek Cmty. v. Bd. of Cnty. Comm'rs, 358 P.3d 67, 74 (Idaho 2015).
207. Thornber v. Vill. of N. Barrington, 747 N.E.2d 513, 523 (Ill. App. Ct. 2001).
208. Scalambrino v. Town of Michiana Shores, 904 N.E.2d 673, 682 (Ind. Ct. App. 2009).
209. Little v. Winborn, 518 N.W.2d 384, 387 (Iowa 1994).

benefit of the owner of the property so zoned and to the detriment of the area and other owners therein. In such a case the zoning may be declared unreasonable and invalid."[210]

Kentucky: "The real evil of spot zoning consists in the reclassification of a site for a use not consistent with the character of the neighborhood or area."[211]

Louisiana: "Spot zoning is the singling out of a small parcel of land for a use classification which is different from that of the surrounding area, usually for the benefit of the owner of that parcel, or for the benefit of the owner of some other property in that area, and to the detriment of other owners. To constitute spot zoning there must be a change in the zoning classification applicable only to a relatively small area, and that change must be out of harmony with the comprehensive zoning plan for the community as a whole."[212]

Maine: "*Illegal* spot zoning is the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners."[213]

Maryland: "Spot zoning, the *arbitrary* and *unreasonable* devotion of a small area within a zoning district to a use which is inconsistent with the use to which the rest of the district is restricted, has appeared in many cities in America as the result of pressure put upon councilmen to pass amendments to zoning ordinances solely for the benefit of private interests. . . . It is, therefore, universally held that a 'spot zoning' ordinance, which *singles out a parcel of land within the limits of a use district and marks it off into a separate district* for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, *is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain*."[214]

Massachusetts: "Our definition of spot zoning is in accord with the general view held by most State courts that spot zoning problems arise where a zoning change is designed solely for the economic benefit of the owner of the property receiving special treatment and is not in accordance with a well considered plan for the public welfare."[215]

210. Weeks v. Bonner Springs, 518 P.2d 427, 435 (Kan. 1974).
211. Wells v. Fiscal Ct. of Jefferson Cnty., 457 S.W.2d 498, 500 (Ky. Ct. App. 1970).
212. Monte v. Parish of Jefferson, 04-1059 (La.App. 5 Cir. 02/15/05), 898 So. 2d 506, 511.
213. City of Old Town v. Dimoulas, 2002 ME 133, ¶ 20, 803 A.2d 1018, 1024.
214. Prince George's Cnty. Council v. Concerned Citizens of Prince George's Cnty., 300 A.3d 857, 898-99 (Md. 2023).
215. Bd. of Appeals v. Hous. Appeals Comm. in Dep't of Cmty. Affs., 294 N.E.2d 393, 410-11 (Mass. 1973).

Michigan: "Thus, a zoning ordinance or an amendment of a zoning ordinance to permit *piecemeal or haphazard* zoning is void, and so-called spot zoning, *where it is without a reasonable basis*, is invalid."[216]

Minnesota: "Spot zoning is a label applied to certain zoning amendments invalidated as legislative acts unsupported by any rational basis related to promoting public welfare. The term applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with surrounding uses and create an island of nonconforming use within a larger zoned district, and which dramatically reduce the value for uses specified in the zoning ordinance of either the rezoned plot or abutting property."[217]

Mississippi: "Spot zoning is defined as a small island of relatively intense use surrounded by a sea of less intense use."[218]

Missouri: "Spot zoning is a descriptive word used for [w]hen a zoning [decision] or an amendment puts a small area in a zone different from that of the surrounding area. The main question to ask is whether the rezoning was done for reasons other than the general welfare. If the rezoning is in harmony with the comprehensive zoning plan and is done for the public good—that is, to serve one or more of the purposes of the enabling statute, and so bears a substantial relationship to the public health, safety, morals and general welfare, it is valid."[219]

Montana: "Whether impermissible spot zoning has occurred presents a fact-specific inquiry that will vary from one case to the next. The presence of three conditions generally will indicate, however, that a given situation constitutes spot zoning, regardless of variations in factual scenarios. The first prong of the three-part *Little* test examines whether the requested use would differ significantly from the prevailing land uses in the area. The second prong explores whether the area requested for the rezone would be rather small in terms of the number of landowners benefitted by the requested zone change. Finally, the third prong analyzes whether the requested zone change would be in the nature of special legislation designed to benefit one or a few landowners at the expense of the surrounding landowners or the public."[220]

Nebraska: "Spot zoning generally refers to the singling out of a small parcel of land for a use or uses classified differently from the surrounding area, primarily for the benefit of the owner of the property so zoned and to the

216. City of Essexville v. Carrollton Concrete Mix, Inc., 673 N.W.2d 815, 823 (Mich. App. 2003).

217. Rochester Ass'n of Neighborhoods v. Rochester, 268 N.W.2d 885, 891 (Minn. 1978).

218. Keenum v. City of Moss Point, 2021-CA-01044-COA (¶ 11) (Miss. Ct. App. 2023).

219. State *ex rel.* Gilley v. Cty. Comm'n of Franklin Cnty., 611 S.W.3d 569, 576 (Mo. 2020).

220. Plains Grains Ltd. P'ship v. Bd. of Cnty. Comm'rs, 357 Mont. 61, 80, 238 P.3d 332, 345.

detriment of the area and other owners therein. The validity of spot zoning depends on more than the size of the spot, and spot zoning as such is not necessarily invalid, but its validity depends upon the facts and circumstances appearing in each particular case."[221]

Nevada: "The test of spot zoning is whether the amendment was made with the purpose of furthering a comprehensive zoning scheme or whether it was designed merely to relieve the land of a restriction which was particularly harsh upon that particular land."[222]

New Hampshire: "[W]hether an area has been singled out for treatment different from that of similar surrounding land which cannot be justified on the bases of health, safety, morals or general welfare of the community and which is not in accordance with a comprehensive plan."[223]

New Jersey: "The test is whether the zoning change in question is made with the purpose or effect of establishing or furthering a comprehensive zoning scheme calculated to achieve the statutory objectives or whether it is designed merely to relieve the lot of the burden of the restriction of the general regulation by reason of conditions alleged to cause such regulation to bear with particular harshness upon it."[224]

New Mexico: "The term 'spot zoning' refers to the rezoning of a small parcel of land to permit a use that fails to comply with a comprehensive plan or is inconsistent with the surrounding area, grants a discriminatory benefit to the parcel owner, and/or harms neighboring properties or the community welfare."[225]

New York: "[T]he real test for spot zoning is whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community."[226]

North Carolina: "A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the small tract greater restrictions than those imposed upon the larger area, or so as to relieve

221. Smith v. City of Papillion, 705 N.W.2d 584, 598-99 (Neb. 2005).
222. McKenzie v. Shelly, 362 P.2d 268, 270-71 (Nev. 1961).
223. Portsmouth Advocs. v. Portsmouth, 587 A.2d 600, 602 (N.H. 1991).
224. Riya Finnegan LLC v. Twp. Council of Twp. of S. Brunswick, 962 A.2d 484, 491 (N.J. 2008).
225. Bennett v. City Council for the City of Las Cruces, 1999-NMCA-015, ¶ 18, 126 N.M. 619, 623-24, 973 P.2d 871, 875-76.
226. Collard v. Flower Hill, 421 N.E.2d 818, 821 (N.Y. 1981).

the small tract from restrictions to which the rest of the area is subjected, is called 'spot zoning.'"[227]

North Dakota: "1) The use is different from the prevailing use of the area; 2) the area rezoned is small, and; 3) the classification benefits a particular landowner."[228]

Ohio: "Spot zoning refers to the singling out of a lot or a small area for discriminatory or different treatment from that accorded surrounding land which is similar in character."[229]

Oklahoma: "[A] tract, usually small in relative size, in an area having a use pattern inconsistent with the small tract, thus projecting an inharmonious land use pattern."[230]

Oregon: "Accordingly, courts generally view spot zoning as being outside the presumption of legislative regularity, and require substantial evidence of change in the neighborhood in order to justify the rezoning of a small tract as an amendment in keeping with the comprehensive plan."[231]

Pennsylvania: "Generally speaking, spot zoning is the arbitrary and unreasonable classification and zoning of *a small parcel of land.* This small parcel of land is usually set apart or carved out of a surrounding or a large neighboring tract, with no reasonable justification for the differential zoning."[232]

Rhode Island: "The fact that a small portion of land is involved in a legislative action does not make it ipso facto illegal spot zoning. The crucial test for determining if an amendment to a zoning ordinance constitutes illegal spot zoning depends upon whether its enactment violates a municipality's comprehensive plan."[233]

South Carolina: "Traditional spot zoning occurs when a small parcel of land is singled out for a use classification different from that of the surrounding area, for the benefit of the parcel's owner(s) and to the detriment of others."[234]

South Dakota: "Spot zoning is what results when a zoning ordinance creates a small island of property with restrictions on its use different from those imposed on the surrounding property."[235]

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227. Chrismon v. Guilford Cnty., 322 N.C. 611, 627 (1988).
228. Dockter v. Burleigh Cnty. Bd. of Cnty. Comm'rs, 2015 ND 183, ¶ 10, 865 N.W.2d 836, 841.
229. Eckert v. Warren Cnty. Rural Bd. of Zoning Appeals, 2018-Ohio-4384, at ¶ 59.
230. City of Tulsa v. Mobley, 1969 OK 85, ¶ 17, 454 P.2d 901, 904.
231. Smith v. Cnty. of Wash., 406 P.2d 545, 547 (Or. 1965).
232. Cleaver v. Bd. of Adjustment, 200 A.2d 408, 415 (Pa. 1964).
233. Carpionato v. Town Council of N. Providence, 244 A.2d 861, 863 (R.I. 1968).
234. Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals, 440 S.C. 266, 281 (2023).
235. Schrank v. Pennington Cnty. Bd. of Comm'rs, 2000 S.D. 62, ¶ 11, 610 N.W.2d 90, 93.

Tennessee: "The law is well settled that spot zoning, as properly known and understood, and spot zoning ordinances, as properly identified, are invalid on the general ground that they do not bear a substantial relationship to the public health, safety, morals and general welfare and are out of harmony and in conflict with the comprehensive zoning ordinance of the particular municipality."[236]

Texas: "The term, spot zoning, is used in Texas and most states to connote an unacceptable amendatory ordinance that singles out a small tract for treatment that differs from that accorded similar surrounding land without proof of changes in conditions."[237]

Utah: "Under Utah's jurisprudence, spot zoning occurs when a municipality either grants a special privilege or imposes a restriction on a particular small property that is not otherwise granted or imposed on surrounding properties in the larger area."[238]

Vermont: "Spot zoning consists of zoning that singles out a small parcel or perhaps even a single lot for a use classification different from the surrounding area and inconsistent with any comprehensive plan, for the benefit of the owner of such property."[239]

Virginia: "If the purpose of a zoning ordinance is solely to serve the private interests of one or more landowners, the ordinance represents an arbitrary and capricious exercise of legislative power, constituting illegal spot zoning; but if the legislative purpose is to further the welfare of the entire county or city as a part of an overall zoning plan, the ordinance does not constitute illegal spot zoning even though private interests are simultaneously benefited."[240]

Washington: "Spot zoning has come to mean arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole."[241]

West Virginia: "Rezoning would have resulted in a commercial island in a residential neighborhood."[242]

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236. Fallin v. Knox Cnty. Bd. of Comm'rs, 656 S.W.2d 338, 343 (Tenn. 1983).
237. Pharr v. Tippitt, 616 S.W.2d 173, 177 (Tex. 1981).
238. Tolman v. Logan City, 2007 UT App 260, ¶ 15, 167 P.3d 489, 494.
239. Granger v. Town of Woodford, 708 A.2d 1345, 1346 (Vt. 1998).
240. Barrick v. Bd. of Supervisors, 391 S.E.2d 318, 320 (Va. 1990).
241. Smith v. Skagit Cnty., 453 P.2d 832, 848 (Wash. 1969).
242. *City of Morgantown v. Calvary Baptist Church*, 849 S.E.2d 150, 161 (W. Va. 2020).

Wisconsin: "Spot zoning, when defined as the practice whereby a single lot or area is granted privileges which are not granted or extended to other land in the vicinity in the same use district."[243]

Wyoming: "Technically, spot zoning occurs when a particular piece of land [is zoned] without regard for the zoning of the larger area surrounding the land."[244]

243. Cushman v. Racine, 159 N.W.2d 67, 69 (Wis. 1968).

244. Laughter v. Bd. of Cnty. Comm'rs, 2005 WY 54 ¶ 41 n.15, 110 P.3d 875, 887 n.15 (Wyo. 2005).

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