

1983 WL 181789 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 10, 1983

*1 Thomas B. Roper, Esquire
Mack, Mack, Grant & Roper
Post Office Box 901
Rock Hill, South Carolina 29731

Dear Mr. Roper:

I am in receipt of your letter in which you requested that I review my opinion of December 3, 1982, regarding an application for re-zoning in Rock Hill. You have requested this review because your reading of [Penny v. City of Durham, 249 N.C. 596, 107 S.E. 2d 72 \(1959\)](#) and [Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E. 2d 352 \(1971\)](#) indicates to you that those statutes authorized a one hundred foot buffer zone and therefore differs from your local ordinance.

My reading of the statute and the case differs from your interpretation. The statute provides that:

. . . a protest . . . signed by the owners of twenty percent or more . . . of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots . . . [Heaton, supra](#), at 361.

The Court cited the intent of the Legislature in passing this Act by citing Section two of that Act which provided:

It is the purpose and intent of this act to extend the protest provision of G.S. 160-176 to the owners of twenty percent or more of each of the areas of the lots on either side of and extending one hundred feet from any area included in proposed changes or amendments of municipal zoning changes. [Heaton, supra](#), at 362.

My reading of the case is that the one hundred feet is the maximum measurement of property owners 'immediately adjacent' or 'directly opposite.' For example, if a lot is directly across the street from the property to be rezoned, it and property beside it, extending a distance of one hundred feet in either direction would be deemed land 'directly opposite.'

My interpretation, I believe, is substantiated by the fact the last part of the opinion concerns whether or not creating a buffer zone represents an attempt to circumvent the law by creating an area that thereby purposefully keeps other property from being 'directly across,' or 'immediately adjacent thereto.'

Further, even if this interpretation of the case and statute would be incorrect, [Heaton](#) quotes the Law of Zoning and Planning, Rathkopf, Vol. 1, Chapter 28, Section 28-10 for the following proposition:

* * * [W]here an applicant for a zoning change seeks to avoid the necessity of a larger than majority vote by creating a buffer zone of 100 feet between that portion of his property sought to be rezoned and the lands of adjacent property owners, such action is valid and avoids the requirement of such larger vote. [Heaton, supra](#), at 365.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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