

**ATTACHMENT A**

**A RESOLUTION ACCEPTING THE RECOMMENDATION OF THE B-1(F)  
SUBCOMMITTEE RECOMMENDATIONS REGARDING ESTABLISHING A  
LIVABILITY PROVISION REQUIREMENT FOR RESIDENTIAL DEVELOPMENTS  
IN DOWNTOWN ZONING DISTRICTS**

**Resolution No. 165/2004-05**

WHEREAS, the Board of Aldermen established a subcommittee to review open space requirements for residential projects in downtown Carrboro, and;

WHEREAS, the subcommittee has completed its review and recommends the establishment of a “livability provision” requirement as an alternative to open space for residential developments in downtown zoning districts.

NOW, THEREFORE BE IT RESOLVED, that the Board of Aldermen accepts this information and refers the proposal to the Planning Board, Environmental Advisory Board, Downtown Development Commission, and staff for evaluation.

The following resolution was introduced by Alderman Joal Hall Broun and duly seconded by Alderman Alex Zaffron.

**A RESOLUTION MAKING APPOINTMENTS AND ESTABLISHING A  
CHARGE FOR THE DOWNTOWN COMMERCIAL-RESIDENTIAL  
INTERFACE SUBCOMMITTEE  
Resolution No. 195/2003-04**

WHEREAS, the Board of Aldermen authorized creation of a subcommittee to review and make recommendations on rezoning alternatives at the interface between residential and commercial zoning districts in downtown Carrboro, and

WHEREAS, the Board determined that the committee would consist of two members of the Board of Aldermen, three citizens, two members of the Planning Board and two members of the Downtown Development Commission; and

WHEREAS, the Board of Aldermen, Planning Board, and DDC have identified prospective members and two applications have been received for citizen members.

NOW, THEREFORE, THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO RESOLVES:

Section 1. The following individuals are hereby appointed to the Downtown Commercial-Residential Interface Subcommittee:

Board of Aldermen	Jacquelyn Gist Alex Zaffron
Citizens	Michelle Rivest Blan Holman
Planning Board	James Carnahan David Clinton
Downtown Development Commission	Nathan Milian James Morgan

Section 2. The charge of the subcommittee shall be as follows:

1. To consider the draft ordinance establishing the B-1(f) zone and make recommendations regarding placement, and
2. To consider the draft ordinance establishing the CORE overlay district and make recommendations regarding placement, and
3. To review the matter of open space requirements in downtown residential development and make recommendations regarding its continued use.

**ATTACHMENT B-1**

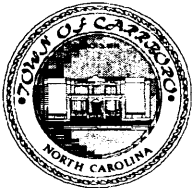
**Section 3. This resolution shall become effective upon adoption.**

**The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 22nd day of June, 2004:**

**Ayes: Joal Hall Broun, Mark Chilton, Jacquelyn Gist, John Herrera, Michael Nelson,  
Alex Zaffron**

**Noes: None**

**Absent or Excused: Diana McDuffee**



B-1(f) and Overlay District Subcommittee  
TOWN OF CARRBORO  
RECOMMENDATION STATEMENT  
05/04/2005

WEDNESDAY, MAY 4, 2005

**LIVABILITY PROVISION FOR DOWNTOWN COMMERCIAL AREAS**

MOTION WAS MADE BY NATHAN MILIAN AND SECONDED BY BLAN HOLMAN THAT THE B-1(F) REVIEW SUBCOMMITTEE RECOMMENDS THAT THE BOARD OF ALDERMEN ACCEPT THE RECOMMENDATIONS OUTLINED BELOW:

The Committee recommends the 40 percent open space requirements for residential projects in downtown zones be repealed and replaced with a **Livability Provision** for any projects in the downtown having a residential component.

We believe, however, that some sort of contribution to the public realm by downtown residential projects, analogous in spirit to the 40 percent Open Space requirement, would serve the public health, safety, and welfare. We propose that residential developments in the Downtown commercial zones be required to make a contribution to the livability of the downtown by the provision of public space and/or amenities that enhance the downtown experience. This provision would serve some or all of the following important objectives, to the benefit of both residents of the Downtown and the general public who come there to work, shop, dine or enjoy the recreational opportunities available:

- 1) It can help to relieve the pressures of the busy, high-density built environment.
- 2) It can help reduce the "heat island" effect in an area of considerable paved surface.
- 3) It can provide relief from the press of multi-floor buildings against the pedestrian realm.
- 4) It can provide gathering space that will facilitate various kinds of social activity and help to build a greater sense of community.
- 5) It can provide habitat for wildlife in the Downtown.
- 6) It can help to manage storm water in the Downtown.
- 7) It can provide opportunities for artistic expression that enrich the physical fabric of the Downtown

The committee proposes two types of Livability Provision that can be provided by a project, **Outdoor Civic Space**, and/or **Civic Amenities**, examples of which are listed below.

The committee has not quantified how the scope of the provision would be determined, only that it should be in proportion to the size of the property and/or proposed project. We suggest the format for such quantification could be similar to the point system used for the Town's Recreation Space requirement. Amenities may be located off-site, but must be located somewhere else in the downtown commercial districts.

Listed below are *examples* of both kinds of provision. The list is not intended to be either fully prescriptive or proscriptive but to illustrate a broad range of possibilities. An applicant could satisfy the requirement with one or with a combination of features. This ordinance should be written to allow

latitude in how the objectives listed above are satisfied, and to give both Staff and the Board of Aldermen guidance in determining that proposed civic space or amenities meet one or more of the objectives.

### **Outdoor Civic Space**

The following are examples of Outdoor Civic Space.

- 1) Outdoor public space where people can enter, sit, interact, play, or engage in an activity, such as playing music, dancing, playing chess, climbing, etc. This space can include:
  - a. pocket parks & mini-plazas (these may be thought of as "outdoor rooms")
  - b. courtyards, mews and atriums
  - c. space under a street-side colonnade
  - d. sidewalk width in excess of the 10' downtown standard; sidewalk dining space; stairs wide enough that people can sit & socialize without impeding circulation.
  - e. sanctuary or meditation grotto
  - f. a memorial area
  - g. seating niches included within a building's contours

This space must be accessible both to residents of the project and to the public as well, and must be universally accessible from the street or sidewalk.

- 2) Bike and/or pedestrian link to town parks or path systems.
- 3) Pedestrian Alleys that link other paths of travel.
- 4) Urban Community Gardens – a group of small plots that may be gardened by individuals.
- 5) Urban Natural Areas designed to attract & sustain wildlife, such as a butterfly garden or bird feeding/roosting area.

### **Civic Amenities**

The following are examples of Civic Amenities that could be provided by a project separately or in the context of a Civic Space. They should be accessible to the public as well as to residents of a project.

- 1) Water feature (reflecting pool, fountain, etc) with appropriate seating.
- 2) Free-standing work of art, or artwork incorporated into the building, that is accessible to the public.
- 3) Recycled architectural elements incorporated into a building façade.
- 4) Planting beds or wells for street trees, and living trees maintained within them.
- 5) Historic feature, marker or memorial piece, such as a plaque or other form of remembrance.
- 6) Play equipment for children.
- 7) Climbing wall.
- 8) Furniture for seating, playing games, dining, changing of diapers, etc.
- 9) Arbors, pergolas and trellis for live plants.
- 10) A green roof of a minimum percentage of a project's size, maintained in healthy condition, could also satisfy this requirement.

Vote: AYES (8) (Carnahan, Clinton, Gist, Holman, Milian, Morgan, Rivest, Zaffron); NOES: (0); Abstentions: (0)



B-1f Subcommittee Chair

June 7, 2005  
Date

**Excerpt of Land Use Ordinance**

**Section 15-198      Open Space. (AMENDED 04/24/84; 03/26/85; 12/10/85; 11/11/86; REWRITTEN 06/27/95)**

(a) The Board finds that when land is developed for residential purposes, the public health, safety, and welfare are best served when substantial portions of the tracts so developed remain as common open space. The preservation of such open space areas serves the following important objectives, to the benefit of the residents of such developments as well as the general public:

- (1) Preservation of open vistas, providing relief from an urban landscape;
- (2) Preservation of environmentally sensitive lands;
- (3) Preservation of habitat for wildlife;
- (4) Preservation of historically or archaeologically significant areas;
- (5) Provision of areas for passive recreation, such as walking or jogging.

(b) For purposes of this section:

- (1) Open space refers to an area that:
  - a. Is not encumbered with any substantial structure;
  - b. Is not devoted to use as a roadway, parking area, or sidewalk;
  - c. Is not part of any privately owned lot that is used or intended for use for residential purposes.
  - d. Is legally and practicably accessible to the general public or to the residents of the development where the open space is located.
- (2) Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:

## ATTACHMENT D-2

- a. Are at least 50 feet in width and capable of functioning as a substantial visual buffer; or
  - b. Are configured and/or improved (e.g. through the installation of trails) in such a way as to be conducive to actual use for passive recreational purposes (i.e. walking or jogging) by residents of the development where located.
- (3) The following areas shall be regarded as open space if such areas satisfy at least the criteria set forth in Subdivision (1) a, b, and c of subsection (b) of this section:
- a. Utility easements located outside of street rights of way;
  - b. Cemeteries located on a tract prior to its development.
  - c. Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the control of a homeowners association and such uses are approved by the homeowners association. **(AMENDED 05/25/99)**
- (4) The term “primary conservation areas” shall mean: **(AMENDED 05/25/99)**
- a. Areas containing slopes greater than 25%
  - b. Hardwood areas identified on the Carrboro Natural Constraints Map
  - c. Wetlands as defined pursuant to Section 404 of the Clean Water Act
  - d. Floodplains
  - e. With respect to streams designated on the adopted Stream Classification Map of Carrboro, those areas within an average perpendicular distance of sixty feet from the edge of the floodway of the stream, if the floodway is designated on the “Flood Boundary and Flood Map” prepared by the U.S. Department of Housing and Urban Development, or sixty feet from the centerline of the stream where the floodway is not designated on this map.
  - f. Lakes and ponds;

- g. Road buffers as required by Section 15-312 of this Chapter, except for those portions of the buffers that must be included in road or utility crossings.

(5) The term “secondary conservation areas” shall mean: **(AMENDED 05/25/99)**

- a. Areas containing slopes greater than 15% but not more than 25%;
- b. Wooded areas other than hardwood areas identified on the Carrboro Natural Constraints Map;
- c. Vistas along entranceways to the town;
- d. Other areas containing unusual natural features (such as major rock formations);
- f. Other environmentally, historically or archaeologically significant or unique areas.

(c) Except as otherwise provided in subsection (j) and Section 15-203, every residential development in zoning districts other than the R-2 district shall be developed so that at least forty percent (40%) of the total area of the development remains permanently as open space. Every residential development in the R-2 district shall be developed so that at least twenty percent (20%) of the total area of the development remains permanently as open space. **(AMENDED 09/05/95)**

(d) Subject to subsection (g), every residential development containing at least 25 lots or dwelling units shall contain, as part of its required open space, one or more areas that are relatively flat, well drained, grassed, and otherwise well suited for use as a play field:

- (1) Each such area shall contain a minimum of 20,000 square feet configured in such a manner as to be useful as a play field.
- (2) Every development covered by this subsection shall set aside in one or more play fields meeting the criteria of this subsection a minimum of 400 square feet of area per lot or dwelling unit within the development.
- (3) Play fields provided under this section shall be located with due regard for the safety and convenience of those using such facilities as well as the welfare of residents living nearby. The play fields required by this subsection shall be located such that 90% of the lots or dwelling units within any development that is required to



install such play field are within 1,500 feet of a play field installed to meet the requirements of this subsection, unless the developer demonstrates by clear and convincing evidence that adherence to this requirement would not be feasible.

- (4) Play fields constructed to meet the requirements of this subsection may be used by the developer to satisfy the active recreational requirements set forth in Section 15-196 as well as the open space requirements of this section. However, the recreation points assigned to such play fields shall be based upon the actual cost of constructing such play fields, exclusive of land costs.

**(AMENDED 05/25/99)**

(e) Subject to subsection (g), if a tract where a residential development is proposed contains any areas defined above as primary conservation areas, then such areas shall be designated as open space. **(AMENDED 05/25/99)**

(f) **RESERVED (AMENDED 05/25/99)**

(g) A developer shall not be required to set aside as open space under the provisions of subsections (d) and (e) more than the minimum required percentage of open space set forth in subsection (c). If the sum total of open space otherwise required under the provisions of subsections (d) and (e) exceeds forty percent of the development tract (twenty percent in the R-2 district), then the permit issuing authority shall allow the developer to set aside a smaller area of open space under subsections (d) and (e), individually or collectively, so that the developer is not required to preserve as open space more than forty percent of the development tract (twenty percent in the R-2 district). However, if areas that constitute primary conservation areas have not been set aside as open space, then the development plans shall otherwise provide for the preservation of such areas even though they may be located within privately owned lots (e.g. by specifying buildable areas within individual lots). Notwithstanding the foregoing, hardwood areas identified on the Carrboro Natural Constraints Map that are not set aside as common open space shall be preserved except to the extent that removal of such hardwood trees is necessary to accommodate the permitted uses created out of land not set aside as common open space. **(AMENDED 09/05/95; 05/25/99)**

(h) If the area of open space required to be preserved under subsections (d) and (e) does not exceed forty percent (40%) of the area of the development tract (20% in the R-2 district), then the permit issuing authority may require that the developer set aside from among the areas that constitute secondary conservation areas as defined above an amount of open space equal to the difference between the amount of open space preserved under subsections (d) and (e) and forty percent (40%) of the development tract (20% in the R-2 district). **(AMENDED 09/05/95; 05/25/99)**

(i) Except as otherwise set forth in this section, the choice as to the areas to be set aside as open space shall remain with the developer.

(j) Subdivided residential developments of less than fifteen dwelling units are exempt from the requirements of this section unless the town agrees that it will accept an offer of dedication of such open space, and in that case the offer of dedication shall be made. Subdivided residential developments exempted by this subsection from the requirement of providing usable open space shall be required to make a payment in lieu thereof to the town's open space and recreational facilities fund in accordance with Section 15-203 if the town determines that it will be possible to provide usable open space areas that are reasonably expected to benefit or serve the residents of such developments. For purposes of this subsection, the term "developments" shall have the same meaning as is set forth in subsection 15-196(d)(3).

(k) Residential developments consisting solely of multi-family, single-room occupancy units (1.340) shall be exempt from the requirements of this section. (AMENDED 01/11/00)

**Section 15-199 Ownership and Maintenance of Recreational Facilities and Open Space Not Dedicated to the Town. (REWRITTEN 06/27/95)**

(a) Unless the town requires that recreational facilities or open space be dedicated to the town or agrees to accept an offer of dedication voluntarily made by the developer, such recreational facilities and open space shall remain under the ownership and control of the developer (or his successor) or a homeowners' association or similar organization that satisfies the criteria established in Section 15-201. If such recreational facilities and open space are not publicly dedicated, they shall be made available to all residents of the development under reasonable rules and regulations established to encourage and govern the use of such facilities and open space by the residents without payment of separate optional fees or charges other than membership fees in a homeowners' association. Such facilities and open space may be made available to a limited extent on a fee basis to persons who are not residents of the development where such facilities or open space are located, so long as such use does not become so extensive as to remove the facilities and open space from the category of an accessory use to a residential development and transform the use to a separate principal use classification (see use classification 6.000) under the Table of Permissible Uses.

(b) The person or entity identified in subsection (a) as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

**Section 15-200 Dedication of Open Space. (AMENDED 11/26/85; REWRITTEN 06/27/95; REPEALED 09/05/95)**

**Section 15-201 Homeowners' Association. (AMENDED 11/26/85)**

Homeowners' associations or similar legal entities that, pursuant to Section 15-199, are responsible for the maintenance and control of common areas, including recreational facilities and open space, shall be established in such a manner that:

- (1) Provisions for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
- (2) The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;
- (3) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities; and
- (4) The association will establish a capital fund for the maintenance and upkeep of common areas and facilities and a method of contributing to that fund which will spread the costs of said maintenance and upkeep to the residents over a number of years. **(AMENDED 11/26/85)**

**Section 15-202 Flexibility in Administration Authorized.**

(a) The requirements set forth in this article concerning the amount, size, location and nature of recreational facilities and open space to be provided in connection with residential developments are established by the Board as standards that presumptively will result in the provision of that amount of recreational facilities and open space that is consistent with officially adopted town plans. The Board recognizes, however, that due to the particular nature of a tract of land, or the nature of the facilities proposed for installation, or other factors, the underlying objectives of this article may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the permit issuing body is authorized to permit minor deviations from these standards whenever it determines that: (i) the objectives underlying these standards can be met without strict adherence to them; and (ii) because of peculiarities in the developer's tract of land or the facilities proposed it would be unreasonable to require strict adherence to these standards.

(b) Whenever the permit issuing board authorizes some deviation from the standards set forth in this article pursuant to subsection (a), the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

**Section 15-203 Fees in Lieu of Active Recreational Areas and Facilities or Usable Open Space.**

(a) When the permit-issuing authority determines (upon the recommendation of the recreation director) that the recreational needs of a development required by Section 15-196 to construct active recreational areas and facilities could also be adequately met by facilities constructed on town property that is located close enough to such development to reasonably serve its residents, the town may authorize the developer to pay a fee to the town's open space and recreational facilities fund in lieu of providing on-site facilities. For purposes of this subsection, "town property" means property that is owned by the town or that the town has made plans to acquire within a reasonable time. **(AMENDED 2/20/90)**

(b) With respect to residential developments that are exempt from the requirement of providing on-site active recreational areas and facilities under Subsection 15-196(d) or exempt from the requirement of providing usable open space under Subsection 15-198(j) and that choose not to provide such facilities or open space, the town shall accept and the developer shall pay a fee to the town's open space and recreational facilities fund if the permit-issuing authority determines that the town has acquired or has made plans to acquire within a reasonable time the necessary land to provide usable open space or a site for recreational facilities that can be expected to benefit or serve such developments.

(c) The minimum amount of the fee paid under this section in lieu of active recreational areas and facilities shall be determined by multiplying the amount of recreation points that would otherwise be required of the development under Section 15-196 by the dollar value per point established in the town's miscellaneous fees and charges schedule. However, nothing herein shall prevent a developer from paying a fee that exceeds the minimum fee established pursuant to this subsection, and the town's willingness to allow a payment of fees in lieu of on-site provisions of facilities or open space under subsection (a) may depend upon the developer's agreement to pay fees in excess of the minimum.

(d) The minimum amount of the fee paid under this section in lieu of usable open space shall be determined by multiplying the square footage of open space that would otherwise be required of the development under Subsection 15-198(c) by the dollar value per square foot established in the town's miscellaneous fees and charges schedule.

(e) With respect to any development that is authorized or required by this section to pay a fee in lieu of providing recreational facilities or usable open space, no use may be commenced, lot sold, or building occupied unless the fee has been paid. If a development is intended to be sold or occupied on a phase-by-phase basis, payment of the fee relating to each phase must first be made.

**Sections 15-204 through 15-209 Reserved.**

Mayor Nelson & Board of Aldermen:

Next week you will be having a work session on a “Livability Provision” that has been drafted to replace the Open Space requirement for residential development in Downtown commercial zones.

Originally, this work session was scheduled to occur the same night as your discussion about architectural design, and there are indeed overlapping issues. I am writing to suggest that, as you look at this proposal the “B1F” committee has prepared, consider it in light of the concerns raised in your April 5 discussion.

The committee considered at some length a motion to apply this Livability requirement across the board to *all* development in Downtown commercial zones. While there was strong support for such application the motion was finally tabled as being beyond the committee’s charge.

I believe there are strong reasons to apply the Livability Provision to all new projects in Downtown Commercial zones. I think this proposal goes a long way to addressing the concerns that were raised at your April 5<sup>th</sup> work session about design in the downtown and I encourage you to expand the scope of the proposal.

It is a challenge to write ordinance describing how a building should look when we want to ensure we get original, authentic outcomes that respond to current needs and contexts. Some communities, including Chapel Hill, have experimented with design codes that require a particular architectural style be incorporated. The outcome is often nostalgic and looks phoney. The skills required to produce traditional looking buildings with traditional materials are no longer common and come at a price. Many new building materials and technologies are available; many of these have sustainability benefits, but cannot necessarily be organized into what we might think of as traditional looking structures.

But we can say a lot about how a building performs, how it responds to the public context. A building’s “program” is driven mostly by the primary function the owner has in mind. “Retail at the ground floor,” “second floor offices,” and “residence in the upper floors” are all “programmatic” considerations. How customers, clients, and residents access the building are as well.

The program is the full set of instructions to the designer; the “Livability Provision” adds an additional set of performance instructions to a building’s design program.

The original Open Space set aside asks residential projects to serve the “public realm,” to make a contribution to public health, safety and welfare by keeping a quantity of land undeveloped. The set-aside is impractical in already-developed areas such as the Downtown, but the *principle*, the idea that development projects must be responsible not only to their particular clients but to the larger community, is embodied in the B1F committee’s proposal, in an analogous form.

I think that this is a compelling and appropriate principle to apply all building projects in the Downtown for the reasons expressed in the “whereas” clauses below.

**Motion to apply the proposed "Downtown Residential Livability Provision" to all projects in Downtown Carrboro:**

**Whereas public comment preceding and following the increase in building heights in Downtown Carrboro indicates many citizens are apprehensive about the outcome of this significant change and wish that further direction be provided by our Land Use Ordinance for development in the downtown;**

**Whereas the very small, intimate scale of the Downtown is particularly vulnerable to the impact of new projects;**

**Whereas the quality of development in our area over the past few decades has been very uneven;**

**Whereas the Conditional Use permitting language contained in the new building height ordinance does not provide sufficient direction to staff, applicants or the Board of Aldermen as to how to conserve the good qualities of the downtown;**

**Whereas we believe the proposed "Downtown Residential Livability Provision" would give better guidance to Staff, applicants and the Board as to how the community expects new projects to respond to the desire to retain and enhance community character;**

**Whereas we believe the proposed "Downtown Residential Livability Provision" contains a variety of programmatic elements that can shape a project in a way that enhances the public experience of new buildings without undue burden on developers;**

**Whereas we believe that the requirement of this kind of civic contribution to the public realm will result in greater public comfort with and support for the significant changes in the fabric of the downtown that will result from the increase in building heights;**

**Therefore Be It Resolved: This committee recommends that the Board of Aldermen extend the "Downtown Residential Livability Provision" requirement to all projects in the Downtown.**

I don't believe this would be a "burden" on developers as was suggested by a member of the B1f committee when we discussed this motion. It is a challenge to designers to shape and detail a building with the general public in mind as well as the clients. There are serious, legitimate concerns about how our Downtown gets shaped, given the very uneven, to say the least, quality of commercial development throughout our region over the past 30 years.

Having granted greater utility in the use of downtown property by raising building heights, the Town is entitled to ask something in return: that developers' projects respond to the public realm and to our desire for an *enduring* ambience in the physical fabric of the downtown that maintains and enhances the qualities that now make it so attractive and supportive of our sense of community.

James Carnahan  
122 Oak St  
Carrboro  
*B1F committee member; Chairman of the Planning Board*  
June 9, 2005