

# **ADVISORY NEIGHBORHOOD COMMISSION 1C**

## **Adams Morgan**

### **Minutes of September 3, 2003 Meeting**

A scheduled meeting of Advisory Neighborhood Commission 1C was held on Wednesday September 3, 2003 at the Third District Police Headquarters. ANC1C Chairman Alan Roth called the meeting to order at 7:08 p.m. Approximately 20 members of the public attended.

Attending were Commissioners Alan Roth (1C01), Nik Apostolides (1C02), Bryan Weaver (1C03), Mindy Moretti (1C04), Ken Levy (1C05), Josh Gibson (1C07), and Jeff Coudriet (1C08).

### **SECRETARY'S REPORT**

Commissioner Moretti, secretary, distributed copies of the Minutes from the July 29 meeting and moved their approval. The motion was seconded and approved by voice vote.

### **TREASURER'S REPORT**

Commissioner Levy, treasurer reported a bank balance of \$62,031.48 as of Sept. 3. Commissioner Levy noted that the balance reflected the quarterly allotment from the District government as well as expenditures of \$1,000 each for grants to Jubilee Housing and the Sitar Center.

Commissioner Levy also moved for the approval of the third quarter report (*see end of Minutes*). The motion was seconded and approved by voice vote.

### **PUBLIC COMMENTS**

Commissioner Roth opened the floor to members of the community. Jeff Countryman with the Key Bridge Foundation discussed the mediation services offered by his organization.

### **COMMITTEE REPORTS**

#### **ABC & Public Safety**

Commissioner Moretti offered a status report on the renewal process for Timerhi Inc. (*see additional information in New Business*).

Lt. Gottert provided the most recent criminal statistics for the neighborhood and noted that while theft from auto had gone down, it was still high. He also noted that burglaries are way down, which most likely coincides with a recent arrest.

### **Planning, Zoning and Transportation**

Commissioner Gibson announced that the PZT Committee will next meet on Sept. 17 at 7:30 p.m. at the Third District Police Headquarters.

### **Public Services**

Commissioner Apostolides reported that the Committee did not meet in August because it had no business before it. The next meeting of the Public Services Committee will be Sept. 29 at 7:30 p.m. at the Kalorama Recreation Center.

## **UNFINISHED BUSINESS**

Commissioner Coudriet gave an update on the status of neighborhood negotiations with the Meridian International Center and Walnut Street Developers. Commissioner Coudriet then offered a resolution in support of the proposed modifications of conditions:

### ***Resolution in Support of Meridian International Center for “Modification of Conditions in BZA Order No. 5802***

*WHEREAS, the Board of Zoning Adjustment (BZA) is considering a request from the Meridian International Center for a modifications of conditions in BZA Order No. 5802, which was adopted by the Board on February 24, 1960, and which is formally referred to as Case No. 17070; and*

*WHEREAS, pursuant to previous resolutions adopted by Advisory Neighborhood Commission 1C, on July 2, 2003, and July 29, 2002, urging the continuance of this matter to a later date in order for the ANC, and the neighborhood, to negotiate Memoranda of Understanding with both the Meridian International Center and the prospective developer, Walnut Street, to address neighborhood concerns over the potential impact on the character of the neighborhood of this modification; and*

*WHEREAS, representatives of the ANC, the neighborhood, Meridian International Center, and Walnut Street have met repeatedly throughout the summer and engaged in a dialogue to address neighborhood concerns over the size and scope of the project, the availability of parking for future residents of the project, as well as for the patrons and guests of the Meridian International Center, and the environmental impact of the project; and*

*WHEREAS, that dialogue has resulted in two Memoranda of Understanding addressing these concerns;*

*NOW, THEREFORE, BE IT RESOLVED, THAT Advisory Neighborhood Commission 1C approves the Memoranda of Understanding as a signatory, and indicates its support for the application of the Meridian International Center for the modification of conditions of BZA Order No. 5802, and designates Commissioner Jeff Coudriet, in whose single member district the property resides, as the Commission’s representative to the Board on this matter.*

The resolution was seconded and discussed. Commissioner Coudriet provided two MOU's between the community and Meridian International and Walnut Creek (*see end of Minutes*). The resolution was approved by roll call vote:

YEA: Roth, Apostolides, Weaver, Moretti, Levy, Gibson, Coudriet  
NAY: None

## **NEW BUSINESS**

Commissioner Apostolides gave an update on the status of the construction at 1949/1953 Biltmore. He noted that he was in contact with HPRB. Commissioner Apostolides then offered a resolution to delay consideration of the plans for 1949/1953 Biltmore:

***Resolution Requesting DC Historic Preservation and Review Board of Postponement of Approval/Consideration of Modification at Both 1949 and 1953 Biltmore Street, NW.***

*WHEREAS, the DC Historic Preservation Review Board (HPRB) has informed ANC 1C of its intention to include modifications to 1949 and/or 1953 Biltmore Street NW on its calendar for its September 25, 2003, meeting,*

*WHEREAS, ANC 1C has not received copies of the revised plans for 1953 Biltmore Street NW, which ANC 1C is informed were submitted to the HPRB itself only earlier today,*

*WHEREAS, the ANC 1C previously voted unanimously to adopt a resolution that opposed "now and in the future any and all applications for historic preservation approval and permit applications for 1949 Biltmore Street N.W., until all exterior construction, renovation, and restoration is completed at 1953 Biltmore Street N.W., including approval of plans by the Historic Preservation Review Board and granting of the appropriate permits by the District of Columbia,"*

*NOW, THEREFORE, BE IT RESOLVED, THAT Advisory Neighborhood Commission 1C urges the HPRB to postpone consideration of this matter until at least its October meeting and to reject any proposed exterior modifications to both 1949 and 1953 Biltmore Street NW until the ANC has had a reasonable opportunity to obtain, review, and comment on such plans.*

The resolution was seconded, discussed and approved by roll call vote:

YEA: Roth, Apostolides, Weaver, Moretti, Levy, Gibson, Coudriet  
NAY: None

Commissioner Gibson offered two resolutions en bloc. One resolution would name a previously unnamed portion of road adjacent to the Marie Reed Learning Center, and the other would support installing a memorial plaque at the U St./Cardozo/African-American Civil War Memorial Metro station:

***Resolution Regarding the Naming of "Old Morgan School Way"***

*WHEREAS, to the south of the Marie H. Reed Community Learning Center building lies a street with no name; and*

*WHEREAS, in the same area, there is an isolated block of Champlain Street with no street numbers and where no homes or businesses have their addresses; and*

*WHEREAS, it is difficult or impossible for neighborhood residents to report public works or public safety needs on these streets to the District government due to this lack of a name and/or street numbers; and*

*WHEREAS, in close proximity to these two streets, at the intersection of California Street and Florida Avenue, the Thomas P. Morgan School was once located; and*

*WHEREAS, it was a cooperative effort between the principals of the all-Caucasian Adams School and the all-African American Morgan School during the period of desegregation that eventually led to the designation of our neighborhood as “Adams Morgan,” and*

*WHEREAS, while the Adams School still exists, the Morgan School has long since been demolished; and*

*WHEREAS, while other neighborhood geographical elements such as Adams Mill Road retain the Adams name, the Morgan name has entirely disappeared from the local government geographic lexicon; and*

*WHEREAS, figuratively putting the “Morgan” back in Adams Morgan would serve both as a monument to the Morgan School and its alumni as well as an important history lesson for the community; and*

*WHEREAS, any street naming requires a vote of the Council of the District of Columbia, and Councilmember Jim Graham has expressed his total support for the following measure;*

*NOW, THEREFORE, BE IT RESOLVED, that Advisory Neighborhood Commission 1C supports naming both the unnamed street just south of the Marie H. Reed Community Learning Center, and the short length of Champlain Street located between the unnamed street and Florida Avenue, as “Old Morgan School Way;”*

*FURTHER RESOLVED, that ANC 1C requests that upon the successful passage of the required Council legislation, both streets will receive a detailed cleanup by the city and new street signs will be hung as soon as possible; and be it*

*FURTHER RESOLVED, that ANC 1C will work in conjunction with the District government to ensure that all District agencies and private mapmaking organizations are informed of these street name changes.*

### ***Resolution Regarding a Plaque in Honor of Officer Marlon Morales***

*WHEREAS, on the evening of June 10, 2001, Metro Transit Police Officer Marlon Morales was shot at close range in the U Street/Cardozo Metro station while trying to apprehend a fare evader; and*

*WHEREAS, four days later, Officer Morales succumbed to his wounds; and*

*WHEREAS, police personnel such as Officer Morales face the threat of such fatal actions without any recognition day in and day out as they work to protect the residents of, and visitors to, the District of Columbia; and*

*WHEREAS, Councilmember Jim Graham, who is currently serving at Chair of the Board of Directors for Metro, has expressed interest in commemorating the loss of Officer Morales;*

*NOW, THEREFORE, BE IT RESOLVED, that Advisory Neighborhood Commission 1C supports the placement of a plaque in the U Street/Cardozo Metro station honoring Officer Morales’ brave sacrifice; and*

*FURTHER RESOLVED, that ANC 1C will write a letter to the Metro Board of Directors encouraging them to take all necessary steps to have such a plaque installed in a timely manner.*

The resolutions were seconded, discussed and approved on roll call vote:

YEA: Roth, Apostolides, Weaver, Moretti, Levy, Gibson, Coudriet

NAY: None

Commissioner Roth updated the Commission on a possible appeal to the BZA and the brewing controversy over construction of a town home on Florida Ave. The Commission did not take action at this time.

Commissioners Moretti and Weaver updated the Commission on a proposal by the owners of Asylum to seek a substantial change to their liquor license and increase their space to the second floor. The Commission is expected to take action on this at the October meeting.

Commissioner Weaver offered a resolution to have the ABC license of Timerhi International, Inc. placed in safekeeping in light of the ABC Board's August 13<sup>th</sup> dismissal of Timerhi's renewal application:

***Resolution to Petition the ABC Board to Deny the Reinstatement of Renewal of the Liquor License of Timerhi International Café***

*WHEREAS, the establishment known as Timehri International Cafe located at 2439 18th Street, NW, Washington, DC 20009 has received a 5-day summary suspension from the ABC Board,*

*WHEREAS, between September 2000 and September 2003 Police have responded to over 15 calls for various infractions, many of them involving violence - including 4 assaults and two assaults with a deadly weapon.*

*WHEREAS, said establishment falls in the jurisdiction of the Adams Morgan ANC (1C);*

*WHEREAS, Timehri International Cafe has failed to appear at two consecutive status hearings before ABRA;*

*WHEREAS, Timehri International Cafe has failed to respond to concerns and pleas of neighbors; remedy or present any plan to resolve these issues;*

*WHEREAS, Timehri International Cafe has a history of being an establishment counter to the interests of this neighborhood;*

***NOW, THEREFORE, BE IT RESOLVED that the Adams Morgan ANC (1C) supports and encourages the ABC Board to deny reinstatement of the renewal, and remove the liquor license of Timehri International Café from the premises and place it in safe keeping***

***BE IT FURTHER RESOLVED that the Adams Morgan ANC (1C) supports the revocation of the liquor license of Timehri International Cafe: and BE IT FURTHER RESOLVED that the officers of Adams Morgan ANC (1C) are authorized to take appropriate actions necessary to secure the support of Councilmember Jim Graham, other Councilmembers, and the support and actions of any relevant city agencies to further this goal.***

The resolution was seconded, discussed and approved by roll call vote:

YEA: Roth, Apostolides, Weaver, Moretti, Levy, Gibson, Coudriet

NAY: None

## **COMMISSIONER ANNOUNCEMENTS**

Commissioner Roth reminded those in attendance of the Commissions quarterly forum on Sept. 15. The topic for the forum is “Education Issues in Adams Morgan and the District.”

Commissioner Gibson noted that the health clinic at Marie Reed Learning Center opened for business on Sept. 2.

Commissioner Weaver commented on the problems getting DDOT to complete street repairs on Mintwood Place.

## **ADJOURNMENT**

Commissioner Gibson moved for adjournment. The motion was seconded and approved by voice vote.

The meeting adjourned at 8:57 p.m.

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into as of this 23rd day of September 2003 by and between the undersigned Parties.

WITNESSETH:

WHEREAS, the Parties hereto, Meridian International Center (“**Meridian**”) and Advisory Neighborhood Commission 1C (“**ANC 1C**”), hereby seek to memorialize their understanding regarding the parking arrangements during construction activity on the property located at 17<sup>th</sup> and Belmont Streets, N.W., Washington, D.C., known as Lot 850 in Square 2567 (the “**Property**”); and

WHEREAS, Meridian seeks a modification of Board of Zoning Adjustment (“**BZA**”) Order. No. 5802 in order to permit residential development on the Property, in addition to the parking spaces that are currently required on the Property pursuant to BZA Order No. 5802; and

WHEREAS, Meridian will temporarily transfer the 38 parking spaces currently used by Meridian on the Property to another location during construction activity on the Property; and

WHEREAS, after the construction of a luxury residential condominium building on the Property, Meridian will own and have exclusive control over 39 parking spaces in the building on the Property; and

WHEREAS, ANC 1C seeks to encourage the development of the Property and manage parking impacts during construction activity on the Property so as to protect and enhance the residential quality of the area; and

WHEREAS, the Parties enter into this MEMORANDUM OF UNDERSTANDING (the “MOU”) to confirm understandings and agreements between them concerning the parking arrangements during construction on the Property and the continued use of parking spaces on the Property by Meridian after development on the Property is completed.

NOW, THEREFORE, in consideration of the foregoing recitals (which are a material part hereof) and in consideration of the mutual promises of the parties hereto and of other good and valuable consideration, it is agreed as follows:

1. **Leased parking spaces during construction.** Meridian hereby agrees to buy or lease 40 off-street parking spaces during the Project construction period. The construction period is defined as the period lasting from the first day the parking spaces located on the Property are made inaccessible by construction, to the date that Meridian takes possession and is able to use the 39 parking spaces to be built as part of the residential project on the Property.

2. **Efficient use of parking lot on Meridian property.** Meridian hereby agrees to utilize an attendant, on an as needed basis, to maximize the use of parking space on its property located at 1630 Crescent Place, known as the east parking lot, to achieve a full capacity of 50 spaces. Further, Meridian hereby agrees to open and utilize the east parking lot whenever events are held.

3. **Valet parking practice.** Meridian hereby agrees that whenever valet parking is utilized, the vehicles will be parked by the valet attendants either on Meridian property or at an off-site location. Meridian hereby agrees to make every effort to insure that valet attendants comply with the valet parking provisions of D.C. Official Code § 47-796.

4. **Valet parking – staffing.** Meridian hereby agrees they will utilize a reasonable amount of valet parking attendants pursuant to the size of the event requiring valet parking

service, especially with the goal of avoiding the backup of guest vehicles on the street awaiting valet service.

5. **Directing guests to parking.** Meridian hereby agrees to actively direct and encourage to utilize the provided off-street parking, through the direction of personnel and the use of signs, invitation directions, program notices, and website notices.

6. **Support for Residential Permit Parking.** Meridian hereby agrees to support the efforts of the residents of Crescent Place and Belmont Road, N.W. to designate 65% of the total spaces of street parking contained on the north side of Belmont Road, N.W., and the south side of Crescent Place, N.W., which adjoin the Meridian property, as residential permit parking. The areas to be designated as residential permit parking, which will yield approximately 34 residential permit parking spaces, are as follows:

Starting on the north side of Belmont Road, N.W., west of the first fire hydrant closest to 16th Street, N.W., to 17th Street, N.W.; north on 17th Street, N.W. to Crescent Place, N.W.; continuing east on the south side of Crescent Place, N.W. to the west of the last fire hydrant on Crescent Place, N.W.

7. **Utilization of Attendant at Crescent Project Garage.** Meridian hereby agrees to utilize an attendant to provide access to the Crescent garage during those times the garage will be utilized for events at the Center.

8. **Support for the Modification of BZA Order No. 5802.** Subject to the provisions of this MOU, and the incorporation of this MOU into the Board of Zoning Adjustment's order on this case, ANC 1C will support Meridian's application to modify the conditions of BZA Order No. 5802, in writing and by testimony, at the BZA Public Hearing on September 30, 2003.

9. **Counterparts.** This MOU may be executed in counterparts and via original or facsimile signature.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Memorandum of Understanding as of the day and year 23rd day of September, 2003.

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Meridian International Center

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Advisory Neighborhood Commission 1C

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into as of this \_\_\_\_ day of September 2003 by and between the undersigned Parties.

### WITNESSETH:

WHEREAS, the Parties hereto, Crescent Place, LLC (“**Crescent**”), and Advisory Neighborhood Commission 1C (“**ANC 1C**”), hereby seek to memorialize their understanding regarding the proposed development and use of the property located at 17<sup>th</sup> and Belmont Streets, N.W., Washington, D.C., known as Lot 850 in Square 2567 (the “**Property**”); and

WHEREAS, Crescent seeks to develop a luxury residential condominium building with a maximum of 44,000 gross square feet and containing no more than 30 residential dwelling units and no more than 100 below grade parking spaces (the “**Project**”) on the Property; and

WHEREAS, ANC 1C seeks to encourage the development of the Property and manage construction activity and parking impacts related to the development of the Project so as to protect and enhance the residential quality of the area; and

WHEREAS, Andrew Kennedy and Peter Rivenberg, abutting property owners (as described in Paragraph 13 below), are signing this MEMORANDUM OF UNDERSTANDING (the “**MOU**”) for the purpose of obtaining rights to enforce this MOU; and

WHEREAS, the Parties enter into this MOU to confirm understandings and agreements between them concerning the design and development of the Project.

NOW, THEREFORE, in consideration of the foregoing recitals (which are a material part hereof) and in consideration of the mutual promises of the parties hereto and of other good and valuable consideration, it is agreed as follows:

1. The foregoing recitals are incorporated herein as if fully set forth.
2. **Development and Design of the Project.** Crescent agrees to develop and construct the Project in substantial accordance with the plans attached as Exhibit A. Such plans, as modified and revised for any purpose, shall at all times include or require the following:
  - a. Levels two and three of the parking ramp and garage shall be enclosed;
  - b. Automobile lights shall be shielded from the Ontario Road, N.W. residences by a six (6) foot wall at any portion that the parking garage is not enclosed;
  - c. The Project shall include acoustic buffers for exposed parking levels, including, but not limited to, ivy screens, acoustic ceilings, quiet automatic door mechanisms, appropriate driving surface to prevent noise from tires, the placement of mirrors and stop signs in the ramps to minimize the occurrence of brake squeal and honking, and signs (asking for quiet since this is a residential neighborhood) posted in open portions of the garage;
  - d. The setting back of the fourth floor of the Project from the rear wall of the residential structure, such setback shall be a minimum of five feet ten inches (5' 10"), so as to maximize the amount of sunlight the Ontario Road, N.W. and 2298 17<sup>th</sup> Street residences receive; and
  - e. Minimum Rear yard set back from the rear wall of the parking structure to the rear property line shall be sixteen (16') feet or the distance required pursuant to the D.C. Zoning Regulations, whichever is greater.

3. **Pre-Construction, Construction Management and Post Construction**

**Issues.** Crescent agrees to undertake the following actions.

a. Pre-Construction Survey. Prior to any grading or excavation work on the Property, Crescent will perform a survey [consisting of inspections and photo documentation] to document the current condition of houses immediately adjacent to the Property (the "Surveyed Properties"). The Surveyed Properties will include: 2123 –2227 Ontario Road, N.W. (Square 2567, Lots 62-74 and 76-78); 1624 Belmont Street, N.W.; and 2298 17<sup>th</sup> Street, N.W. Crescent will pay for these surveys, which will be completed within a reasonable time prior to any grading, excavation or other construction activity being performed on the Property. Owners of the Surveyed Properties (the "Owners") are entitled to provide evidence of the existing condition of their homes which shall be included in the survey. Crescent will furnish to each of the Owners a copy of the survey relating to their home when the survey is completed. Crescent or the surveyor will notify the Owners, in writing, of the opportunity to have a pre-construction survey conducted by the surveyor. The Owners shall be provided a reasonable period of time to respond to such notice, to respond to the surveyor's reasonable request for access to the Owner's property, and to respond to other reasonable requests of the surveyor.

b. Construction Contactperson. Crescent will provide all abutting property owners/neighbors with the name and telephone/pager number of a primary point of day-to-day contact (Construction Ombudsman) during pre-construction and construction activity on the Property. The Construction Ombudsman will respond to and resolve potential problems associated with noise, erosion, trash/construction debris, security, and construction related issues. The Construction Ombudsman will also provide notification,

to the maximum possible extent, including e-mail messages, to all abutting property owners and neighbors of periods of expected acute construction activity that may impact the surrounding area, including the blocking of traffic on Belmont, Crescent or 17<sup>th</sup> Streets during construction or deliveries.

c. Compliance with Applicable D.C. Building Code Provisions. Crescent will satisfy all District of Columbia municipal regulations related to weekday (and as permitted or necessary, Saturday) construction start and stop times and permitted noise/decibel levels. Crescent shall make good faith efforts to limit work that is likely to disturb the residents of the neighborhood adjacent to the Property to weekdays except where limitations on work during the week requires work on Saturdays to meet the requirements of construction teams for a 40 hour work week.

d. Construction Staging and Construction Management.

i. Crescent shall not permit construction activity on the Property that requires the movement of heavy vehicle traffic or other significant traffic to, or from, the Property or which otherwise generates sound levels in excess of 60 decibels (60 db) or otherwise is likely to significantly disturb the residents of the neighborhood near the Property before 7:00 AM or after 6:30 PM on weekdays, or before 9:00 AM or after 4:00 PM on Saturdays.

ii. During the construction period, Crescent agrees to utilize or remove from public use only those parking spaces located on the west side of 17<sup>th</sup> Street that abut the Property. However, in order to facilitate the efficient flow of traffic along 17<sup>th</sup> Street, Crescent may apply for the temporary removal of the parking spaces on the east side of 17<sup>th</sup> Street in order to accommodate the delivery of

construction materials. Such temporary parking space removal is only expected to occur in a limited number of occasions.

iii. Upon completion of the parking garage levels of the Project, Crescent will utilize these parking levels to the maximum possible extent for construction worker parking and the staging of construction materials. Prior to the completion of the garage levels, Crescent will utilize the closed parking lane adjacent to the Property to the greatest possible extent for construction staging and delivery truck queuing in order to facilitate unimpeded traffic flow on 17<sup>th</sup> Street, and will not double park vehicles on the street.

iv. Crescent shall encourage the use of public transportation and carpooling by their contractors and subcontractors during the course of the project.

e. Maintenance of Chain Link Fence. Crescent will maintain the existing chain link fence which abuts the rear of the properties located at 2123-2227 Ontario Road, N.W. and 2298 17<sup>th</sup> Street, N.W. during construction activity on the Property, for safety and security purposes. Crescent will also identify an appropriate time, upon substantial completion of the Project (including completion of proposed interlocking block retaining walls identified on final and approved site plan(s)), to remove the chain link fence.

f. Continuing Opportunities for Comment. Crescent will facilitate periodic courtesy reviews for abutting property owners during the Project's development and construction phases.

g. Post-Construction Support for 17<sup>th</sup> Street Parking Spaces. Upon completion of the construction of the Project, Crescent agrees to restore and return to use the public

parking spaces on the west side of 17<sup>th</sup> Street adjacent to the Property. Crescent will not seek a loading zone, entrance, or other no parking zone in front of the project.

4. **Stormwater Management.** Consistent with the requirements of D.C. law and municipal regulations (DCMR, Title 21), plans for development of the Property shall incorporate a plan for effective stormwater management. To the greatest extent possible, Crescent shall implement stormwater-management measures (e.g., low-grade slopes, erosion-resistant ground cover, centralized stormwater conveyance and collection facilities) that minimize both runoff to adjacent properties and standing water on the Property.

5. **Protection of Adjacent Properties.** Crescent agrees to the following:

a. That it will protect adjacent/adjoining properties during construction, especially the protection of all trees, shrubbery and other landscape material;

b. That it will utilize the services of a licensed and insured arborist/tree removal expert, see section 7 below, and ensure the careful cutting and removal of any trees in a manner that will protect adjacent properties.

c. That it will repair and/or replace in kind any plant or tree located on abutting properties sustaining damage as a result of construction of the Project, as determined by the arborist.

6. **Landscape Buffer.** Crescent agrees to plant a significant landscape buffer in substantial accordance with the description attached as Exhibit B.

a. The landscape buffer is intended to meet the following objectives:

i. Provide an adequate and continuous visual buffer between adjacent properties, especially those directly impacted by the Project, including 2123-2227 Ontario Road, N.W., and 2298 17<sup>th</sup> Street, N.W.;

- ii. Protect neighborhood character from unnecessary intrusion, automobile exhaust, headlight glare, noise and other potential impacts caused by a multi-level parking garage located in a residential neighborhood;
- iii. Ensure the complete stabilization of the embankment/ revised slope after completion of construction; and
- iv. Protect the embankment/slope, mitigate any potential future erosion, and ensure consistency with agreed-upon storm water management control/practices.

b. The buffer plantings will be composed of a mix of evergreen and deciduous trees, large evergreen shrubs, medium sized evergreen and deciduous shrubs, and groundcovers. All plant and tree species identified in the approved landscape buffer/site and planting plan will be chosen for their hardiness for current climatic and urban conditions, including species capable of surviving in shade/shadow created by the Project. Some native plants may be selected for their ability to adapt quickly and flourish in this specific location.

c. Erosion control devices will be installed during construction and left in place until the embankment has been stabilized by the new plantings. Temporary cover planting(s) may be used to stabilize the embankment prior to establishment of the permanent plantings. Crescent will ensure the safe and careful removal of any temporary erosion control devices and/or temporary cover planting(s).

d. All plant materials shall meet the standards established by the American Association of Nurserymen, and shall include a one-year warranty and a three – five year maintenance agreement. The table below provides an illustrative example of the types, species and sizes of plant materials to be used in the landscape buffer.

<b><u>TYPE</u></b>	<b><u>PREFERRED SPECIES</u></b>	<b><u>MINIMUM SIZE</u></b>
Evergreen trees	Leyland Cypress, White Pine, Blue Spruce, Cryptomeria, Holly, Magnolia Arborvitae Green Giant	10-12' height
Lge. deciduous trees	Sugar Maples, Red Oak, Pin Oak Red Maples, Purple Beech	3" caliper or 15 ft. height, whichever is greater.
Ornamental trees	Japanese Maple, Paperbark Birch Crape Myrtle, Hinoki Cypress, Star Magnolia, Dogwood	2" caliper or 10 ft. height, whichever is greater.
Evergreen & deciduous shrubs	Variegated Euonymous, Barberry, Purple Rhododendron	3-5 gallon
Groundcovers	Pachysandra, Myrtle	2 1/4" per pot

7. **Independent Arborist.** Crescent agrees to retain an independent, certified arborist to:

- a. Examine all trees on the Property;
- b. Identify and tag those trees requiring removal as a result of erosion problems;
- c. Identify & tag all trees that can be saved as part of the Project's overall landscape buffer plan;
- d. Review the preliminary landscape buffer plan; and
- e. Identify appropriate species for planting on the Property.

8. **Involvement of DDOT.** Crescent agrees to involve a representative of the Urban Forestry Administration of the District Department of Transportation ("DDOT") to:

- a. Participate in a tour of the Property with abutting property owners and representative(s) of Crescent at an agreed upon time prior to submittal of final plans for the Project;

- b. Review and approve the written findings of the certified arborist identified above;
- c. Identify appropriate species for planting on the Property; and
- d. Review the Project site plan(s), the preliminary landscape buffer plan prepared by the Project architect, and the final landscape plan.

9. **Chain Link Fence.** Crescent agrees to remove the chain link fence located at the rear of the Property after substantial construction is complete. Fence removal work will also include removal of below-grade poured concrete that support the fence's metal posts. Crescent shall be liable for any damage as the result of construction and the fence removal work, including damage to the Comcast cable line, which lies at-grade along the rear Property line.

10. **Materials.** Crescent agrees to consider the input of adjacent property owners in the design and use of materials for various parts of the Project, including the west elevation facing Ontario Road, N.W. and other architectural elements, through illustrations and physical samples presented during periodic project review meetings.

11. **Landscape Maintenance Plan.** Crescent agrees that the covenants described in Paragraph 13 below shall include a requirement, which shall run with the land and bind heirs and successors (including, but not limited to, a homeowner's association or condominium association) that the landscaping required herein shall, at all times, be maintained and, as and when necessary, replaced at such time as plant materials are damaged, diseased or die with plant materials of similar or comparable type, species and size (to the maximum extent reasonably feasible) to those originally planted and as required herein. This is intended to protect the significant investment in the landscape buffer, ensure an adequate and continuous visual buffer, and protect and enhance the value of the Property as well as adjacent properties. To this end, Crescent shall allocate a reserve fund of \$25,000 expressly identified for future maintenance of

the landscape buffer as part of its conveyance to the condominium association- or as part of a homeowner's association or, in the event the Project is a rental project, set aside in the budget for the operation of the Property.

12. **Support for the Project and Annual Report.** Subject to the provisions of this MOU, ANC 1C will support Crescent in obtaining all necessary approvals for the development of the Project from any and all District of Columbia regulatory agencies. Crescent agrees that the covenants described in Paragraph 13 below shall include a requirement, which shall run with the land and bind heirs and successors (including, but not limited to, a homeowner's association or condominium association), that the Property owner report annually to the ANC, for a period of ten (10) years from ~~on~~ the anniversary date of the BZA Order, on compliance with the terms herein concerning landscaping. This report shall outline all completed landscaping efforts, address any additional or replacement of plantings required herein and give approximate completion dates for work required thereby.

13. **Covenant Running With the Land.** This MOU and the restrictions contained herein shall be deemed real covenants running with the land (Lot 850 in Square 2567) in perpetuity, and shall bind the parties hereto, their successors and assigns and shall inure to the benefit of the parties hereto, and the owners of abutting property on 2123–2227 Ontario Road, N.W. (Square 2567, Lots 62-74 and 76-78) and 2298 17<sup>th</sup> Street, N.W. ("Abutting Owners"), and their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Property. Crescent shall record this MOU in the form of a declaration of covenants in form and substance as fully agreed to by the parties hereto and the Abutting Owners and Crescent shall cause such declaration to be recorded, at its expense, in the Land Records of the District of Columbia. The Declaration of Covenants will include a provision authorizing

enforcement of the covenants in D.C. Superior Court and authorizing the Court to award reasonable attorney's fees and costs to the prevailing party in any enforcement action. Such Declaration of Covenants shall be recorded in the Land Records of the District of Columbia within 10 days of Crescent closing on, and taking title to, the Property.

14. Crescent agrees to provide a copy of this MOU to all contractors who will be required to abide by its terms and conditions.

15. **Counterparts.** This MOU may be executed in counterparts and via original or facsimile signature.

**IN WITNESS WHEREOF**, the Parties and Andrew Kennedy and Peter Rivenberg hereto have executed this Memorandum of Understanding as of the day and year \_\_\_\_\_ day of September, 2003.

\_\_\_\_\_  
Crescent Place, LLC

\_\_\_\_\_  
Advisory Neighborhood Commission 1C

\_\_\_\_\_  
Andrew Kennedy (for the purpose of obtaining the right to enforce this MOU on his behalf and on behalf of all other Abutting Owners)

\_\_\_\_\_  
Peter Rivenberg (for the purpose of obtaining the right to enforce this MOU on his behalf and on behalf of all other Abutting Owners)