

9411 Connecticut Avenue, Kensington, MD  
Grace Episcopal Day School

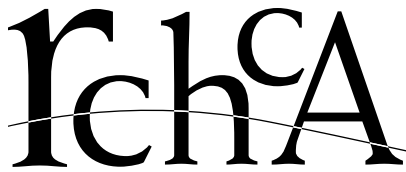
Spring Meeting  
Thursday, May 13  
Meeting 7:30-9:00

Rock Creek Hills Citizens' Association  
9501 Old Spring Road  
Kensington, MD 20895

RCHCA

**RCHCA SPRING MEETING**  
**THURSDAY MAY 13TH, 7:30-9:00**





Rock Creek Hills Citizens' Association  
rchca.org

Your Neighborhood  
News and Information  
Spring 2010

## Message from the Board

After a long hard winter, we hope that by the time people read this, Spring will have come to stay, at least for the season.

First let me say thank you to Ken Sanford and David Hall for volunteering to fill the positions for Vice President and Treasurer, respectively, which remained open after our Annual Meeting. The RCHCA Constitution and bylaws permit the Executive Committee to fill vacant positions, and this was the first time within recent memory when two officer positions were filled in this manner. I'd also like to thank their predecessors, Bill Casson as Vice President, and Karyl Kramer as Treasurer, each for serving in those capacities for two years.

Among the things that help foster a sense of community are the neighborhood activities in which we catch up with people who live nearby but often don't see more than maybe to say hello. Congratulations to Susan Gerecht, Eden Durbin, Marilyn Emery, and Lois Hall for arranging what we hope is the first of many "Winterfest" parties. It was well attended, somehow devoid of children (must have been an oversight), and successful in bringing people at least temporarily out of their "cabin fever" doldrums.

Now we hope to have three annual Rock Creek Hills events. Our next one is the Mother's Day Concert in the Park. Thanks to Lyle Farmer, our Special Events Chair, we will have dinner served and music to celebrate moms who (along with fathers) should have the day off from normal Sunday chores. Based on our intrepid attitude in evidence two years ago during a monsoon, we have shown that regardless of what the weather gods have in store, we can set up in a tent and still hold all of the festivities. See elsewhere in this newsletter for more detail on this event. (FYI: The third annual event is our Halloween Parade and Potluck).

Unfortunately, we also have had some divisive issues facing our community. Most notably, a long-standing covenants dispute involving an unauthorized fence has roiled many people, with strong emotions being expressed on both sides.

Although Rock Creek Hills Covenants Inc (RCHCI) has some level of discretion in approving such construction, we thus far have been unsuccessful in resolving this issue with the homeowner in question. To move this effort forward, we plan to devote most of the Spring General Meeting on May 13 to present the issue and allow people to vote on possible solutions. The most urgent reasons for this focus are twofold: (a) to provide RCHCI with a sense of the community on alternative proposals for a settlement, which RCHCI Executive Committee members felt all RCHCA members in good standing should have input on; and (b) to formally authorize funding of a lawsuit if needed. Other covenants issues also will be addressed at this meeting, time permitting, such as what RCHCI policy should be regarding pre-existing covenants violations, if they are learned about only after some lengthy period of time, and also whether some flexibility should be adopted as a matter of RCHCI policy that might alter the current absolute prohibition on any type of home based business, beyond what types of businesses are now explicitly allowed by law. Please see the main article in this newsletter for details on the "Covenants Agenda".

We hope that the Spring General Meeting will allow members the opportunity to voice their opinions on these controversial issues with civility and respect for opposing viewpoints, find common ground where possible, and give guidance to RCHCI in the exercise of its responsibilities.

We look forward to seeing you on May 13. Babysitting will be provided.

<i>President</i>	Joe Rosenberg
<i>Vice President</i>	Ken Sanford
<i>Treasurer</i>	David Hall
<i>Secretary</i>	Mike Baker

## Next Meeting

The RCHCA Annual/Winter Meeting is scheduled for **Thursday** evening, May 13, 2010. It will be held at Grace Episcopal Day School, 9411 Connecticut Ave, in the multipurpose room. Our meetings generally run from 7:30 to 9 pm, but given our special "Covenants Agenda", it is likely that the meeting will extend beyond the usual ending time.

Babysitting will be provided.

Agenda items include:

- Approval of prior meeting minutes
- Treasurer's Report
- Covenants Agenda:
  - Covenants Enforcement Action Regarding Unauthorized Fence: What to do about the unauthorized fence at 9604 Hillridge Drive? This issue is most important to address on May 13. However, two other covenants issues have surfaced and also will be addressed this evening, time permitting, or at a subsequent RCHCA meeting. These are:
  - Pre-existing covenants violations: What should RCHCA policy be when we learn about pre-existing covenants violations?
  - Home based businesses: What types of home based businesses should be allowed?

We welcome volunteers to help in set-up and clean-up of the event. Please contact Joe Rosenberg at 301-495-9821 or [jrosenberg123@gmail.com](mailto:jrosenberg123@gmail.com) if you are interested in helping.

## Covenants Meeting Agenda

Other than required items such as the Treasurer's report and approval of the prior meeting minutes, the May 13 General Meeting will be devoted almost entirely to a few key issues related to the enforcement of covenants. For general information purposes, Rock Creek Hills Covenants Inc. (RCHCI) is responsible for enforcing those covenants which apply to properties within Rock Creek Hills. The Board (officers) and Executive Committee (officers plus standing committee chairs) of RCHCI are the same as for Rock Creek Hills Citizens' Association (RCHCA). The following three covenants issues will be addressed at the RCHCA General Meeting on May 13, time permitting:

- **Covenants Enforcement Action Regarding Unauthorized Fence:** What to do about the unauthorized fence at 9604 Hillridge Drive?
- **Pre-existing covenants violations:** What should RCHCI policy be when we learn about pre-existing covenants violations?
- **Home based businesses:** What types of home based businesses should be allowed? (Time permitting, which may well not happen on May 13).

Legal counsel will be in attendance to help answer any questions.

### I. Covenants Enforcement Action Regarding Unauthorized Fence:

As many of you know, RCHCI has been engaged in a protracted dispute with David and Katherine Hatwell at 9604 Hillridge Drive regarding the construction of an unauthorized fence. The location of their lot fronting on two streets (Hillridge in front and E. Bexhill behind their house) means that there are effectively two front yards for covenants enforcement purposes. For over six months we have negotiated unsuccessfully to have the fence removed or relocated to a place consistent with their neighbors' fence at 9602 Hillridge, which also effectively has two front yards, but whose fence is substantially more distant from E. Bexhill.

We also have engaged legal counsel to address the Hatwells' challenges to our authority to enforce the covenants in question, as well as to help negotiate a mutually agreed upon settlement. Counsel has confirmed that the key to maintaining the enforceability of our covenants is to be consistent in their application over time. Thus, while the written covenants prohibit "... line fences or walls of any kind..... except growing hedges, or such fences of an ornamental character as may be approved by [the former authority, which was legally transferred to RCHCI]", what matters is that RCHCI has been consistent in the application and enforcement of this prohibition over time. To this end, our Community Directory has for years provided guidance that explicitly prohibits front yard fences by location, and chain link fences by type. The location reasoning is that back yard fences adjoining a neighbor's back yard are largely unobservable from the street and do not have the same disruptive affect on the neighborhood view. In a similar vein, retaining walls have been allowed for obvious functional purposes, and do not have the obstructive appearance of a raised wall in front of one's home.

Over the last few months, members who have addressed this case in their e-mails have been overwhelmingly in favor of urging the RCHCI and RCHCA leadership to enforce our covenants in bringing this matter to a successful conclusion. It should be noted that we really have only three distinct options at this juncture:

- 1) **Agree to one of the several alternative proposals that have been put forward recently by Mr. Hatwell.** It remains unclear whether any of several previously submitted written proposals are still acceptable to Mr. Hatwell. Nonetheless, in the interest of leaving no stone unturned to avoid a lawsuit, we wish to describe these proposals here, and get a sense of what the community is willing to accept before RCHCI makes any final decision of approval. RCHCI is requesting RCHCA members-in-good-standing who are in attendance on May 13 to vote on the general

acceptability of each of these proposals. This will give guidance to RCHCI on whether to approve any agreement with the Hatwells along the following lines, all summarized from his written proposals:

- a) Replace the existing fence with a new black aluminum fence about three feet behind the current fence location, with shrubs of Hatwells' selection planted in front of the fence;
- b) Replace the existing fence with one of similar composition (pressure treated wood) located about 13 feet further from E. Bexhill from the current fence's location, with shrubs of Hatwells' selection planted in front of the fence. Note that while this particular proposal was submitted over a month ago in writing, the Hatwells indicated verbally in a subsequent meeting that they might be willing to move the fence further away from E. Bexhill, but to a location that is still about 8 feet closer to E. Bexhill than their neighbors' fence.
- c) Remove the existing fence and replace it in the same location with Skip Laurel shrubs to form an evergreen hedge. When purchased, Skip Laurels will be 36" and later grow to a height of roughly 9 feet at a rate of 6-8" per year. In lieu of a fence, a green PVC coated metal mesh will be attached to spikes located behind each shrub. It is claimed in the proposal that the wire mesh will allow the bush leaves to run through the holes, effectively removing the bulk of the visibility over time.

While there were varying opinions among RCHCI Executive Committee members about the acceptability of these proposals, especially the last one, it was generally agreed that any decision by RCHCI that results in something potentially more visible from E. Bexhill than his neighbors' fence should be informed by RCHCA membership voting at this meeting.

- 2) **Submit, with the Hatwells, to binding arbitration.** The cost for this option should range in the \$3,000 to \$7,000 range. It is unclear at this time whether the Hatwells would concur in this option, and mutual concurrence is required.
- 3) **Filing a lawsuit, and pursuing it to a win or lose conclusion.** Cost will be higher than arbitration but the potential magnitude is unknown. It is very unlikely to be less than \$10,000.

Since RCHCI (i.e., Covenants Inc.) does not have any of its own funds, funding would have to be authorized by RCHCA or else provided, in whole or in part, by those residents most interested in pursuing legal action. The course of action to be taken, and how such action would be funded, shall be voted upon at this meeting by all RCHCA members in attendance and in good standing. To be in good standing, your RCHCA dues must be paid in full by the time of the meeting. For reference, through the end

of March, we have spent just under \$6,000 on legal fees related to this dispute.

One last point: **Our attorneys have advised that a failure to move ahead at this time with some type of legal enforcement mechanism will cause substantial damage to RCHCI's future enforcement capabilities in similar circumstances.**

## II. Pre-existing covenants violations:

In the course of the above covenants dispute, it has come to our attention that at least one other resident and perhaps more have fences that would appear to be in violation of our prohibition on front yard fences and, when considering back yards, may be in violation of our prohibition on chain link fences. We need to decide what RCHCI policy should be when we learn about pre-existing covenants violations. Do old front yard fences of any kind and/or chain link back yard fences require RCHCI legal action, or after a certain point, if they were never approved, should they be considered "grandfathered in"? What should our policy be if the resident claims that say, a front yard fence was there when he/she bought the home? And of course, how much, if any, will RCHCA agree to fund legal redress of such pre-existing covenants violations that we become aware of by whatever means? Voluntary curing of a violation is always a possibility and should be sought as a first resort.

Legal counsel informs us that, again, what is important is enforcement consistency. For example, it could be argued that a consistent policy would be to not take action on a fence or other violations that are of a certain vintage if RCHCI only learns about such violation many years after the fact, as long as it was never approved of, and if no one has formally complained about it to RCHCI over that entire period. One consideration for RCHCA voting on whether after some specified period of time in which no formal complaints are made to RCHCI, that a particular covenants violation has surpassed the time requirement for enforcement and is allowed to stand.

The above questions need to be answered before we embark on enforcement of pre-existing covenants violations.

## III. Home based businesses:

Our covenants say that "...no part of said lots or land, nor any building which may be erected thereon, shall be used for any trade, business, manufacturing, mercantile purposes..." Obviously, this is extremely broad, and in fact is countered by County or State ordinances which permit socially desirable businesses such as dentists and day care centers in residential neighborhoods. But does this mean that anyone who runs a business out of his/her home, such as an accountant, financial planner, or tutor, or manages a business from their home but that is conducted primarily offsite, such as one for home improvement, would

automatically be in violation of this covenant? Unless we wish to defer to the County, we need to establish exactly what types of home based businesses should be allowed. A clear policy must include what criteria should be considered to constitute a nuisance to one's neighbors, and how we can maintain consistency with County ordinances.

The county lists three basic categories of home based business:

- "home occupation no impact"
- "home occupation registered"
- "home occupation major"

A quick reading of the rules shows that the first two categories preclude any home based business involving "A maximum of 5 visits per week... [including] a visit to the home by one automobile transporting one or more clients or customers". By this reckoning, someone tutoring "clients" would fall outside of this maximum and therefore be a "home occupation major", while a home remodeling business conceivably might be exempt, since the 5 visits per week do not transport clients but instead may only transport workers who simply pick up the trucks and go offsite to do their work.

There are many different ways to be realistic about focusing on what impact a business has on one's neighbors. For example, we might choose to accept a policy that distinguishes between home based businesses in which multiple

customers come and go all day and potentially create a parking problem, vs. businesses that have one-at-a time customers or, in other cases, have no customers at all, but do have a limited number of non-oversized work-based vehicles that come and go once a day to perform their work offsite.

Along these lines, purely as one suggestion to get people thinking, we might consider defining what types of businesses might be prohibited based on their neighborhood impact. Hypothetical types of businesses for prohibition might include:

- "Multiple customers at a time" home based businesses like a hair salon;
- Businesses that create traffic problems by having multiple trips per day through the neighborhood, or any trips made by oversize vehicles;
- Environmentally disruptive businesses, such as auto mechanic or auto body work"

If there is insufficient time on May 13 to address the home based business topic, at least the subject has been broached for RCHCA members to think about and to address formally at the next General Meeting in October.

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## Train Noise Update

After much confusion, we finally have a clear path toward establishment of a Quiet Zone (QZ) at Forest Glen. In the ten-year effort to obtain relief from train horns blaring all hours at 110+decibels, the past year has been maddeningly confused as we have been told mixed information by officials at all levels of government (local, state and Federal). To recap briefly, in summer 2009, lane separators were installed at the rail crossing to prevent cars from driving around the extended gate arm when trains are approaching. This technology has long been approved by the Federal Railroad Administration (FRA) to provide better safety than the mere sounding of train horns that leave cars free to drive around the gates. In providing comments to the County's Sep. 2009 "Notice of Intent to Establish a Quiet Zone" letter, Maryland Dept. of Transportation (MDOT) said that they would not support a Quiet Zone regardless of using any FRA-approved safety measures. This effectively reneged on an MDOT promise made in 2006 to Rep. Van Hollen and Senator Cardin that they would take a neutral position on our QZ application. In a January 14, 2010 letter, Rep. Van Hollen graciously reminded MDOT of their prior promise. As a result of Rep. Van Hollen's letter, MDOT contacted FRA to ascertain what effect its stated position would have on the consideration of a QZ application. In good news for the QZ effort, MDOT was told that its position would have no bearing on the FRA's

decision, which is consistent with what FRA told us at a March 25 meeting: Since the road crossing the tracks is owned by the County, FRA said that the County DOT and not MDOT was the appropriate jurisdiction to submit the QZ application to FRA.

The above-mentioned March 25 meeting with FRA was requested by County DOT to move this stalled process forward. At this meeting, although we were told that County DOT had authority to submit the QZ application, we also were told that the QZ application process would have to begin again. This was supposedly due to a technical issue regarding what to call the lane separator safety measure, based on the close proximity of a driveway to the tracks at this particular location. However, a few weeks later, a higher FRA official corrected his staff and said that we could proceed where we left off in the process from last year and submit the QZ application to FRA. This should happen very soon, now that a final re-calculation of the lane separator's effectiveness rating was performed, as long as it took into account the driveway and its location. After so many false starts, the remaining timeframe is hard to predict, but after the QZ application is submitted, it should take no more than 60 days for FRA to receive further comments from relevant parties, and then a 21-day waiting period must pass following formal notification that the QZ will be established.

## **Annual Concert in the Park Mother's Day, May 9, 2010 – 4:40-6:30**

Shake off the doldrums of Winter! Come to Rock Creek Hills Park on Saul and Haverhill and relax. We have a great event planned to take the burden off Mom and celebrate spring and our community altogether. This year we are switching gears on the music and have booked a Jazz Trio that play popular hits arranged of course in a classic Jazz style. We are also switching up the menu – instead of “grilled” type fare we will be dishing out 3 types of pasta and sauces, fresh green salad and more! There will be a “kids” menu and vegetarian dishes too. So, bring a blanket, some lawn chairs, and a smile for Mom and enjoy a Jazzy evening with your neighbors.

In order to help us plan the amount of food needed please RSVP by Friday eve, May 7 to: [lylefarmer@yahoo.com](mailto:lylefarmer@yahoo.com). If you are unable to reply by e-mail, call Lyle or Kathleen at home 301.585.6989.

We will need 3 volunteers to set up, and 3 volunteers to clean up! If you would like to volunteer please send a note with “Volunteer” in the subject line to the email address above. We hope to see you!

(Rain Date May 16, location TBA).

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### **Treasurer's Report**

(As of 4/1/09)

Total Acct Balances	
as of 1/1/10:	\$29,826.00
Income:	\$7,754.00
Expenses:	\$8,353.00
Total Acct Balances	
as of 4/21/10	\$29,227.00