

# Your Neighborhood News & Information



MAY 2014

rchca.org

**RCHCA MEMBERSHIP MEETING • THURSDAY, MAY 29, 2014 • 7:30 PM**  
**GRACE EPISCOPAL DAY SCHOOL • 9411 CONNECTICUT AVE**

## President's Message

Dear neighbors,

A long winter finally gave way to a late spring, bringing rain, flowers, and pollen. I hope that the pleasure you get from the flowers beats the pain you get from the pollen. And, I hope to see you at our meeting on May 29th (7:30 PM at Grace Episcopal Day School). We'll review our community covenants, and consider a pending request for a rental "accessory apartment;" there will be updates on Rock Creek Hills Park, and on what we can do about crime. As for me, after 15 years in Rock Creek Hills, I'm still getting surprises: I had not known that there were catfish in Silver Creek (the creek that runs along Kensington Parkway) until, early one recent morning, I saw an owl take one.

Again, I hope to see you at our meeting on May 29th. If you've paid your 2014 dues, thank you. If not, then please pay them, because they are an excellent investment in your quality of life – and because only paid-up members can vote at meetings of the RCHCA. Dues are \$40 per household; checks payable to "RCHCA" may be sent to our Treasurer, Ms. Maria Marzullo, at 9801 East Bexhill Drive, Kensington, MD 20895. Thank you.

Best regards,

Jim Pekar  
President, RCHCA

## Know your Covenants: Important Information for Your Notice and Review

This newsletter provides an explanation of how RCHCA views our members' obligations under the various covenants covering different lots in our community, sources of information about those covenants, RCHCA's approach to implementing and enforcing certain aspects of the covenants, if necessary, and a detailed explanation of a new and important issue regarding the legality of accessory apartments, which will be discussed at the May 29, 2014, membership meeting. This newsletter is being distributed in print as well as electronic format to assure that all of our members, as stated on our current mailing list, are informed of the legal and social implications of the covenants. We are explaining what additional steps will be taken to provide further information to prospective purchasers and to those who may be concerned with possible violations of the covenants. If you have questions, please visit the RCHCA website at [rchca.org](http://rchca.org) and click on the Resources tab. Inquiries can also be directed to Vince DeCain at [decainvf@aol.com](mailto:decainvf@aol.com) or John Robinson at [jmarkrobinson@verizon.net](mailto:jmarkrobinson@verizon.net).

### The Nature and Importance of the RCHCA Covenants

Most lots in Rock Creek Hills west of the Mormon Temple are governed by covenants that run with land and remain attached to a lot at the time of any conveyance of a lot. (The lots east of Mormon Temple are governed by the detailed provisions of a home owners association with mandatory dues and are enforced by its governing board.) There are three separate groups of covenants, and the lots covered by each are specifically marked on the map that can be found at [rchca.org](http://rchca.org) under the Resources tab. The lots that are not covered by covenants are also marked. Each block and lot number is marked on the map so you can search the County's land record web site for the language of the covenants governing your lot that were recorded in your deed at the time of settlement. RCHCA emphasizes that it is the LOT OWNER'S responsibility to know which covenants, if any, apply to your lot and to be familiar with their requirements. Their requirements are BINDING ON THE OWNER even if the covenant details were not

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## Know your RCHCA Covenants *(cont., from p. 1)*

known before or at the time of closing on the house purchase. Given concerns in this regard, RCHCA is taking steps to see that local real estate agents advise prospective purchasers of the RCHCA covenants before any contract for the purchase of a house is signed.

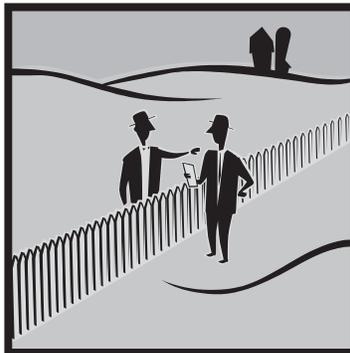
### The General Nature of the Covenants

The three RCHCA covenant types are not laid out in detail on [rchca.org](http://rchca.org) under the Resources tab, but the tab does provide a summary of the principal provisions. As stated in the February 2014 electronic RCHCA newsletter, the language varies slightly, but all of the covenants address five essential points: fences; the prohibition of business activities; the proposed construction of structures or external improvements to existing structures; and, the subdivision of lots and the single family character of the community.

Fences are a critical issue because of their visual impact on the community. For this reason, fences are prohibited from being further forward than the front line of the house, the materials are reviewed by the Rock Creek Hills Covenants Inc. (consisting of the RCHCA Board), and landscaping to soften or conceal the fence may be required.

Home-based businesses can be enjoined if detected, and the Association in the past has allowed a reasonable period of time for the business to relocate. Recognizing that many people work out of their homes electronically or by mail and telephone, the Association's Board has adopted the "no impact" standard contained in the County zoning code. The revised code prohibits employees at the residence and limits all visits, including deliveries, to five per week. This permits a reasonable amount of consultation and FedEx type deliveries without imposing traffic or a commercial environment on the community.

Historically, the most difficult covenants issue is the requirement to have all improvements or structural modifications excepting landscaping approved by the Rock Creek Hills Covenants Inc. This requirement is absolute and has important implications for the owner because failure to comply is a breach of a condition attached to the owner's deed and may affect the quality of the owner's title. The Board emphasizes that it does not engage in intrusive review of the details of proposed construction and improvements, as some communities with obligatory home owner associations are known to do. Finally, the February 27, 2014, meeting concluded that the definition of landscaping should include large retaining walls or large stair cases that are necessary to support or serve a structure, and as such should be considered an extension of the house.



The Board believes that pressures for subdivision are likely to increase as land values escalate due to the locational advantages of our community. All subdivisions must be approved by the Board and by the Park and Planning Commission.

A recent amendment to the County Zoning Code permits Class III accessory apartments as a matter of right subject to certain regulatory provisions that bring the requirement for single family residences to the fore. This issue is discussed below in the context of a pending application for a Class III accessory apartment at 9641 E. Bexhill Drive.

### RCHCA Protocols for Administering and Enforcing the Covenants

Homeowners desiring to construct fences, or to build or improve structures that are subject to the covenants, must apply to the Rock Creek Hills Association Board, which serves as the officers of Rock Creek Hills Covenants, Inc. This corporation holds the rights to administer and enforce the covenants that were designed by the Rock Creek Hills developers. RCHCA also requires that any proposed fences or new residential

construction or exterior improvements or modifications be submitted to neighbors for review and comment and submitted to the RCHCA Board for review.

The [rchca.org](http://rchca.org) site contains an application form that states the information to be provided to the neighbors and the RCHCA Board and sign off blocks for the adjoining neighbors, including those facing and to the rear of the structure if the improvements would be visible to them. The application should be submitted to Vince DeCain at 9627 West Bexhill Drive, Kensington, MD 20895 with a copy to Jim

Pekar at 9723 Kingston Road, Kensington, MD 20895. The Board tries to act in one week from receipt of an application. The Board has sole authority to approve or deny an application and, while the opinions of neighbors are a very important factor, these are not binding on the Board's decision.

Regarding enforcement, the Board believes that the best approach is for voluntary compliance by our residents. If a member (all lot owners are members of RCHCA) is concerned that the covenants have or are not being complied with, the member should file a complaint with the RCHCA Board. The complaint must be in hard copy form, state the basis for the complaint, and signed by the member making the complaint. The Board will not accept anonymous or oral complaints because if members are concerned, they must stand behind the issue. The Board seeks to resolve concerns and disputes informally and to avoid confrontation between members of the community or with the Board itself.

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*This will be a precedent-setting case, affecting the rights and concerns of some 600 houses within our community, as most houses are subject to covenants that have the same language or somewhat different language that reads in terms of a house's architecture, namely, that those houses shall be only of single family design or occupancy.*

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#### **The Pending Request for a Class III Accessory Apartment**

The Rock Creek Hills Citizens Association (RCHCA) has a pending request for the operation of a Class III accessory apartment at 9641 East Bexhill Drive, Kensington, MD. The upcoming community-wide RCHCA May 29, 2014, meeting will help determine whether this proposed Class III accessory apartment would violate a covenant governing the lot in question that limits the use of the lot in question to single family residences. The County Zoning Code now permits such units as a matter of right subject to certain conditions. These include that there be off-street parking for the accessory unit, certain interior design requirements, that any such units be at least 500 feet apart (lot line to lot line), and the unit be consistent with the County Zoning Code and home owner association requirements. As we understand it, the provisions of the County Zoning Code governing these units do not override the RCHCA covenants. Therefore, while the County Zoning Code may provide information on how to interpret and apply the covenants regarding building use, the decision rests with the Association.

A contested application is also before the Hearing Examiner (Office of Zoning and Administrative Hearings) for the same address, Docket No. 88144. This is a public docket and the comment or protest period closes May 23, 2014. Protests or comments must have a signature even if submitted electronically. The RCHCA has submitted a protest and comment that was previously posted on RCHCA.net. The Office of Zoning and Administrative Hearings (OZAH) address is Room

200, 100 Maryland Avenue, Rockville, MD 20850. Any hearing dates and other procedural information will be posted on rchca.net as the case progresses.

The Applicants and the RCHCA Board agree that the most material language governing the lot in question is fairly stated as follows, based in part on the Applicants submission to RCHCA on this matter. The specific set of covenants for the Weiss's house (Block 26, Lot 4) at 9614 E. Bexhill Drive was recorded on May 14, 1952, under recordation 1663-321 (Liber 1663 Folio 321). Of these, the relevant provision provides, "no apartment house, or houses in rows, or semi attached houses, or houses for the occupancy of more than one family (servants and the owner excepted) shall be erected or maintained upon said lots, or either of them." The Applicants are of the view that having a Class III permitted accessory apartment with one single adult tenant under the new County provisions Class III accessory apartments would be in the spirit of this covenant.

This interpretation is disputed by several adjoining and confronting neighbors, who argue that this language precludes all accessory apartments, and that allowing such units in Rock Creek Hills would change the character of the neighborhood. Those neighbors are also concerned that approval of the application will result in an increase in the number of applications for such units and will de facto approve any unpermitted accessory apartments that may already exist in Rock Creek Hills.

The RCHCA board met to discuss this issue, and has concluded that it should not determine if the proposed apartment violates the RCHCA covenants without consulting RCHCA's general membership, which includes all homeowners having lots within the Rock Creek Hills community. This will be a precedent-setting, case affecting the rights and concerns of some 600 houses within our community, as most houses are subject to covenants that have the same language or somewhat different language that reads in terms of a house's architecture, namely, that those houses shall be only of single family design or occupancy. Any policy ultimately adopted by the Board, after consultation with the members, must be applied uniformly to any subsequent applications or to the review of any unpermitted units that may currently exist in Rock Creek Hills.

**It is critical that you attend the May 29 meeting and state your opinion on this new and important covenants issue.**

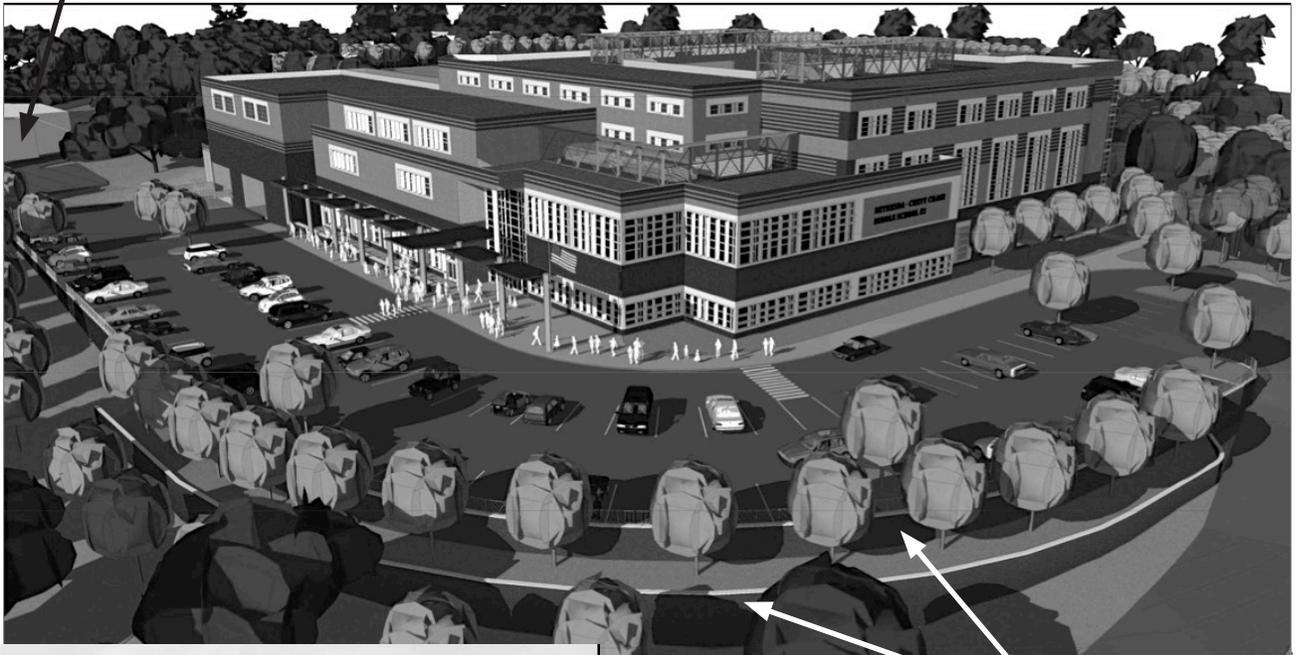
# Rock Creek Hills Local Park Construction

As you may have noticed, heavy equipment has been used to bulldoze some of the woodlands of Rock Creek Hills Park (a photo is posted at: <<http://SaveRockCreekHillsPark.org>>). Our understanding is that this bulldozing was done to facilitate surveying and geological testing; that the park's recreational facilities (ball fields, playground, etc.) will not be directly affected at this time; and that groundbreaking for construction remains scheduled for July of 2015 to be completed

for opening by the 2017 school year. At the request of several members, we've included a copy of MCPS's official schematic of the proposed four-story school and how its massing may appear as seen from above. **You are encouraged to review all the relevant studies, including traffic predictions, and administrative notes on the website of the School Board's construction project division at <http://montgomeryschool-smd.org/departments/construction/projects/bms2.shtm>**

## Official Schematic Design for Proposed Rock Creek Hills Middle School, Aerial View

The four-story structure: 65 feet tall from the lowest level and 45 feet above the playing fields. For reference, the bright structure near the upper-left corner is the existing four-story building that is part of the Kensington Park Retirement Community.



Two six-foot-tall, 400-foot-long retaining walls facing Saul Road

10-foot-tall, 270-foot-long retaining wall between the tennis courts and bus entry on Haverhill Drive

RCHCA OFFICERS	
President	Jim Pekar
Vice President	Hill Carter
Treasurer	Maria Marzullo
Secretary	Jill Gallagher
President, ex officio	John Robinson

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## Status Update: Rock Creek Hills Local Park Litigation

On April 1, 2014, a three-judge panel of the Court of Special Appeals in Annapolis released a ruling affirming the decision of the Circuit Court in Rockville to dismiss our litigation seeking to enforce the law and protect Rock Creek Hills Local Park. The panel did not rule against our arguments that the proposed conversion of the Park is unlawful; instead, their ruling was based primarily on their finding that the appealing parties lack adjacent property owner and taxpayer standing. The Court of Special Appeals held that adjacent property owners lack adjacent property owner standing because the County's option to reclaim the land for educational use was not a land-use related provision.

The RCHCA Board therefore held an emergency meeting. After reviewing the court's ruling and consulting with our counsel, we concluded the findings of the Court of Special Appeals are erroneous. This is particularly true given a March 27 decision of Maryland's highest court, the Court of Appeals, which reached the opposite conclusion in a different case that dealt with a similar conceptual issue. Therefore, on April 22, RCHCA filed a motion for reconsideration, asking the Court of Special Appeals to reconsider its decision on our standing in light of the recent Court of Appeals decision, and to rule on the merits of our case. Failing that, RCHCA will file a request for certiorari with the Court of Appeals; that is, it is prepared to ask the State's highest court to consider our case both on the issue of standing and the three central merits issues: (1) the legality of the clause that the County exercised to convert the park to a school site; (2) the Maryland National Park and Capital Planning Commission's failure to determine that the RCH Local Park is not needed for park purposes; and (3) the refusal of three state agencies to rule that they must review the School Board's conversion of the park to non-park use.

If these appeals are successful, then the transfer, and the recent destruction of park vegetation, will be reversed, and trees planted to remediate the damage. It is also likely that conversion of the park site will prove sufficiently costly that the Board of Education would elect to pursue a different approach.

**Your Board continues to believe that our case has considerable merit, and asks for your continued support.** If you wish to donate to the legal defense of the park, you may send a check to Maria Marzullo at 9801 E. Bexhill Drive, Kensington, MD 20895, or may do so online at <<http://tinyurl.com/ca9k-p5m>>. Any amount is welcomed.

## Treasurer's Report

As of April 30, 2014, RCHCA had \$23,234 in general funds available, less sums due to cover the expenses of the May 11 Mother's Day picnic and this newsletter. Of this \$9,350 was in checking and \$13,518 was in savings. We have received \$7,920 in dues so far this year. The dedicated Rock Creek Hills Local Park litigation fund has \$2,145 in hand and owes \$9,716 in accrued funds through March 31, 2014. The April fees for the work on the appeal were \$4,370.57, or a total of \$ 13,718.50.

### Rock Creek Hills Citizens Association Balance Sheet

AS OF APRIL 30, 2014

#### Assets

M&T Money Market	\$13,518
M&T Checking	\$9,350
Total Assets	\$23,234

## Next Meeting

The RCHCA Spring Meeting is scheduled for Thursday evening, May 29, 2014, from 7:30 – 9:00 pm. It will be held at Grace Episcopal Day School, 9411 Connecticut Ave, in the multipurpose room.

Agenda items include:

- Discussion of Accessory Apartment Application
- Status of Rock Creek Hills Park Construction
- Neighborhood Crime

If you wish to vote on any issues, your household must be a paid up dues member of the RCHCA.

Checks for \$40 should be sent to:

Maria Marzullo  
9801 East Bexhill Drive  
Kensington, MD 20895