

## **RCHCA Meeting Minutes, 5-29-2014, Grace Episcopal Day School**

### **Opening Remarks**

RCHCA President Jim Pekar opened the meeting and called for approval of the RCHCA Feb. 27 meeting minutes. The minutes were approved. Pekar ran through the evening's scheduled agenda, including changes due to the withdrawal of the application for an accessory apartment in the neighborhood. Pekar then asked for volunteers to lead the Association's effort to increase member participation. He also announced the possibility of adopting Silver Creek – through the Rock Creek Conservancy, as well as the upcoming publication of a neighborhood directory.

### **Treasurer's report**

RCHCA Treasurer Maria Marzullo reported that the combined funds in the Association's checking and saving accounts totaled \$21,000. Income was approximately \$8,100 from 200 households. Major expenses of \$3,200 were meeting notice mailings and the Mother's Day Picnic. The RCHCA litigation account balance was \$5,200, with an outstanding balance of \$9,300 for legal expenses related to the ongoing litigation in defense of Rock Creek Hills Park. She estimated that the Association would need approximately \$10,000 more in funds if the RCHCA take the case to the Maryland Court of Appeals. RCH homeowner Cathy Fink noted the pro bono work that Sandra Van Bochove, John Robinson and Tom Sisti have done on this issue, and advocated for neighbors to give to the litigation fund.

Marzullo reported that RCHCA's membership has grown from the previous year.

### **Litigation Update**

RCH Homeowner Sandra Van Bochove gave an update on the appeal, reporting that the Association is actively pursuing an appeal over the last decision by the Court of Special Appeals. RCHCA filed a motion for reconsideration of the court's decision in April, in which it denied RCHCA's appeal. Van Bochove reported that RCHCA continues to believe the case has merits. The case has not yet been evaluated on those merits, but rather on technicalities. RCHCA believes it has cause to proceed based on the technicalities that were ruled on in April.

Past-president John Robinson spoke about the ongoing geological survey by the Board of Education, the results of which will not be known until Montgomery County Public Schools (MCPS) has completed 30% of the design. The Montgomery County Planning Board does not have the power to stop it, but can offer suggestions to change the design in order to help environment.

### **Covenants/Accessory Apartment Request**

John Robinson explained the history of how RCHCA handles covenants issues. He said that when RCHCA first received the application for an accessory apartment, Robinson entered into a process suggested by the Association's lawyers. He started by trying to figure out what is available under the covenants and what is not. RCHCA does not administer the covenants. Rock Creek Covenants Inc. (RCC Inc.) administers the covenants. The officers of RCHCA serve as the officers of RCC Inc. When a developer first sold a lot at the inception of Rock Creek Hills, the successors and assigns agree to these covenants. RCC Inc. is the ultimate authority on how to interpret and administer them. Individual citizens do not have that authority. If someone wants to make an external change to their home or build on a lot, they have to come to RCC Inc. (Robinson gave an example of someone putting an addition on their house, as RCC Inc. approves plans for external improvements). Having the power to rule on the covenants is intended to serve as a way to inhibit discrimination. RCC Inc. consults with the residents, but has the ultimate authority. There are remedies: homeowners can have the board removed; if you are an adjacent lot owner with like covenants, you can bring legal action against the owner. Proximity is important in these cases.

Businesses are not permitted in Rock Creek Hills. However, interpretation has to be reasonable. If we were to construe the prohibition on businesses literally, Robinson said, you wouldn't be able to work from home on your computer. Given contemporary patterns, that's an unreasonable interpretation of the covenants. We follow county code/the "no impact" test: no employees, clients, customers, and no more than one delivery per day.

On the issue of fences, if you were to interpret the covenants literally, you wouldn't be able to have a swimming pool in your backyard. We are already construing the covenants in a non-literal, non-discriminatory way, Robinson said. Legal counsel has recommended that we make sure the covenants are well publicized. This issue has been discussed at the past two RCHCA meetings, on the website, in the membership book, and on the homeowner's deed, so all should be aware.

### **Enforcing the Covenants**

The Board has policy of only generally enforcing "on complaint." Reasons for this policy include the difficulty of finding someone to serve on a Board with the obligation to inform on their neighbors. It also normally stops enforcement without complaint. The board and community are protected by the policy. . If you want to do something about a violation, then you have to file it with the Board. The Board keeps complaints confidential to see if a resolution can be reached. He also reiterated the need for witnesses to complaints. Past RCHCA president Keith Emery noted that the Board will take action on an application or a complaint.

Application forms and information are on the website – rchca.org – under "Resources", then "Covenants." Homeowners making changes to their homes should get their surrounding neighbors' approval by showing plans. Once completed, they should bring the package to Vince DeCain at 9627 W Bexhill Drive. The Board will usually respond within a few days, particularly regarding approvals to homes. There has never been a denial.

### **Accessory Apartments**

RCHCA has retained counsel due to threats of lawsuits. Three schools of thought that have come up:

1. Literal interpretation of covenants: no accessory apartments ever;
2. As long as county codes are met and no more than 2 people, then that's OK (Class 3 Accessory apartment);
3. Grandfather in those that we have already and when those turn over and people move out, then the apartment can no longer be rented.

If you don't want an accessory apartment nearby, Robinson said the homeowner you should complaint to the county first. You always have a right of private remedy if you are an adjacent property owner.

John Robinson noted that a poll of RCHCA past presidents found that there has not been one complaint about having a renter in an RCH house for the past 25 years. Though Robinson doesn't know of any requests for rental accessory apartments, Keith Emery said there have been requests, and they were told it was okay.

RCH homeowner George Forlay feels that board members have a lot of authority/power and should be sensitive to homeowner's financial issues. Neighbor who just moved in said there is no such info on his deed/reference to covenants. The only info is on the web site. There also is no info on the Plat map and no mention of covenants except on a 1953 deed. How is a purchaser supposed to know about this? Seller told him that there was no homeowner's association.

Robinson says that is asking for a level of care that the RCC Inc. officers can't provide. If someone with good intentions can't find them, then that's a concern, but RCHCA can't excuse people from obligations related to the covenants.

RCH homeowner Diana Ditto noted that Chevy Chase View, who employs a Town Manager, has a big blue book of covenants so that every purchaser is aware of them.

RCHCA has asked real estate neighbors to put information out to potential buyers that there are covenants in Rock Creek Hills. RCHCA homeowner and realtor Marilyn Emery said it is up to the homeowners to disclose the covenants. It is also the responsibility of the title attorney that processes loans to alert buyers to the deed. There are 20,000 real estate agents in Montgomery County. A new neighbor said there is mutual responsibility and said the issue didn't come up until settlement. RCH homeowner and realtor Gary Ditto said the same problem happens in a historic district: the Association of Realtors puts it in the contract that the house resides in a historic district. He suggests that something similar could be put in the contracts for RCH homes.

Weiss addressed the meeting about their removal of a request for an accessory apartment after neighbor complaints. The Weiss family moved into RCH in 2009. Stephen Weiss said they didn't think they were going to change anything in the neighborhood; they spoke to neighbors and posted a County sign that notified neighbors that they could object, and submitted a request to the RCHCA board. They then saw postings on the neighborhood list-serve that upset some of them. He said he was operating on a different set of assumptions than his neighbors. He stated that in our case, we learned that we really needed to talk to our neighbors about this and he is sorry that this has caused so much angst. However, he said the list-serve should not be a venue to hurt neighbors.

RCH homeowner Stephanie Rigaux, a 12- year resident, reported on research she did on restrictive covenants. She thinks RCHCA should look to zoning laws that have recently been crafted by the county. She also stated her belief that the neighborhood should allow rental accessory apartments in light of possible economic events. She said that a house at 9708 Kenmore, an original house built in 1958, had an apartment built into the original building. The exemption transferred with sale of property. She added that there are many people who do this already in their homes. She clarified the difficult County requirements of getting an accessory apartment approved in the neighborhood: the owner must live in the home as well.

RCH homeowner Tom Sisti said he reads the covenants literally on this matter and does not see any ambiguity. He relied on covenants, and read them, when he purchased his home. He asked that neighbors not focus on one person's expectations at the expense of another. Sisti said that permit process explicitly states that people seeking permits should look to their covenants/restrictions that may take precedence over the county permit.

A few neighbors spoke in favor of rental accessory apartments in light of the changing world in which we live. Another thought apartments would be consistent with traffic patterns in the neighborhood. Looking at the practical impact on neighborhood, he believed it would have minimal practical impact.

RCH homeowner Richard Hatsfeld moved in after a year of research. He said he chose to live in Kensington because it matched a level of progressiveness he desired. He believed that the meeting's speeches showed that we can come together to resolve and adapt to differences. He would like to see how we can change covenants to meet the needs of the "new" neighborhood or how we can be more flexible in interpreting covenants.

Keith Emery said that some of what draws people to the neighborhood is the uniformity that the covenants help to protect and he would hate to see them changed. He moved the RCHCA to identify and publish the position of the board on the accessory apartment issue in a timely manner after receiving advice of counsel and after all risk of litigation is eliminated.

### **Protecting Silver Creek**

A neighbor on Elrod reported that the Rock Creek Conservancy helps to monitor the health of the watershed and is asking people who live near these tributaries to help monitor the creek for environmental hazards like dumping, potential park construction, and overflow of the creek with excessive rains. Because she wants to maintain the character of neighborhood and Silver Creek\* has no sponsor, Laura proposes that the neighborhood sponsor the creek, which would also be a way to get neighborhood kids and families involved. Everyone in attendance thought it was a great idea.

### **List-Serve**

Neighbors are very concerned about the tone of the list-serve and hope that the behavior exhibited with regard to the rental accessory apartment issue doesn't occur again. Some questioned whether abusive behavior warrants removal from the list serve.

The list-serve is not currently moderated because it is believed that the community does a better job of moderating than someone who arbitrarily decides what should and shouldn't go out on the list-serve. Currently, postings go directly up on the list-serve. It was decided that the Board will put out a friendly reminder email about how to behave on the list-serve.

Jim Pekar said he is looking for a volunteer to help study the issue of proxy votes. There were no volunteers, so he will put the request out on the list-serve.

### **Village Concept**

A neighbor on Old Spring asked the neighborhood to consider a "Village" program that would bring in services to help people who need it (elderly, ill, children). They sent a survey out a few months ago and have not had any responses, so she is going to put it out once again to see if anyone is interested in getting it started.

The meeting adjourned at 9:43 p.m.

\*Silver Creek, also known as Kensington Branch or the Kensington watershed, was likely once a natural tributary, but now is part of a system of storm water runoff channels that collect rain from as far north as Viers Mill Road in Wheaton to be channeled to Lower Rock Creek. In 2008, the county's Department of Environmental Protection ranked the channel "poor," which is the lowest ranking for streams in the county. It has been ranked poor since 2000. (*The Gazette*, 5/11/11)