PLANNING COMMISSION STAFF REPORT

MEETING DATE: **February 2, 2009** Report Written: January 22, 2009

ITEM: VII. B. – Planning Commission Public Hearing

FILE: **VAR-06-08 – Steven and Laurie Hafener (Applicant and Owners) – 121 Brookline:** A Public Hearing to consider a request for a variance to allow a 540 square foot addition to encroach 4-feet into the required 10-foot side yard at the south side of an existing 3,268 square foot home at 121 Brookline in the Moraga Country Club.

ASSESSOR'S PARCEL NUMBER: APN 257-541-013

TOWN ZONING: 3 Dwelling Units per Acre

GENERAL PLAN DESIGNATION: Single Family Residential: 3 Dwelling Units Per Acre

ENVIRONMENTAL REVIEW STATUS: The project is categorically exempt under CEQA Guidelines Section 15301(e), which applies to additions to existing structures not exceeding 50% of the existing floor area. Approval of a variance qualifies for a categorical exemption under Section 15305(a), which includes minor alterations of land use limitations.

PUBLIC NOTICE AND CORRESPONDENCE: Public Notices were mailed to property owners and residents living within 300 feet of 121 Brookline on February 2, 2009. The area of notice map, mailing address list and public hearing notice is enclosed as **EXHIBIT A**. If correspondence is received from neighbors prior to the meeting, staff will forward the correspondence by email or bring the correspondence to the meeting if it received too late to be sent by email.

REQUEST:
The requested 540 square foot expansion of the home would add 262 square feet on the main floor and 278 square feet on the lower floor. The addition on the main floor includes enlargement of the master bedroom and a walk-in closet and reconfiguration of the kitchen, dining and living room areas. The modifications to the lower floor include conversion of an existing bedroom to a den and the addition of a new bedroom and bathroom. The maximum allowed floor area for the 7,482 square foot lot is 2,634 square feet under the Town's floor area ratio (FAR) guidelines. The existing home is 634 square feet over the maximum floor area and the proposed 540 square foot expansion of the home will require an exception to the FAR guidelines to allow the total floor area to be 1,174 square feet over the maximum floor area. The project also includes expansion of the decks at the east, west and south sides of the home with 470 square feet additional deck area. The existing cantilevered deck at the rear east side would be extended 4-feet further east with new 6-inch square support posts that would be 20-feet high. A new deck would also be added at the southwest front corner of the home.

BUILDING SETBACK ISSUES:

The project site is zoned by the Town as 3-DUA (three dwelling units per acre) single-family residential. The MCC was approved under Contra Costa County as a PUD (Planned Unit Development) where most of the lots are smaller than 10,000 square feet and the building setbacks are smaller than the setbacks established by the Town for the 3-DUA zoning district. The table below shows the required front, side and rear building setbacks for 121 Brookline based on the current 3-DUA zoning.

3-DUA Zoning Development Standard	Required	Existing	New Addition (minimums)	
			Proposed	Compliance
Minimum front yard	20 feet	8-feet Garage	No Change	Legal Non-conforming
Minimum side yard	10 feet	5-ft. 10-in. north side 12-ft. 8-in. south side	No Change on north side 6-feet on south side	Legal Non-conforming **Variance Required**
Side yard Sum	20 feet	18-ft. 6-in.	11-ft. 10-in.	**Variance Required**
Minimum rear yard	15 feet	23-ft. 8-in. rear chimney	22-ft. 7-in. Master Bedroom 16-feet New Porch Posts	Complies

At the time the home was built in 1983, the side yard setback was measured to the foundation line because the interpretation of Moraga Municipal Code Section 8.68.070 was that eave lines could project into the setback requirements as long as they did not obstruct light and ventilation on an adjacent parcel. The applicable code section is printed below:

> **8.68.070 Obstructions in yard areas.**
> Every part of a required yard area shall be open and unobstructed to the sky except as permitted in Section 8.68.100. However, a fire escape, open stairway, chimney and the ordinary projection of a sill, belt-course, cornice, eave, and ornamental feature which does not obstruct the light and ventilation on any adjoining parcel is not an obstruction and does not violate the prescribed yard regulations.

The homes in this area of the MCC generally have no eave projections at the sides. Except for the existing garage roof, the front roof eaves on the home do not encroach into the 20-foot front setback. The rear roof eaves do not encroach into the require 15-foot rear setback. However, the proposed expansion of the deck will be about 13-feet from the rear property line at the closest point. With regard to the Town Council's November 14, 2001 ruling with regard to the definition of "yard" under MMC Section 8.04.020, building setbacks have not been applied to decks because they do not meet the definition of a "building", with roof and walls. The definition of "yard" from MMC Section 8.04.020 reads:

> **"Yard"** is the open space, other than a court, on the same lot with the building which is unobstructed from the ground upward to the sky. In determining the dimensions of a yard the line of the building means a line drawn parallel to the nearest lot line through the point of a

the property due to the requirements imposed by the Moraga Country Club Homeowners Association Bylaws.

Finding 2: The variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity and in the same zoning district;

Comment: *As noted above, most of the homes in the Moraga Country Club do not conform to the setback requirements in the 3-DUA zoning district. The applicant has provided an analysis of the setbacks of homes in the area to show that their request cannot be deemed a grant of special privilege. The proposed aggregate side yard setback is 11.8-feet and 44% of the properties within 300-feet of 121 Brookline have an aggregate side yard setback of less than 11.8-feet.*

Finding 3: The variance substantially complies with the intent and purpose of the zoning district in which the property is classified.

Comment: *One reason for building setbacks is to insure privacy between neighbors. The adjoining property at the south side of the home is private open space where no additional homes will be built. The bird's eye aerial view of the home at 121 Brookline below shows the relationship to the open space area on the south (left) side and the existing separation between the homes on the north (right) side. The proposed addition would not obstruct light and ventilation on any adjacent parcel that is developed with a residence.*

Birds eye view of 121 Brookline from the east side showing open space at south side