



**STAFF REVIEW AND RECOMMENDATION**

**Variance Case #:** V2020-28                      **Legistar #:** 20200632

**Board of Zoning Appeals Hearing: Monday – August 31, 2020 – 6:00 p.m.**

**Property Owner:** Rachel Barry & Philip Myrick  
126 Stewart Avenue  
Marietta, GA 30064

**Applicant:** Same as above

**Address:** 126 Stewart Avenue

**Land Lot:** 1147              **District:** 16th                      **Parcel:** 0170

**Council Ward:** 4A    **Existing Zoning:** R-4 (Single Family Residential – 4 units/acre)

**Special Exception / Special Use / Variance(s) Requested:**

1. Variance to reduce the minor side yard setback for a new addition from 10’ to 6’ [*§708.04 (H)*]
2. Variance to reduce the major side yard setback for a new addition from 25’ to 15’ [*§708.04 (H)*]
3. Variance to reduce the major side setback for an existing structure (house) from 25’ to 4’ [*§708.04 (H)*]
4. Variance to reduce the minor side yard setback for an existing accessory structure (shed) from 10’ to 4’ [*§708.04 (F.1)*]
5. Variance to reduce the rear yard setback for an existing accessory structure (shed) from 30’ to 8’ [*§708.04 (F.1)*]

**Statement of Fact**

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

**Criteria:**

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

**PICTURES**



*Corner of Stewart Avenue and Awtrey Street*



*Major side yard setback at 126 Stewart Avenue*



*Minor side yard setback at subject property*



*Existing accessory structure (shed) along major side yard setback*

**Recommended Action:**

**Approval.** The applicants, Rachel Barry & Philip Myrick, are requesting variances to expand their home at 126 Stewart Avenue. The subject property is generally a triangular shape but with irregular property lines. It is approximately 0.296 acres and is located at the corner of Awtrey Street and Stewart Avenue. The surrounding properties are all zoned R-4 (Single Family Residential – 4 units/acre) as well. The applicants are requesting variances on the existing structure to develop a one-story expansion of the master suite on the western side of the property.

The existing two-bedroom, two-bathroom house is 1,480 square feet and the applicants would like to build a 600 square foot one-story addition onto the master bedroom. The City’s ordinance states that *“the lawful use of any building or structure or land existing at the time of enactment of this ordinance or amendment thereto may be continued”* and that *“any nonconforming building or structure existing as of June 9, 2010, may be retained, except that it shall not be expanded, extended or enlarged in any manner which increase its non-conformity [§706.01 (A)].”*

In this case, the variance requests are for encroachments that already exist on the property as well as for new encroachments for the proposed addition to the master suite. The existing, main structure is only 4 feet from the Awtrey Street property line (major side yard) instead of the required 25 feet. The applicants would like to place the proposed addition on the western side of the property only 6 feet from the minor side property line instead of the required 10 feet.



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Because of the irregular shape of the parcel, the new addition would only be 15 feet from Awtrey Street instead of 25 feet.

Also, the existing shed located near western property line is not in compliance with the rear and minor side yard setback requirements. The shed is only 4 feet from the side property line and only 8 from the rear property line. Accessory structures are required to be at least 10 feet from the side and rear property lines. According to the applicants, the shed has been on the property since the 1940's. The applicant is requesting variances to allow the accessory structures to remain as-is to avoid the costs that may arise with relocating those structures.

Considering the irregular shape of the parcel and the existing encroachments, the new addition should not create any negative impacts on the adjacent properties or surrounding community. As a result, ***staff recommends approval of all the requested variances.***

*Fire comment: The setback reduction to 6' will expose the subject property to installation of fire sprinklers in accordance with Marietta Code 2-6-140.*

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Department of Development Services
205 Lawrence Street
Marietta, GA 30060
Phone: 770-794-5440

APPLICATION FOR VARIANCE OR APPEAL

(Owner/Applicant/or Representative must be present at all public hearings)

(NOTE: CORRESPONDENCE IS HANDLED VIA EMAIL UNLESS OTHERWISE REQUESTED)

For Office Use Only:

Application #: V2020-28 Legistar #: 2020 0632 BZA Hearing Dt: 8-31-20
City Council Hearing Dt (if applicable) #: PZ #: 20-217

This is a variance/appeal application for:

[X] Board of Zoning Appeals [ ] City Council

Owner's Name Rachel Barry and Philip Myrick
EMAIL Address: rachelsbarry18@gmail.com
Mailing Address 126 Stewart Ave Marietta Zip Code: 30064 Phone Number 404-308-5867

COMPLETE ONLY IF APPLICANT IS NOT OWNER:

Applicant:
EMAIL Address:
Mailing Address Zip Code: Phone Number

Address of subject property: 126 Stewart Ave Date of Acquisition: 09/2015
Land Lot (s) 16 District 1147 Parcel 120170 Acreage .296 Zoned R4 Ward 4A FLU:MDR

List the variance(s) or appeal requested (please attach any additional information):
Request to Reduce Awtreys Street Setback from 25 ft to 15 ft
Request to Reduce Neighboring setback from 10 ft to 6 ft

Required Information

- 1. Application fee (\$250)
2. Completed notarized application. The original application must be submitted with ALL original signature(s) - Copies of the application or signature(s) will NOT be accepted.
3. Copy of the deed that reflects the current owner(s) of the property.
4. Letter describing the reason for the variance request, stating why strict adherence to the code would result in a particular hardship (as distinguished from a mere inconvenience or desire to make more money).
5. Site plan - drawn to scale. Site plans must illustrate property lines and all relevant existing information and conditions in addition to proposed additions or modifications within the referenced property lines of the tract(s).
6. Copy of current tax bill showing payment or documentation certified by the City of Marietta Tax Office.

Note: The Department of Development Services reserves the right to obtain additional information that reasonably may be required in order that an informed decision may be made.

OVER

**CAMPAIGN CONTRIBUTIONS**

The Owner and Applicant herein certify that he/she  has  has not made campaign contributions or gifts aggregating \$250.00 or more to the Mayor, any member of Council or any member of the Board of Zoning Appeals within the two (2) years preceding the filing of this application.

[Signature]  
Signature of Owner  
Rachel Barry  
Print Name

[Signature] [Signature]  
Signature of Applicant  
Rachel Barry Philip Myrick  
Print Name

**FINANCIAL INTEREST**

The Applicant herein certifies that he/she  has  has not a financial interest in the property which is ten percent (10%) or more.

Rachel Barry  
Print Name  
Philip Myrick

[Signature]  
Signature of Applicant  
[Signature]

**APPLICANT CERTIFICATION**

- The Applicant certifies that all information in this application, and all information furnished in support of this application, is true and complete to the best of the Applicant's knowledge and belief. Should any portion not be true, then the application may be rejected.
- Penalty for false or fraudulent statement: Whoever, in any matter, knowingly and willingly falsifies or makes any false, fictitious or fraudulent statement of representatives concerning this application shall be denied the request stated in this application.

[Signature]  
Signature of Applicant  
Rachel Barry  
Please Print

July 20, 2020  
Date  
[Signature]  
Philip Myrick

**OWNER CERTIFICATION**

- The Owner certifies that all information in this application, and all information furnished in support of this application, is true and complete to the best of the Owners's knowledge and belief. Should any portion not be true, then the application may be rejected.
- Penalty for false or fraudulent statement: Whoever, in any matter, knowingly and willingly falsifies or makes any false, fictitious or fraudulent statement of representatives concerning this application shall be denied the request stated in this application.
- The Owner hereby gives permission to enter on the property for inspection during the time application is pending.

[Signature]  
Signature of Owner

Rachel Barry Philip Myrick  
Please Print

126 Stewart Avenue Marietta, GA 30064  
Address

July 20, 2020  
Date

Signed, sealed and delivered in the presence of:

[Signature]



My Commission Expires: 10/25/2023

Note: Owner, Applicant or Representative must be present at meeting in order for case to be heard.

July 20, 2020

To whom it may concern,

This letter is in request of a variance for our property at 126 Stewart Avenue, Marietta, Georgia 30064. We are planning to build a one-story master addition on the back of our house. Our house is currently a 2/2 with approximately 1480 square feet, and we need a little extra space because we are expecting our second child in January!

We are currently in the process of working with Designer, Dan Olah, to create an aesthetically-pleasing design that will match the historic craftsman style, as well as compensate for our irregularly-shaped lot line. In order to accomplish this, we are requesting a variance to reduce the side yard Awtrey Street setback from 25 feet to 15 feet and a variance to reduce the side yard neighboring setback line from 10 feet to 6 feet. These setback reductions will provide us an ample amount of space to build an attractive, historically-appropriate addition that will meet the needs of our growing family.

Sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is a cursive script that appears to read 'Rachel Barry'. The signature on the right is also in cursive and appears to read 'Philip Andrew Myrick'. Both signatures are fluid and connected.

Rachel Barry and Philip Andrew Myrick

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**TO: Marietta Daily Journal**  
**FROM: City of Marietta**  
**RUN DATE: August 14, 2020**

**CITY OF MARIETTA  
PUBLIC NOTICE OF VARIANCES**

The City of Marietta hereby gives notice that a public hearing will be held to give consideration to the following requests. The Board of Zoning Appeals will consider the following requests on **Monday, August 31<sup>st</sup>, 2020 at 6:00 P.M.**, City Hall. Anyone wishing to attend may do so and be heard relative thereto.

**V2020-28 [VARIANCE] RACHEL BARRY & PHILIP MYRICK** are requesting variances for property zoned R-4 (Single Family Residential – 4 units/acre), located in Land Lot 1147, District 16, Parcel 0170, 2<sup>nd</sup> Section, Marietta, Cobb County, Georgia, and being known as 126 Stewart Avenue. Variance to reduce the minor side yard setback for a new addition from 10’ to 6’; variance to reduce the major side yard setback for a new addition from 25’ to 15’; variance to reduce the major side setback for an existing structure (house) from 25’ to 4’; variance to reduce the side yard setback for an existing accessory structure (shed) from 10’ to 4’; variance to reduce the rear yard setback for an existing accessory structure (shed) from 30’ to 8’. Ward 4A.

A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto. You may also review the property file at [www.mariettaga.gov](http://www.mariettaga.gov) and enter the case # in the search box.

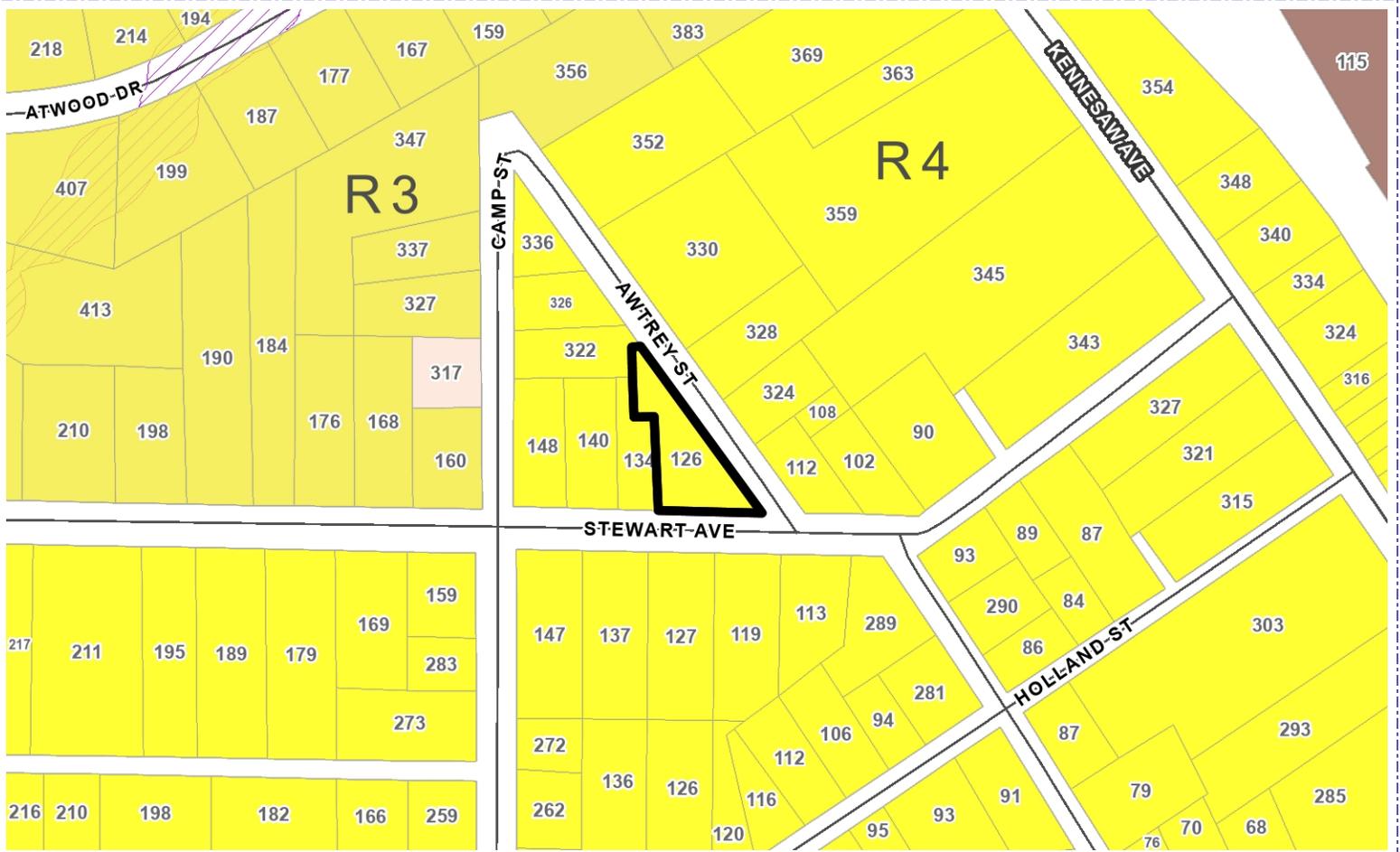
**For additional information please call the Planning and Zoning Office (770) 794-5669.**

**Accessibility to Meetings:** If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call ADA Coordinator, at 770-794-5558 no later than 48 hours before the date of the above meeting.

City of Marietta  
205 Lawrence Street  
Marietta, Georgia 30060



# Variance

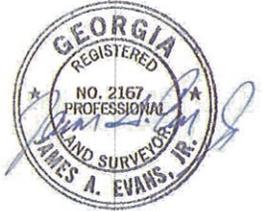
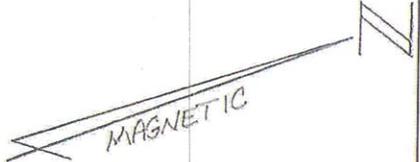
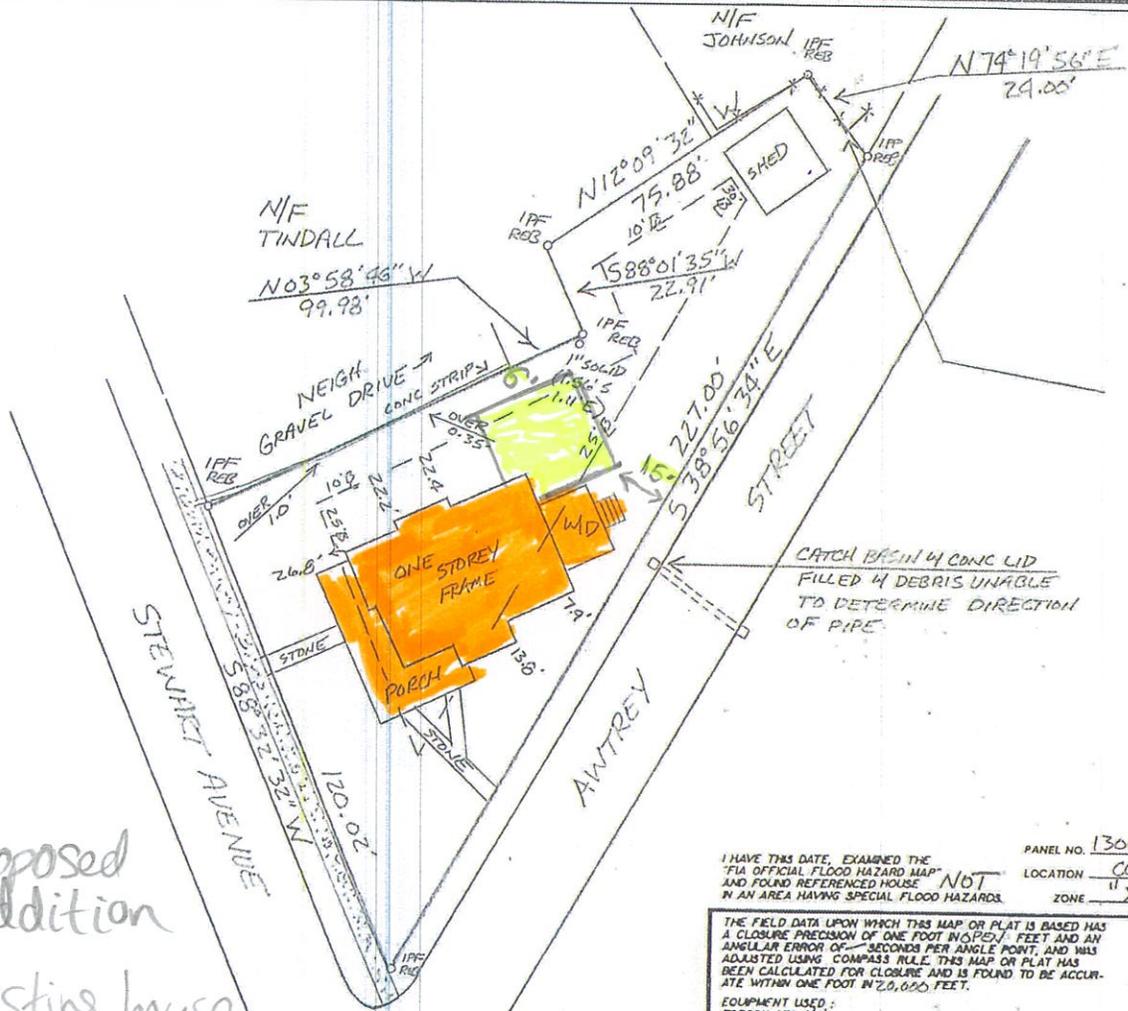


Address	Parcel Number	Acreage	Ward	Zoning	FLU
126 STEWART AVE	16114700170	0.296	4A	R4	MDR

Property Owner:	Rachel Barry & Philip Myrick
Applicant:	
BZA Hearing Date:	08/31/2020
Acquisition Date:	
Case Number:	V2020-28
City of Marietta Planning & Zoning	

**Zoning Symbols**

- Railroads
- City Limits
- Cobb County Pockets
- NA
- R1 - Single Family Residential (1 unit/acre)
- R2 - Single Family Residential (2 units/acre)
- R3 - Single Family Residential (3 units/acre)
- R4 - Single Family Residential (4 units/acre)
- RA4 - Single Family Residential - Attached
- RA6 - Single Family Residential - Attached
- RA8 - Single Family Residential - Attached
- MHP - Mobile Home Park
- PRD-SF - Planned Residential Dev. Single Family
- RM8 - Multi Family Residential (8 units/acre)
- RM10 - Multi Family Residential (10 units/acre)
- RM12 - Multi Family Residential (12 units/acre)
- RHR - Residential High Rise
- PRD-MF - Planned Residential Dev Multi Family
- NRC - Neighborhood Retail Commercial
- CRC - Community Retail Commercial
- RRC - Regional Retail Commercial
- PCD - Planned Commercial Development
- LI - Light Industrial
- HI - Heavy Industrial
- PID - Planned Industrial Development
- MXD - Mixed Use Development
- CBD - Central Business District
- OIT - Office Institutional Transitional
- LRO - Low Rise Office
- OI - Office Institutional
- OS - Office Services
- OHR - Office High Rise

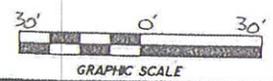


AREA = 0.2785 ACRE  
 #126 STEWART AVENUE

= Proposed addition  
 = Existing house

I HAVE THIS DATE, EXAMINED THE "FIA OFFICIAL FLOOD HAZARD MAP" AND FOUND REFERENCED HOUSE **NOT** IN AN AREA HAVING SPECIAL FLOOD HAZARDS.

PANEL NO. 13067C0108J  
 LOCATION COBB  
 ZONE "X"



THE FIELD DATA UPON WHICH THIS MAP OR PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 10,000 FEET AND AN ANGULAR ERROR OF SECONDS PER ANGLE POINT, AND WAS ADJUSTED USING COMPASS RULE. THIS MAP OR PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 20,000 FEET.

EQUIPMENT USED:  
 TOPCON (GTS-RIB)  
 IN MY OPINION, THIS PLAT IS A CORRECT REPRESENTATION OF THE LAND PLATTED AND HAS BEEN PREPARED IN CONFORMITY WITH THE MINIMUM STANDARDS AND REQUIREMENTS OF LAW.

*James A. Evans, Jr.*  
**J.A. EVANS**  
 SURVEYING CO., INC.  
 POWDER SPRINGS, GEORGIA  
 PH. 770-943-0000

SURVEY FOR:				REVISIONS
RACHAEL BARRY				
LOT	BLK.	UNIT		
	D.B.	15277		
		PG. 1648		
LAND LOT		1147		
DISTRICT	16 <sup>TH</sup>	SECTION 2ND		CC
	COBB	COUNTY, GEORGIA		DRWN
PLAT BOOK	64	PAGE 166		CHKD
DATE:	5-11-17	SCALE: 1" = 30'		JOB #
				14.7-17

STUBS PER R-4 ZONING  
 survey was prepared in conformity with The  
 nical Standards for Property Surveys in Georgia  
 t forth in Chapter 180-7 of the Board Rules of the  
 gia Board of Registration for the Professional  
 teers and Land Surveyors and as set forth in the  
 gia Plat Act O.C.G. A. 15-6-67.

LSF00248