



Planning and Development Department  
 Zoning Board of Appeals  
 Practical Difficulty Variance Application

Applicant Information:

JUDITH & PHILLIP RICHARDSON  
 Name

Business Name

747 LAST ARROW DRIVE  
 Address

HOUSTON, TX 77079

281-597-9657 Telephone 832-317-8794 (CELL) Fax

Applicant's Right, Title or Interest in Subject Property:

OWNER  
 (e.g. owner, purchaser, etc.):

Current Zoning Designation: IR-1 RESIDENTIAL

Existing Use of Property:

SUMMER COTTAGE

Subject Property Information:

700 CENTRAL AVE., PEAKS ISLAND, ME 04108  
 Property Address

88-E-5,6,18  
 Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

SAME  
 Name  
 Address

Telephone Fax

Practical Difficulty Variance from Section 14-145.1 - 14-145.6

RECEIVED

JUN 29 2012

Dept. of Building Inspections  
 City of Portland Maine

WITHDRAWN

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for a Practical Difficulty Variance as above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Phillip M Richardson  
 Signature of Applicant

6/26/12  
 Date

Judith E. Richardson

WITHDRAW

## Required Conditions for Variance

Notwithstanding the provisions of subsections 14-473(c) (1) and (2) of this section, the Board of Appeals may grant a variance from the dimensional standards of this article when strict application of the provisions of the ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:

***1. The need for the variance is from dimensional standards of the Land Use Zoning Ordinance (lot area, lot coverage, frontage, or setback requirements).***

The owners request a variance from setback requirements in order to meet the changing needs of five senior family members who are the primary residents of *Blue Heaven*, a small summer cottage on Peaks Island. Our goals include the following:

- A safe staircase to the second floor to prevent recurring accidents
- An upstairs bathroom to limit trips up and down stairs, especially at night

No area in this cottage currently provides the space necessary to build a staircase to code; therefore, all designs for a new staircase must extend the cottage outside its current footprint, thereby requiring a side yard setback. The proposed plan, the only sensible and most cost effective of the designs considered, would result in a 8' 6" setback from the property line for a repositioned landing and steps (and possible future ramp) and a 12' 6" setback for the addition.

When *Blue Heaven* was built about 1886, its 100' x 50' lot size was standard in this particular summer cottage development. There were no 20' setback requirements at that time, and it is not possible 126 years later to adapt this cottage for contemporary senior needs within a 10' wide building envelope.

As is explained more fully in our cover letter, this project would require only a variance to the setback requirements on one side. The building as modified would comport with the front and rear setbacks and the 20' requirement on the opposite side. We have more than the required 100' of road frontage. With the other contiguous parcels the lot coverage is slightly less than 5% (a 951 square foot cottage footprint on a 20,319 foot parcel.) The addition would bump that up to about 6%, well under the 20% lot coverage limit.

***2. Strict application of the provisions of the Ordinance would create a practical difficulty, meaning it would both (1) preclude a use of the property which is permitted in the zone in which it is located and also would (2) result in significant economic injury to applicant. "Significant economic injury" means the value of the property if the variance was denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.***

# WITHDRAW

## Use of the Property Permitted in the Zone

*Blue Heaven* is located in the IR-1 residential zone which provides for “low intensity residential, recreational, and rural uses in the less developed areas of the islands.” This current zoning description fits with the historic and current use of the property. It is a single-family dwelling with driveway, parking and recreational area on the lawn in front of the cottage. None of the tax parcels other than 88-E-18 is improved with any structures.

We believe the intent of IR-1 zoning is to encourage all homeowners in the area, including those of limited mobility, to enjoy the residential and recreational benefits of Peaks Island’s rustic areas. But “strict application of the dimensional standards of the ordinance” to *Blue Heaven* will preclude the use of the existing cottage by its longtime owners who require a safe staircase, second floor bathroom, step-in shower, and first-floor sleeping option. In the future one or more of these family members may need first-floor handicapped accessibility: outdoor ramp, wide doorways, and access to the downstairs bathroom and bedroom, alterations included in this plan to be implemented if and when needed.

## Economic injury

If older family members are unable to use the cottage because of its physical limitations, the cost to those family members who are able to use the cottage will escalate. We can foresee it becoming financially prohibitive to keep the cottage in the family if it can only be used in a limited way. We also believe that if forced to sell, the market would be limited for an old-fashioned cottage that cannot be modernized, so our many years of care and maintenance wouldn’t pay off with a reasonable sale price.

For the five seniors who have spent so many summers at *Blue Heaven* and for our children and grandchildren, the emotional costs of giving up summers together at the cottage – a family tradition of five generations spanning 64 years – would be as great as the financial injury.

### ***3. The need for the variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.***

From the outside *Blue Heaven* exudes Victorian charm in a natural, woodland setting. On the inside, however, the remnants of 1880s cottage design—steep and narrow staircase, dorm-style bedroom, single bathroom downstairs, and claw-foot tub—indicate this cottage was not designed for older adults or modern families. Without modifications the cottage will become inaccessible to one or more of our family’s seniors in the near future; the upstairs bedroom has already become unusable by the oldest senior.

Other cottages in the neighborhood were built in relatively modern times, allowing for more safe, comfortable conditions. This is a unique property that should not have to be frozen in time.

WITHDRAW

***4. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of the abutting properties.***

The proposed house addition will not affect the value of abutting or nearby residential or undeveloped properties. The addition is designed to match the 1880s cottage character. It will not affect Trott-Littlejohn (public) Park which lies to the southeast across Central Avenue. The (grandfathered) side wall of the cottage is closer to the small, undeveloped lot on the southwest side than the new addition would be, so there is no reasonable argument that it would crowd that lot, which we believe is unbuildable in the zone in any event.

***5. The practical difficulty is not the result of action taken by the applicant or a prior owner.***

The *practical difficulty* is not the result of any action or inaction on our part or a prior owner. It is directly related to modern side-yard setback requirements impacting a historic home built on a typical 5,000 square foot lot in 1886. Without a variance to build onto the original structure, an addition could be only 10' wide, which is too narrow to construct a new staircase according to code. The existing screened porch, the only 16' space available, is one foot shy of the width required for a staircase, hallway, and exterior wall. There are also financial considerations. It is imperative to keep construction costs (typically higher for additions than for new construction) commensurate with the overall value of the house.

The family's five seniors were ages four to nine when the family, then living in Portland, purchased the cottage in 1948. With a life expectancy of 86, these seniors are likely to use the cottage until 2027 – possibly longer, provided the cottage can be made more amenable to older adult safety and accessibility. Indeed, seniors need more than safety and accessibility in their home. They also need comfort and privacy. Sharing the dorm-style bedroom on the second floor may be a treat for 10-year-old cousins, but it is definitely *not* a treat for 65+ male and female siblings and their spouses. Older folk have very different habits for waking/sleeping times, preferences for temperature/fresh air/fan, light exposure, tolerance for snoring, getting up at night to use the bathroom, and reading in bed. Accommodating personal needs for privacy and comfort is important to every family member's quality of sleep and sense of well-being. The second floor of the cottage currently has three beds in one bedroom and with the proposed addition would still have three beds but in two bedrooms (one old, one new), allowing for more privacy but no increased occupancy.

***6. No other feasible alternative is available to the applicant, except a variance.***

The owners' preferred option was to purchase an abutting property (88-E-17) in order to build without requiring a variance, but the abutting owner and his predecessor have been unwilling to discuss selling or exchanging a lot. Given that closed door, the owners considered ways to meet practical, aesthetic, and financial goals with an addition that required minimal use of a variance.

# WITHDRAW

After comparing several possible designs and construction cost estimates from three Peaks Island contractors, the applicants chose the proposed 18'6" x 17'6" two-story addition because it matches the existing dimensions of the two-story core of the house. This plan fulfills all design goals except avoiding the need for a variance and offers the lowest overall cost and lowest cost per square foot. The addition would include a new staircase, second floor bathroom, and first floor area adaptable for sleeping on a temporary basis; it would also replace the porch and bedroom space lost in the reconstruction. This plan will create a safe, accommodating home, keep costs in line with the property's overall value, and maintain an appropriately enhanced cottage in the historic colony known as Rock Bound Park.

***7. The granting of a variance will not have an unreasonably adverse effect on the natural environment.***

The proposed addition will not change the natural environment to any significant degree. It will not change the drainage pattern from the owners' parcels, which are at the highest elevation, in relation to adjoining lots. It also will not eliminate trees or add pollutants to the air, land or water table.

***8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. Section 435, nor within a shoreland zone or flood hazard zone.***

The property located in the center of Peaks Island is not in a flood hazard zone or shoreland area which is defined in 38 M.R.S.A. Section 435 as "those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal wetland or within 250 feet of the upland edge of a freshwater wetland."

June 25, 2012  
747 Last Arrow Drive  
Houston, TX 77079

Re: 300 Central Avenue  
Peaks Island, Portland, Maine

City of Portland  
Zoning Board of Appeals  
389 Congress Street, Room 315  
Portland, ME 04101

WITHDRAW

For 64 years our family has owned a small, two-bedroom summer cottage in the center of Peaks Island, which is in the IR-1 zone. We own five separate lots with total area of 34,759 square feet. All are located on Tax Map 88, Block E. They are lots #4, 5, 6, 16 and 18. Attached as Exhibit A is a copy of Tax Map 88 with those lots highlighted.

The cottage itself is located on 88-E-18, which is 50 feet wide by 100 feet deep. This non-conforming parcel is contiguous with 88-E-5 & 6, which we believe means that for zoning purposes, they are considered to be a single lot of 20,319 square feet. However, as can be seen on Exhibit A, the additional area provided by 88-E-5 & 6 does not provide any practical benefit in our proposal to build a small addition because of their location in relation to the cottage. Accordingly, in our discussion of setback requirements, we will refer primarily to the 5,000 square foot parcel on which the cottage sits.

As is noted on the photograph of the cottage attached as Exhibit B and as shown in the Chapman Plan attached as Exhibit C, this 5,000 square foot lot is part of a late 19<sup>th</sup> century subdivision of this portion of the island called Rock Bound Park. The house is oriented toward Park Avenue (a/k/a Central Avenue). Parcels 88-E-5 & 6 extend from the cottage lot to the road. Our other two parcels (88-E-4 and 88-E-16) are non-contiguous.

The primary summer residents of the cottage are five family members now aged 68-73. Accordingly, modifications to the cottage are necessary for senior safety, accessibility and comfort. These modifications are:

1. Replacement of steep, narrow, interior stairs
2. Addition of a second-story bathroom with walk-in shower
3. Creating accessible downstairs sleeping capacity for temporary use
4. Making provisions for future handicapped accessibility, including code-compliant exterior stairs and a base where a ramp could be attached.

The most logical (and only cost-effective) way to make these improvements is to build an addition off the front side of the cottage, as is shown on the plot plan attached as Exhibit D. As is evident from this plot plan, the grandfathered footprint of the existing cottage is 3' from the side property line. This footprint would not change. However, the planned two-story addition would be within the 20' setback. The replacement steps and base for a future ramp would be 8 feet, 6 inches from the property line, and the sidewall of the addition would be 12 feet, 6 inches from the property line.

WITHDRAW

We have attempted on numerous occasions recently and during the past to contact the owners of the undeveloped abutting parcel to the northwest (88-E-17) to inquire about buying or swapping land so this project could be accomplished without a variance. Unfortunately, they have been unwilling to even discuss this possibility.

On the northeasterly side, the existing footprint is 15 feet from the sideline. The addition has been designed to be 20 feet from that sideline, so no variance will be needed on that side in order to build the addition.

As is evident from Exhibits A and D, the cottage is set back 47 feet from the rear line. When the front lots (C 5 & 6) are taken into account, it is more than 100 feet from the road.

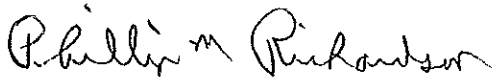
The existing floor plan makes it impractical to build an addition that does not impact the southwesterly sideline. Without a variance to build onto the original structure, an addition could be only 10' wide, which is too narrow to construct a new staircase according to code.

Prior to settling on this design we explored several other options but found the required modifications, particularly a new staircase, simply cannot be constructed within 20' side yard setbacks. We are therefore requesting a side yard variance to allow a repositioned landing and steps and an addition that will accomplish the safety and accessibility goals set forth above. We believe the grant of this variance would have minimal impact and is necessary because of the practical difficulty of adapting the cottage while being true to setback rules that did not exist when the cottage was built.

We respectfully request a variance to make our cottage safer and more accessible for our older adult family members. This action fits with the spirit of IR-1 residential zoning and will not adversely affect the environment or owners of neighboring lots. Thank you for your consideration.



Judith E. Richardson



Phillip M. Richardson

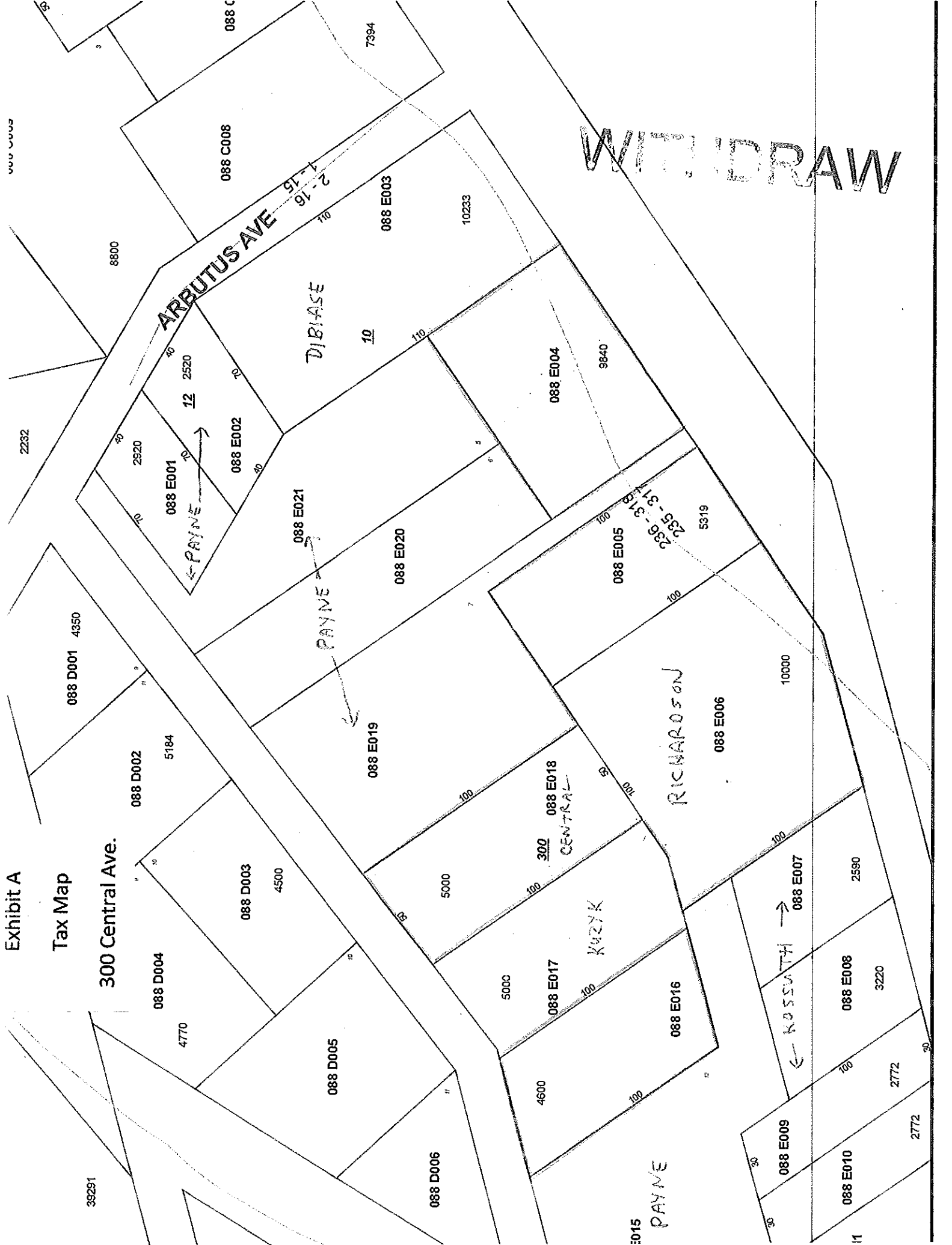
Phone: 281-597-9657

Cell: 832-317-8794

Exhibit A

Tax Map

300 Central Ave.



WITHDRAW

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2232

8800

088 C

088 C008

7394

ARRUTUS AVE  
91-1  
91-2

088 E003

10233

DIBIASE

10

088 E004

9840

088 E001

12 2520

088 E002

2920

PAYNE

088 E021

088 E020

088 E005

236-318  
235-31

5319

088 D001 4350

088 D002

5184

088 E019

RICHARDSON

088 E006

10000

088 D003

4500

088 E018

300

CENTRAL

39291

088 D004

4770

5000

088 E017

KUZYK

088 E016

088 E007

088 E008

3220

088 D005

4600

4600

088 E009

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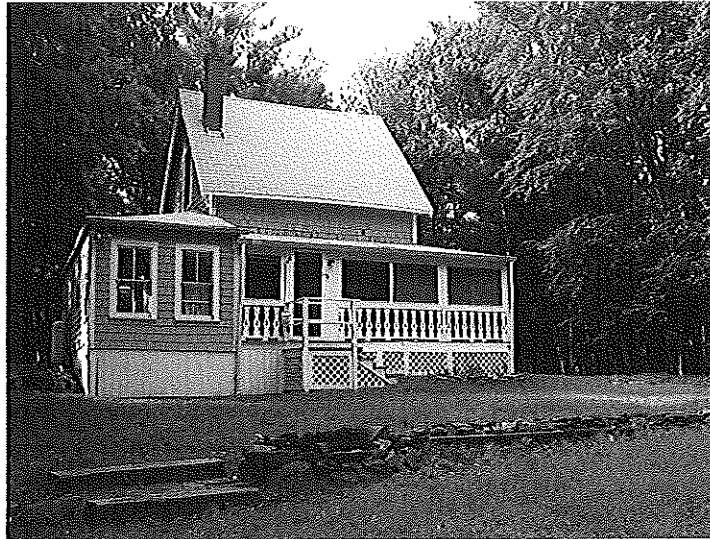
Exhibit A-1

Aerial View

300 Central Ave.

Exhibit B  
Blue Heaven

WITHDRAW



300 Central Avenue, Peaks Island

*Blue Heaven* is a small summer cottage (841 square feet) built in Rock Bound Park, Peaks Island, about 1886. Since its development as a summer colony in the 1880s (see original Plan), Rock Bound Park, a large tract of Peaks Island stretching from the center to the eastern shore, has included primarily summer properties with *Blue Heaven* as one of the first and possibly the oldest to survive. The house lot, one of five adjoining lots owned by the family, is surrounded by woods on all sides and faces Trott-Littlejohn Park across Central Avenue. The closest cottage is about 200 feet distant.

*Blue Heaven* passed through eight owners in its first 58 years and has now been held by one family and been used only by them, not rented, for the past 64 years. The family has worked to maintain the integrity of this historic cottage, retaining 1880s period design, replanting trees to replace those lost to storms, and clearing brush and dead trees to protect the area from fires that have ravaged so many of the Island's wooded acres and original homes.



Exhibit B-1  
Blue Heaven, Peaks Island

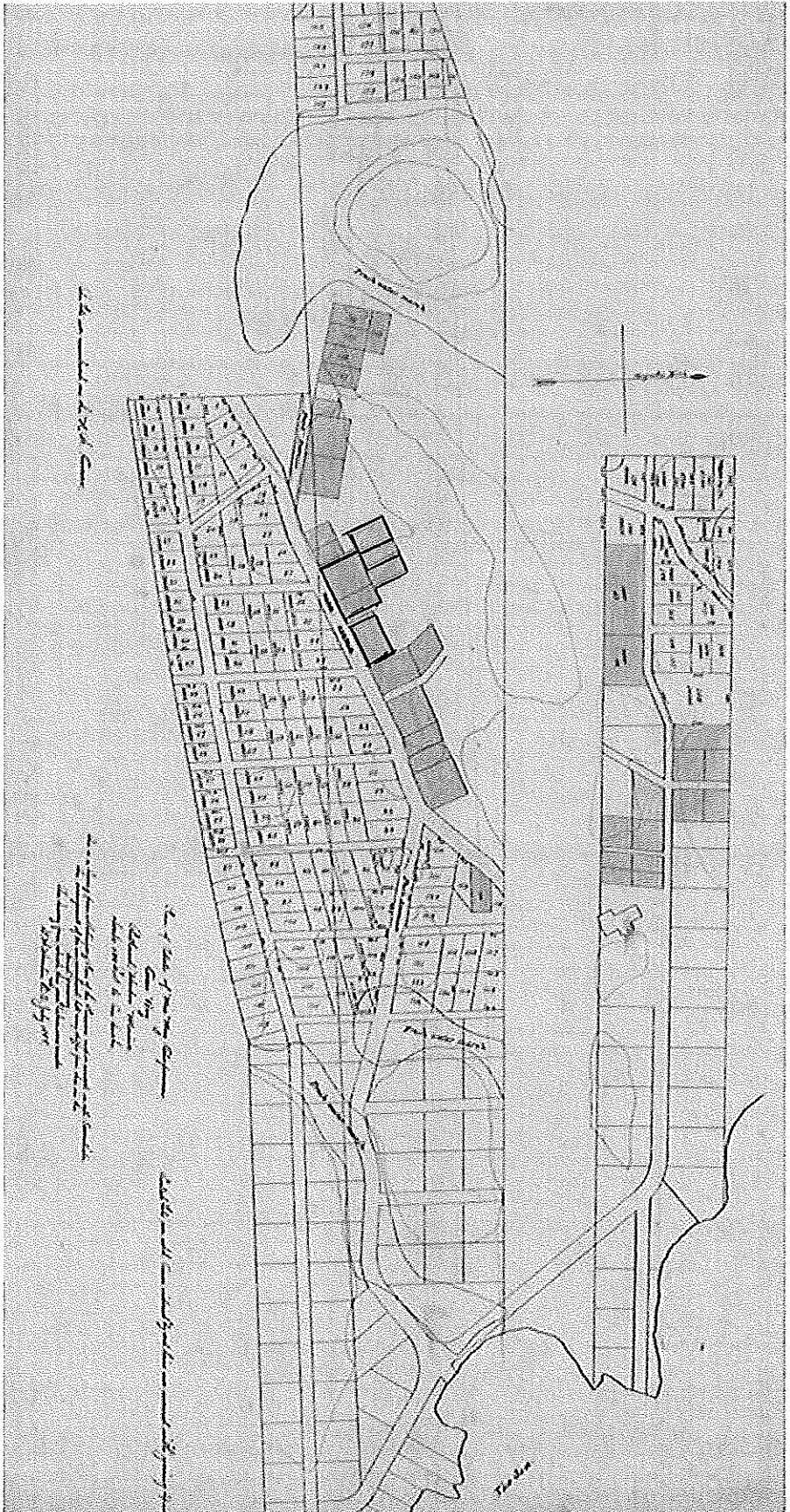
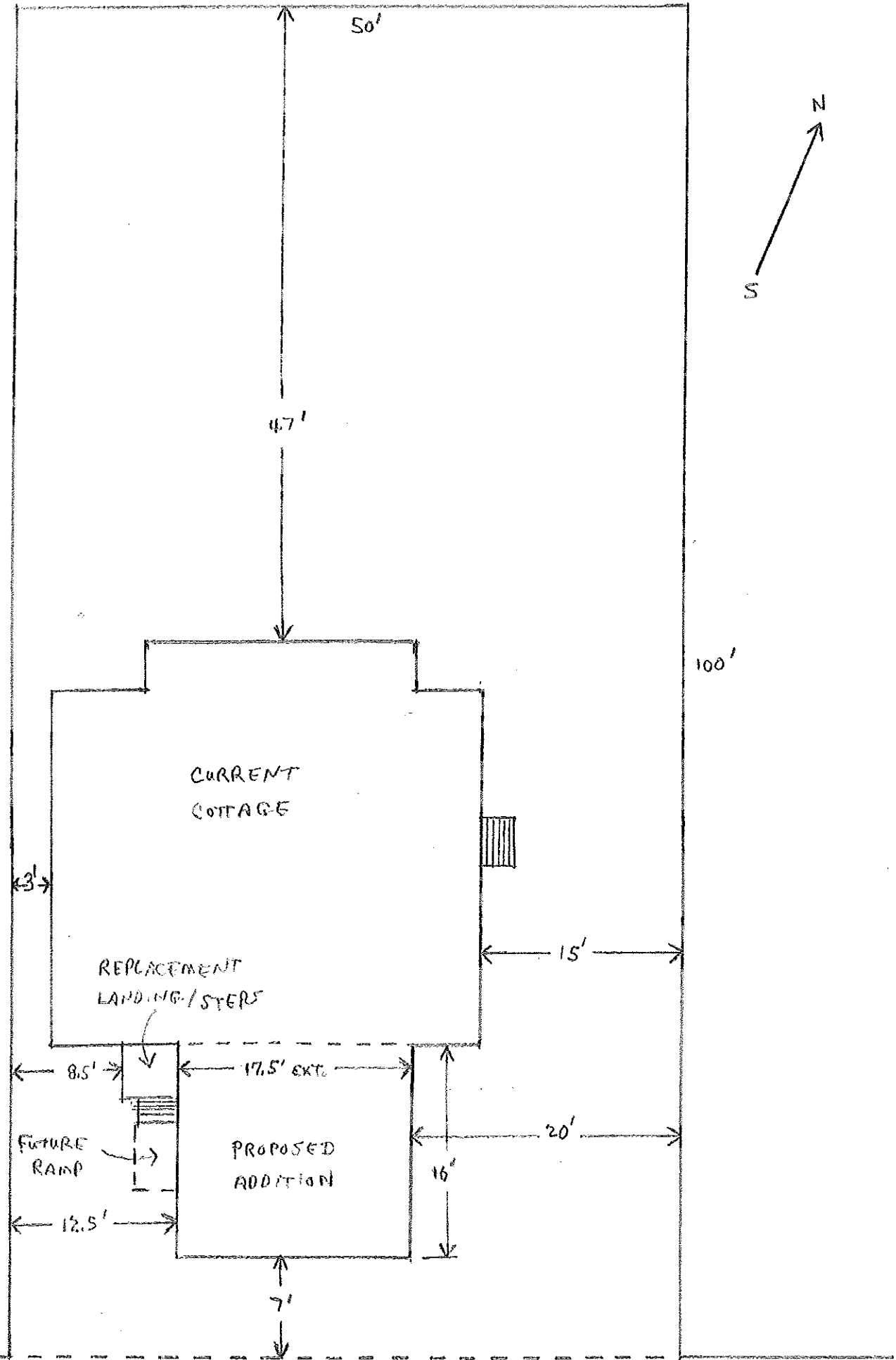


Exhibit C

Chapman Plan, Rock Bound Park, Peaks Island, 1888

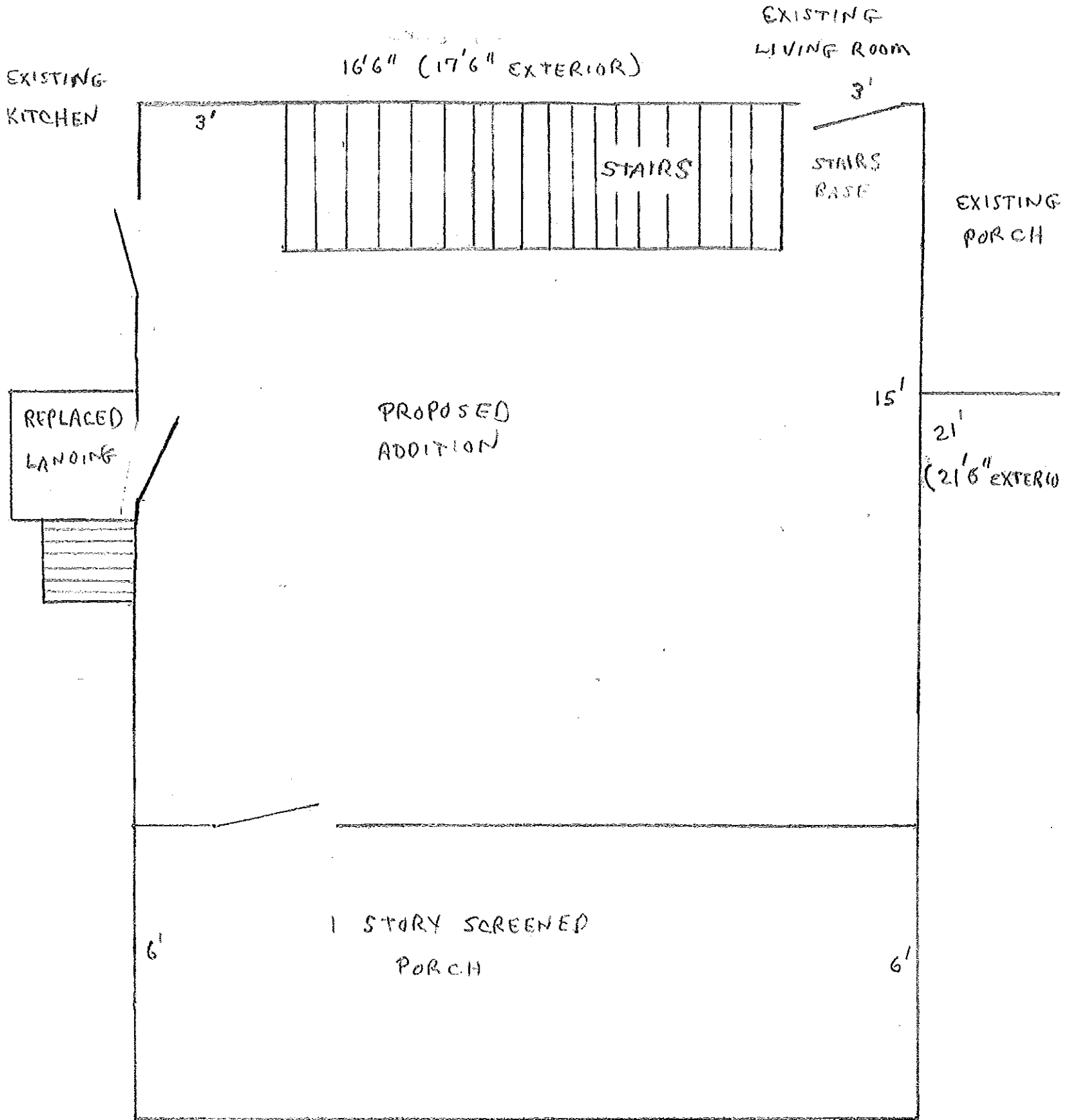
Blue Heaven lots (88-E-4, 5, 6, 16, 18) were among the first lots sold in the summer colony.

EXHIBIT D: PLOT PLAN FOR 300 CENTRAL AVENUE



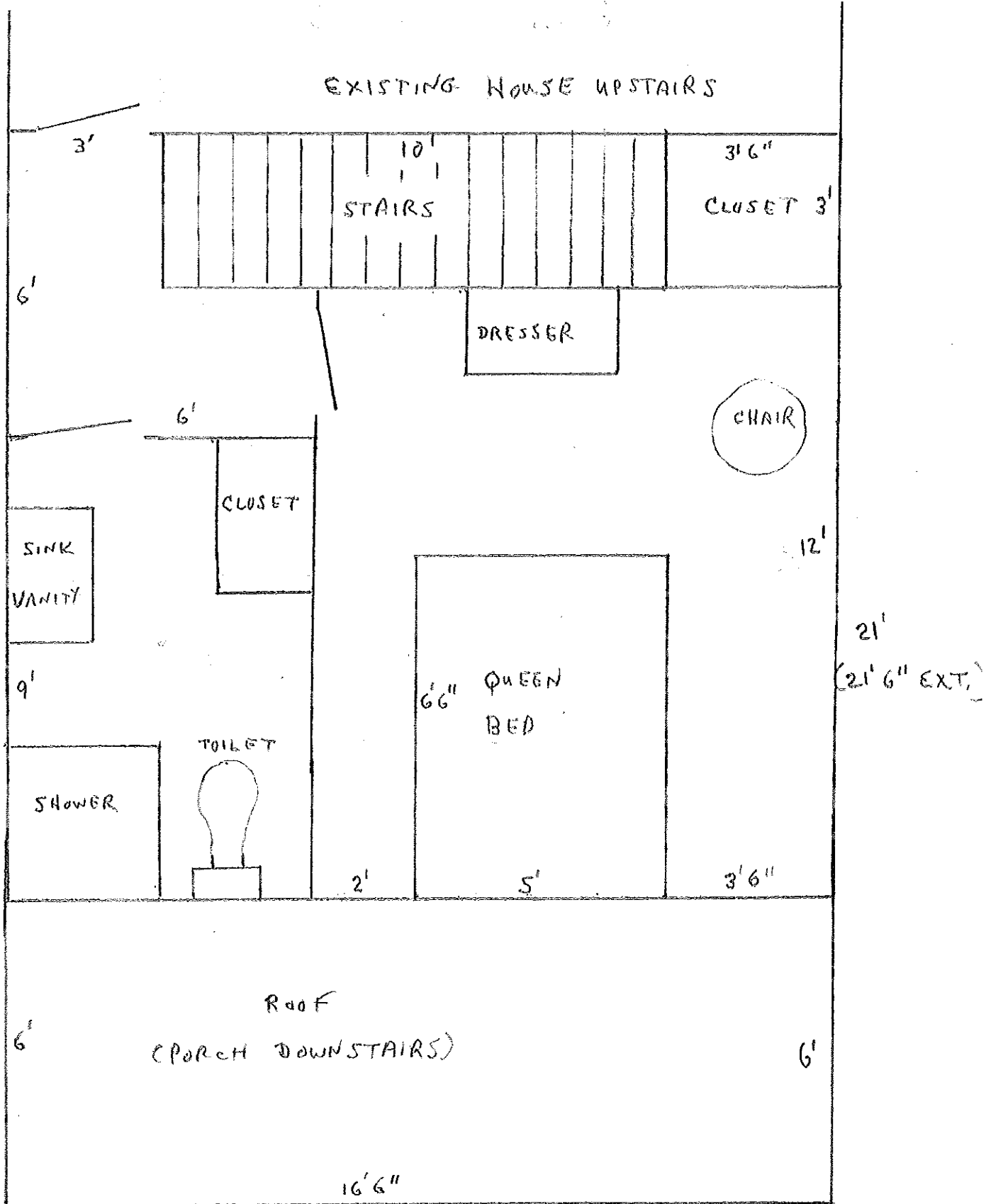
OTHER RICHARDSON LOTS

EXHIBIT E: 1<sup>ST</sup> FLOOR ADDITION FOR 300 CENTRAL AVENUE



WITHDRAW

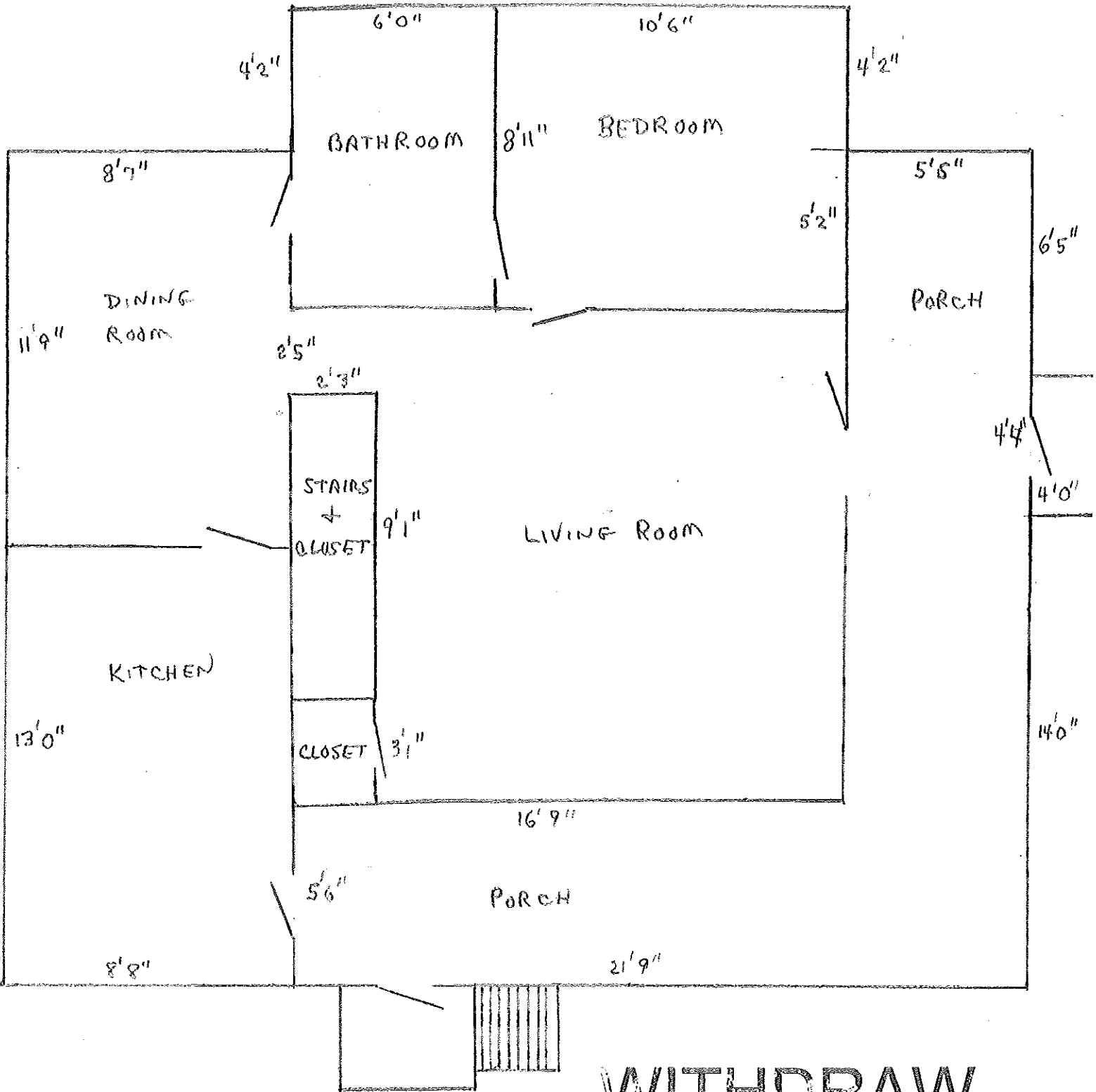
EXHIBIT E 3<sup>RD</sup> FLOOR ADDITION FOR 300 CENTRAL AVENUE



WITHDRAW

EXHIBIT E

1ST FLOOR CURRENT HOUSE FOR 300 CENTRAL AVENUE

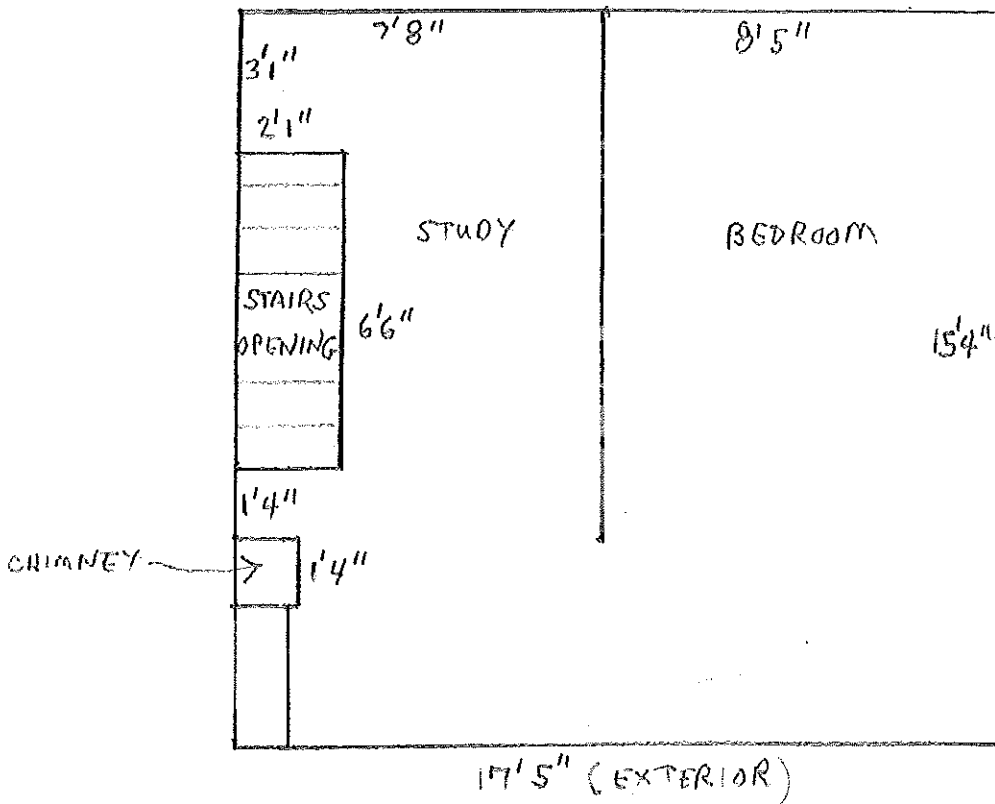


WITHDRAW



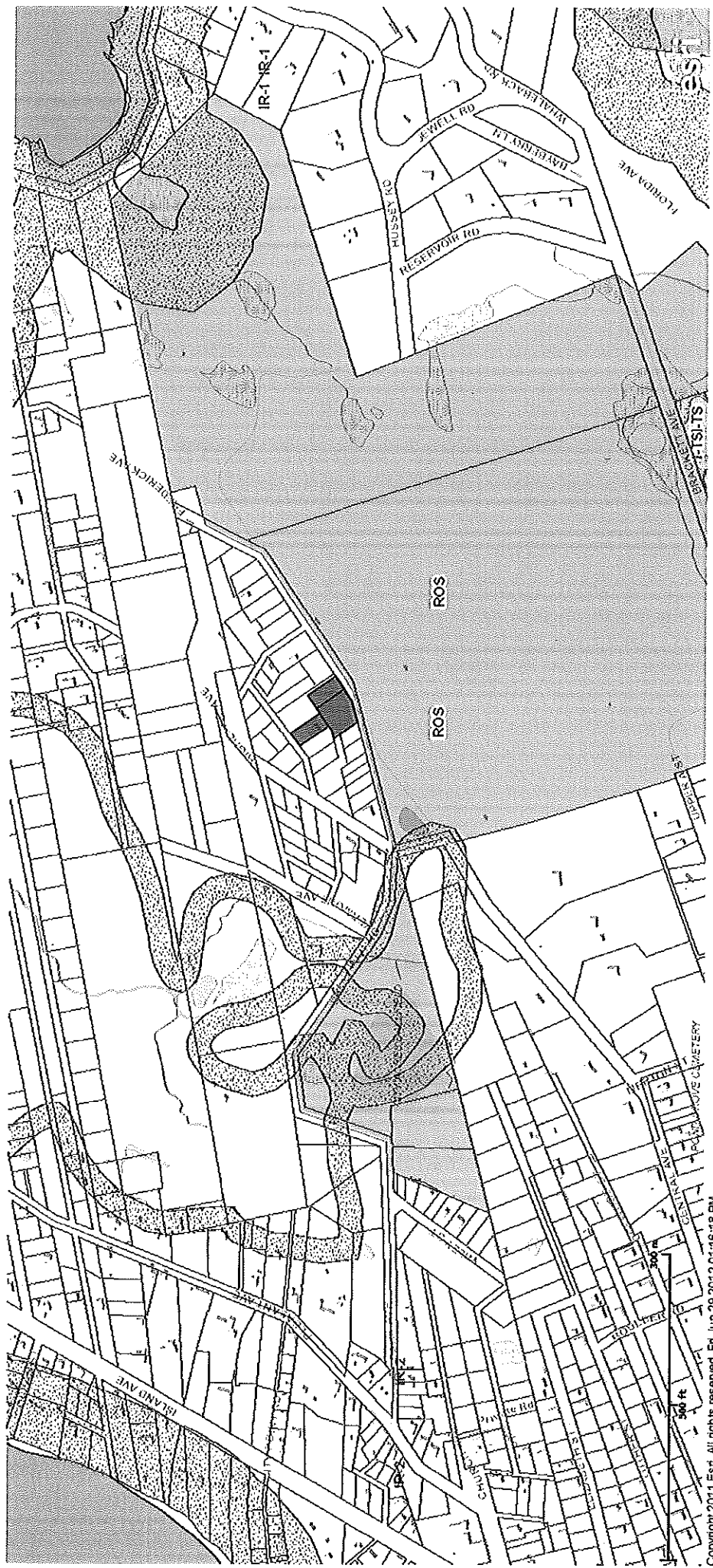
EXHIBIT E

2<sup>ND</sup> FLOOR CURRENT HOUSE FOR 300 CENTRAL AVENUE



WITHDRAW

# 300 Central Ave., Peaks Island



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Receipts Details:

**Tender Information:** Check , Check Number: 6060

**Tender Amount:** 100.00

Receipt Header:

**Cashier Id:** amachado

**Receipt Date:** 6/29/2012

**Receipt Number:** 45532

# WITHDRAW

*requested refund 7/24/12*

Receipt Details:

Referance ID:	1660	Fee Type:	PZ-Z1
Receipt Number:	0	Payment Date:	
Transaction Amount:	100.00	Charge Amount:	100.00

Job ID: Project ID: 2012-532 - 300 Central Ave., P.I. - Practical Difficulty

Additional Comments:

Thank You for your Payment!