

TOWN OF SMITHTOWN

SUFFOLK COUNTY, NEW YORK

2015-01

PETITION TO THE TOWN BOARD FOR A CHANGE IN ZONING DISTRICT OR A SPECIAL EXCEPTION

IN THE MATTER OF THE PETITION OF:

1. Petitioner's Name: Story Book Meadows, LLC
Address: c/o Tantone and Gulotta
2459 Ocean Avenue, Ronkonkoma, New York 11779
Telephone No.: (631) 285-7000

2. Petitioner's interest in property: (check one).

A. ☒ Owner ☐ Contract vendee

B. Is the Petitioner or owner a partnership.
☐ Yes ☒ No

C. If petitioner is not the owner;
Owner of fee title to land: N/A
Address: _____
Telephone No.: _____

3. Petitioner's Attorney: Tantone & Gulotta by Frank A. Tantone, Esq.
Address: 2459 Ocean Avenue
Ronkonkoma, New York 11779
Telephone No.: (631) 285-7000

4. Please send all correspondence to: ☐ Petitioner ☐ Owner ☒ Attorney

FOR:

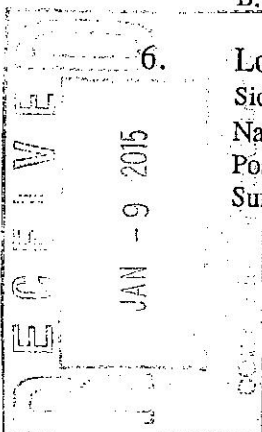
5. The purpose of:

A. A change of zone from modification district to _____ district
of Covenants originally recorded 04/11/97, Liber 11825, Page 217
(see attached sheet for modification of Covenants). Also to
B. A special exception for request 78 bonus density units.

6. Location of Property:

Side and name of street: North side of Smithtown Blvd.
Name and distance of nearest intersection: 215' east of Marys Lane (Opposite
Post office: Chestnut & Locust Streets, Nesconset
Suffolk County Tax Map # 0800-168-01-028.003

COPY TO: ☐ Town Clerk ☐ D.E.W. ☒ Planning ☐ S.C.P.C.



7. Describe the existing use of the subject property Vacant land
currently zoned RC & R15
8. Describe in detail the proposed use of the subject property and why such a petition is being made (may attach statement): To modify covenants recorded 04/11/97 Liber 11825, Page 217. (See attached "Requested Covenants to be modified and or omitted". Also requesting approval of 78 bonus density units.
9. How does this proposal comply with the Comprehensive Plan of the Town? (may attach additional sheets.) To address the need for affordable senior housing which is greatly needed.
10. Give zoning history of prior applications (may attach additional information).

	Case #	Decision Date	Nature of Decision	Decision
Town Board	<u>982</u>	<u>12-10-96</u>	<u>R-15 & NB to RC</u>	<u>Granted W/C</u>
Planning Board				
Board of Zoning Appeals				
Other				

11. Please complete the following:

PETITIONER'S AFFIDAVIT

COUNTY OF SUFFOLK SS

Elmer Hornberger being duly sworn, and deposes and says that he resides at 8 Valiant Court, Nesconset, in the STATE OF NEW YORK and that he is the owner /contract vendee of the above property, which is hereby making application; as the petitioner of property described. That all statements made in this application are true to the best of his (or) her knowledge and belief.

Sworn to me before this

27th day of October, 2014

Dorothy Quigg

SIGNED Elmer Hornberger
Elmer Hornberger

Notary Public, State of New York
No. 01QU6964275, Suffolk County
Term Expires February 28, 2015

For Office Use Only

Petition No.	<u>201501</u>	Checked By:	<u>EB</u>	Date:	
Date Filed:	<u>1-8-15</u>	Checked By:		Date:	
Filing Fee:		Sent to County by:	<u>EB</u>	Date:	<u>1-8-15</u>
Received by:	<u>EB</u>	Returned from County:		Date:	

REQUESTED COVENANTS TO BE MODIFIED AND OR OMITTED

#1 Modify to read:

The Declarant covenants that the total number of approved units to be constructed on the property described in Exhibit "D" shall be one-hundred ninety-two (192) units plus any additional bonus density units.

#6 Omit

#7 Modify to read (New #6):

The Declarant covenants that the capacity of the proposed sewage treatment plant will not exceed the level necessary to serve the retirement community and any proposed development to the thirty-six (36) acres to the North.

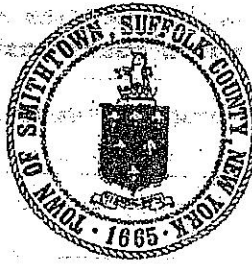
#8 Omit

#9 Modify to read (New #7):

The Declarant also covenants that the lifting or modification of any covenants herein contained shall require the agreement of the property owner and the Town of Smithtown.

TOWN OF SMITHTOWN

SUFFOLK COUNTY, N.Y.



DISCLOSURE AFFIDAVIT

(See Instructions Below)

In the Matter of the Application

Case #

2015-01

Of

Story Book Meadows LLC

FULL DISCLOSURE
AFFIDAVIT

P. O. Address P. O. Box 473

St. James, New York 11780

STATE OF NEW YORK

SS.:

COUNTY OF SUFFOLK

Elmer Hornberger

(name), being duly sworn, deposes and says:

1. This affidavit is made by your deponent and intent to be filed with The Town Board - Board of Zoning Appeals of the Town of Smithtown (cross out one) to fulfill requirements of the Building Zone Ordinance with respect to the above entitled Application made or intended to be made affecting property located and described as follows:

SCTM # 0800-168-01-02833 N/S of Smithtown Blvd. 215 feet

East of Marys' Lane (Opposite Chestnut & Locust Streets),

Nesconset

(Continue on the back of this page.)

Instructions:

This affidavit must be signed by all owners of record, contract vendees, lessors, lessees, sub-lessees, contract lessors, contract lessees, contract sub-lessors, contract sub-lessees, holders of beneficial interest, contract holders of beneficial interest, holders of encumbrances and contract holders of encumbrances. The purpose of this affidavit is to insure disclosure of any interest of any nature or form whether oral or written held by any individual, partnership, firm, or corporation. (Exception: Lending institutions licensed or franchised by the State of New York, public corporations and lessees, contract lessees, sub-lessees and contract sub-lessees of less than a whole interest in land are not required to execute this affidavit. Individual applicant or applicants who are husband and wife need not file this affidavit in connection with applications for an area variance or an interpretation of any provision of this ordinance with respect to residential property, unless directed to do so by the Board of Zoning Appeals.)

2. Signatures of this Affidavit as specified above under Instructions shall fill out the following applicable items: (If necessary, attach additional information on separate sheet.)

a. If signator is an individual, state full name and street address;

N/A

b. If signator is a partnership, state the name, street address and the nature of interest of each partner;

N/A

c. If signator is a corporation, state name and street address of each officer, director and stockholder;

Elmer E. Hornberger, 8 Valiant Court, Nesconset, New York 11767

Douglas Hornberger, 4 Farmers Lane, St. James, New York 11780

Kenneth Hornberger, 4 Tracklot Lane, St. James, New York 11780

d. If signator is a corporation and stock has been pledged or agreement made to pledge stock, state name and street address of all persons to whom stock has been pledged or with whom any agreement has been made to pledge the stock. If none, so state;

N/A

e. State name and address of all persons, individuals, partnerships and/or corporations who are holders of any instrument creating an encumbrance upon the property; state the nature of such encumbrance; and if the holder of such encumbrance is a corporation (See Exception) state the names of all officers, directors and stockholders of such corporation;

N/A

f. State whether any person whose name is contained herein either as a signator or as a party having any interest in the property as defined herein is an officer or employee of the Town of Smithtown or is related thereto either by blood or by marriage and if so, state name and relationship;

N/A

g. If the signator is the owner of the property, contract vendee, or other, so state;

Owner

h. State whether any person, partnership, firm or corporation has any interest, as defined in the Instructions in respect to the subject property. If none, so state; if otherwise, set forth names, addresses, and nature of interest;

None

i. All signators hereby agree that in the event there is any change in any matter set forth herein after the execution hereof and prior to the issuance of a Certificate of Occupancy for the property affected hereby, they shall file with the Planning Department a Supplemental Affidavit containing the details of such change within forty-eight hours of such change.

APPLICANT'S AFFIDAVIT

Deponent makes this Affidavit to induce the Town Board - Board of Zoning Appeals (cross out one) to act favorably upon deponent's concomitant Application, with full knowledge that the Town Board - Board of Zoning Appeals will rely upon the statements made herein.

Elmer E. Hornberger

being duly sworn deposes and says that deponent is the signator of the above Affidavit; that deponent has read the foregoing Affidavit and knows the content thereof; that the same is true to deponent's own knowledge.

Signed _____

(Individual)

Signed _____

Elmer E. Hornberger
(Partner or Corporate Officer)
President

(Title)

Sworn to before me this

27th Day of October, 2014

Dorothy Quigg
(Notary Public)

DOROTHY QUIGG
Notary Public, State of New York
No. 01QU6964275, Suffolk County
Term Expires February 28, 2015

CORRECTION
COVENANTS, RESTRICTIONS AND RESERVATIONS

STORY BOOK MEADOWS, INC.

with

THE TOWN OF SMITHTOWN

WHEREAS, the undersigned corporation, STORY BOOK MEADOWS, INC., is the owner of a plot of land, situated at Nesconset, in the Town of Smithtown, County of Suffolk and State of New York, consisting of three (3) parcels for a total of twenty four (24) acres with frontage on the northerly side of Smithtown Boulevard, 215 feet East of Mary's Lane and more accurately described as Exhibit "A" attached hereto, and

WHEREAS, the said corporation, STORY BOOK MEADOWS, INC., having an office at 100 Nesconset Highway, Nesconset, New York, the fee owner of the said twenty four (24) acres described herein as Exhibit "A", is desirous of declaring and filing certain covenants, restrictions and reservations to run with the premises.

NOW, THEREFORE, the said STORY BOOK MEADOWS, INC., declares and covenants as follows:

(1) The DECLARANT covenants that the total number of units to be constructed on the property described in Exhibit "D" shall not exceed one hundred ninety-two (192) units, and the DECLARANT waives any right to seek any additional bonus density units.

(2) That a western portion of said Exhibit "A", adjacent to residential property and more particularly described as Exhibit "B", consisting of 3.009 acres shall be 150 feet deep and remain zoned R-15 as set forth in the Building and Zoning Ordinance of the Town of Smithtown, and shall remain undisturbed in its natural state as a wooded buffer.

(3) That an eastern portion of said Exhibit "A", adjacent to residential property and more particularly described as Exhibit "C", consisting of 1.760 acres shall be 100 feet deep and remain zoned R-15 as set forth in the Building and Zoning Ordinance of the Town of Smithtown, and shall remain in its natural state as a wooded buffer.

(4) That, for a depth of 60 feet, the northern edge of the property described herein as Exhibit "D" shall remain undisturbed and in its natural state (excluding the recharge basin as may be approved by the Town Engineer).

(5) DECLARANT covenants that the within described buffer zones designated in paragraphs 2, 3 and 4 will not be subdivided and will remain part of a single parcel along with the parcel zoned RC (Retirement Community) as described in Exhibit "D".

(6) The DECLARANT, as owner of the thirty six (36) acres set forth herein as Exhibit "E" by metes and bounds and immediately adjacent to the North side of the RC site (Exhibit "D") covenants that said thirty six (36) acres will be used for construction of single family homes at a density no greater than that achievable under R-15 zoning of the Building and Zoning Ordinance of the Town of Smithtown.

(7) The DECLARANT covenants that the capacity of the proposed sewage treatment plant will not exceed the level necessary to serve the proposed 192 unit retirement community and the proposed single family development to the North, consisting of thirty six (36) acres, zoned R-15.

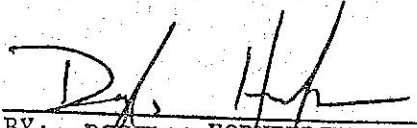
(8) That any basements, cellars or other such below grade spaces, other than that which may be a part of a clubhouse or communal recreation center, as may be constructed upon the 19.231 acre parcel zoned RC (Retirement Community) described in Exhibit "D" shall not be made habitable, but shall be limited to use for storage or laundry purposes, or the placement of mechanical equipment or sewer lines. Below grade spaces as may be constructed as part of a clubhouse or communal recreation center may not contain sleeping quarters or be used for other than recreational or mechanical purposes.

(9) The DECLARANT also covenants that the lifting or modification of any of the covenants herein contained shall require the agreement of the property owner, the Town of Smithtown and all of the owners of the residential properties adjacent to the land designated herein as Exhibits "B" and "C".

(10) The foregoing covenants and restrictions shall be construed as running with the land and binding upon the DECLARANT, any owner or purchaser of the premises or portion of same, their respective heirs, distributees, successors, legal representatives and/or assigns and may be enforced by DECLARANT, its successors and assigns, and by the Town of Smithtown.

(11) This corrects the covenants by STORY BOOK HOMES, INC., recorded in the Office of the Clerk in the County of Suffolk on April 11, 1997 in Liber 11825, page 217.

STORY BOOK MEADOWS, INC.


BY: DOUGLAS HORNBERGER,
(Vice President)

STATE OF NEW YORK)

ss.:

COUNTY OF SUFFOLK)

On the 15th day of FEB., 2000, before me personally came DOUGLAS HORNBERGER, to me known and who being by me duly sworn, did depose and say that he resides at 100 Nesconset Hwy., Nesconset, New York, and that he is the President of STORY BOOK MEADOWS, INC., the corporation described in and which executed the foregoing instrument.

MARGARET HIGGINS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 6118023718
QUALIFIED IN SUFFOLK COUNTY
MY COMMISSION EXPIRES APRIL 28, 2001

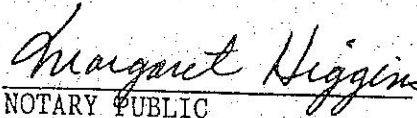

NOTARY PUBLIC

EXHIBIT "A"

ALL that certain plot, piece or parcel of land, situate lying and being at Nesconset, Town of Smithtown, County of Suffolk and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the northerly side of Smithtown Boulevard distant 215.00 feet easterly from the corner formed by the intersection of the northerly side of Smithtown Boulevard with the former easterly side of Mary's Lane.

RUNNING THENCE from said POINT of BEGINNING northerly and westerly the following four (4) courses and distances:

- (1) North 2 19' 58" East, a distance of 271.66 feet;
- (2) North 82 23' 18" West, a distance of 123.07 feet;
- (3) North 0 12' 06" East, a distance of 559.60 feet;
- (4) North 0 13' 22" East, a distance of 304.83 feet;

RUNNING THENCE easterly, south 89 29' 00" East, a distance of 1286.37 feet;

RUNNING THENCE generally southerly and westerly the following (11) courses and distances:

- (1) South 45 52' 20" West, a distance of 7.32 feet;
- (2) South 77 35' 30" West, a distance of 219.62 feet;
- (3) South 1 14' 58" West, a distance of 533.01 feet;
- (4) North 89 52' 42" West, a distance of 8.00 feet;
- (5) South 1 14' 58" West, a distance of 120.94 feet;
- (6) North 88 45' 02" West, a distance of 130.00 feet;
- (7) North 48 45' 02" West, a distance of 100.00 feet;
- (8) North 81 44' 22" West, a distance of 138.69 feet;
- (9) South 2 19' 58" West, a distance of 484.45 feet;
- (10) North 76 32' 46" West, a distance of 60.00 feet;
- (11) South 2 19' 58" West, a distance of 175.00 feet to the northerly side of Smithtown

Boulevard.

RUNNING THENCE westerly, along the northerly side of Smithtown Boulevard, North 76 32' 46" West, a distance of 523.30 feet to the POINT or PLACE OF BEGINNING.

January 31, 2000

EXHIBIT "B"

DESCRIPTION OF 150 FOOT WIDE RESIDENTIAL BUFFER PARCEL

ALL THAT CERTAIN PART, PIECE OR PARCEL OF LAND LYING, BEING AND SITUATE AT NESCONSET, TOWN OF SMITHTOWN, COUNTY OF SUFFOLK AND STATE OF NEW YORK;

BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS;

BEGINNING at the southwest corner of the parcel herein described, said Point of Beginning being distant the following three (3) courses and distances from the corner formed by the intersection of the northerly side of Smithtown Boulevard with the easterly side of Mary's Lane.

- (1) South $76^{\circ}32'46''$ East, a distance of 215.00 feet;
- (2) North $2^{\circ}19'58''$ East, a distance of 271.66 feet;
- (3) North $82^{\circ}23'18''$ West, a distance of 123.07 feet

RUNNING THENCE from said Point of Beginning northerly the following two (2) courses and distances:

- (1) North $0^{\circ}12'06''$ East, a distance of 559.60 feet;
- (2) North $0^{\circ}13'22''$ East, a distance of 304.83 feet;

RUNNING THENCE easterly, South $89^{\circ}29'00''$ East, a distance of 150.00 feet;

RUNNING THENCE southerly the following two (2) courses and distances:

- (1) South $0^{\circ}13'22''$ West, a distance of 304.05 feet;
- (2) South $0^{\circ}12'06''$ West, a distance of 579.07 feet;

RUNNING THENCE westerly, North $82^{\circ}23'18''$ West, a distance of 151.26 feet to the Point or Place of Beginning.

Containing within said bounds 3.009 acres.

January 31, 2000

EXHIBIT "C"

DESCRIPTION OF 100 FOOT WIDE RESIDENTIAL BUFFER PARCEL

ALL THAT CERTAIN PART, PIECE OR PARCEL OF LAND LYING, BEING
AND SITUATE AT NESCONSET, TOWN OF SMITHTOWN, COUNTY OF SUFFOLK
AND STATE OF NEW YORK;

BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at the southwest corner of the parcel herein
described, said Point of Beginning being distant the following
seven (7) courses and distances from the corner formed by the
intersection of the northerly side of Smithtown Boulevard with
the easterly side of Mary's Lane.

- (1) South 76°32'46" East, a distance of 738.30 feet;
- (2) North 2°19'58" East, a distance of 175.00 feet;
- (3) South 76°32'46" East, a distance of 60.00 feet;
- (4) North 2°19'58" East, a distance of 484.45 feet;
- (5) South 81°44'22" East, a distance of 138.69 feet;
- (6) South 48°45'02" East, a distance of 100.00 feet;
- (7) South 88°41'30" East, a distance of 38.00 feet;

RUNNING THENCE from said Point of Beginning northerly,
North 1°14'58" East, a distance of 707.01 feet;

RUNNING THENCE easterly, South 89°29'00" East, a distance
318.58 feet;

RUNNING THENCE generally southerly and westerly the
following six (6) courses and distances:

- (1) South 45°52'20" West, a distance of 7.32 feet;
 - (2) South 77°35'30" West, a distance of 198.00 feet;
 - (3) South 1°14'58" West, a distance of 533.01 feet;
 - (4) North 89°52'42" West, a distance of 8.00 feet;
 - (5) South 1°14'58" West, a distance of 120.94 feet;
 - (6) North 88°45'02" West, a distance of 92.00 feet
- to the Point or Place of Beginning.

Containing within said bounds 1.760 acres.

EXHIBIT "D"

DESCRIPTION OF 19.231 ACRE REZONING PARCEL

ALL THAT CERTAIN PART, PIECE OR PARCEL OF LAND LYING, BEING AND SITUATE AT NESCONSET, TOWN OF SMITHTOWN, COUNTY OF SUFFOLK AND STATE OF NEW YORK;

BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at a Point on the northerly side of Smithtown Boulevard distant 215.00 feet easterly from the corner formed by the intersection of the northerly side of Smithtown Boulevard with the easterly side of Mary's Lane.

RUNNING THENCE from said Point of Beginning northerly, North $2^{\circ}19'58''$ East, a distance of 271.66 feet;

RUNNING THENCE easterly, South $82^{\circ}23'18''$ East, a distance of 28.20 feet.

RUNNING THENCE northerly, the following two (2) courses and distances:

- (1) North $0^{\circ}12'06''$ East, a distance of 579.07 feet.
- (2) North $0^{\circ}13'22''$ East, a distance of 304.05 feet.

RUNNING THENCE easterly, South $89^{\circ}29'00''$ East, a distance of 817.79 feet;

RUNNING THENCE generally southerly and westerly the following seven (7) courses and distances:

- (1) South $1^{\circ}14'58''$ West, a distance of 707.01 feet;
- (2) North $88^{\circ}45'02''$ West, a distance of 38.00 feet;
- (3) North $48^{\circ}45'02''$ West, a distance of 100.00 feet;
- (4) North $81^{\circ}44'22''$ West, a distance of 138.69 feet;
- (5) South $2^{\circ}19'58''$ West, a distance of 484.45 feet;
- (6) North $76^{\circ}32'46''$ West, a distance of 60.00 feet;
- (7) South $2^{\circ}19'58''$ West, a distance of 175.00 feet to the northerly side of Smithtown Boulevard.

RUNNING THENCE westerly, along the northerly side of Smithtown Boulevard, North $76^{\circ}32'46''$ West, a distance of 523.30 feet to the Point or Place of Beginning.

Containing within said bounds 19.231 acres.

EXHIBIT "E"

ALL that certain plot, piece or parcel of land, lying and being at Nesconset, town of Smithtown, County of Suffolk and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the easterly side of Wood View distant 144.64 feet southerly from the southerly end of a curve connecting the easterly side of Wood View Drive with the southerly side of Stone Edge Lane.

RUNNING THENCE from said POINT OF BEGINNING generally easterly the following five (5) courses and distances:

- (1) North 76 38' 10" East, a distance of 425.54 feet;
- (2) South 12 31' 50" East, a distance of 131.48 feet;
- (3) North 76 38' 10" East, a distance of 100.00 feet;
- (4) South 12 31' 50" East, a distance of 100.00 feet;
- (5) North 76 38' 00" East, a distance of 200.00 feet; to the westerly side of Gibbs Pond Road.

RUNNING THENCE southerly, along the westerly side of Gibbs Pond Road, the following two (2) courses and distances:

- (1) South 12 31' 50" East, a distance of 189.91 feet;
- (2) South 4 06' 00" East, a distance of 95.39 feet;

RUNNING THENCE westerly, South 85 54' 00" West, a distance of 195.00 feet;

RUNNING THENCE southerly, South 4 06' 00" East, a distance of 228.64 feet;

RUNNING THENCE easterly, North 76 12' 00" East, a distance of 197.83 feet to the westerly side of Gibbs Pond Road.

RUNNING THENCE southerly, along the westerly side of Gibbs Pond Road, the following two (2) courses and distances:

- (1) South 4 06' 00" East, a distance of 117.10 feet;
- (2) South 16 23' 53" West, a distance of 292.00 feet;

RUNNING THENCE generally westerly the following four (4) courses and distances:

- (1) South 83 10' 50" West, a distance of 304.32 feet;
- (2) South 6 16' 53" East, a distance of 47.65 feet;
- (3) South 45 52' 20" West, a distance of 122.34 feet;
- (4) North 89 29' 00" West, a distance of 1286.37 feet;

RUNNING THENCE generally northerly and easterly the following nine (9) courses and

distances:

- (1) North 0 13' 22" East, a distance of 354.08 feet;
- (2) South 89 46' 38" East, a distance of 134.37 feet;
- (3) North 0 14' 58" East, a distance of 156.30 feet;
- (4) North 67 29' 58" East, a distance of 89.40 feet;
- (5) North 0 14' 58" East, a distance of 399.65 feet;
- (6) South 89 45' 02" East, a distance of 513.27 feet;
- (7) North 0 30' 06" East, a distance of 116.00 feet;
- (8) North 82 40' 12" East, a distance of 142.94 feet;
- (9) North 76 38' 10" East, a distance of 51.62 feet to the easterly side of Wood View Drive and the POINT OR PLACE OF BEGINNING.