

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT ALLOWING
FOR THE CONSTRUCTION, USE AND MAINTENANCE OF
AN ARTIFICIAL LAKE AT 789 PLUM TREE ROAD**

WHEREAS, the Village of Barrington Hills (“Village”) is a duly organized and existing Illinois home rule municipality pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, Section 5-10-7 of the Village’s Zoning Code authorizes the Zoning Board of Appeals (“ZBA”) to recommend, and the Board of Trustees to approve, special uses within the zoning districts of the Village; and

WHEREAS, the SanFilippo Family Generation-Skipping Trust dated December 31, 1999 (“Applicant”) applied for a Special Use Permit to allow for the construction, use and maintenance of an artificial lake on property located at 789 Plum Tree Road (“Property”), within the R-1 Residential District; and

WHEREAS, Section 5-5-3(A) of the Village Zoning Code classifies an artificial lake as a special use within the R-1 Residential District; and

WHEREAS, on September 21, 2015, the Zoning Board of Appeals (“ZBA”), with six members present and voting on this matter, held a public hearing on the application for special use permit, prior to which time all notice of the public hearing was published in a timely manner in the Daily Herald as well as posted in the Village Hall, and individual notice was provided to all property owners within two hundred fifty feet (250) of the Property, as recorded in the most recent County real estate tax records, and notice of said hearing was properly posted on the Property; and

WHEREAS, Section 5-10-7(D) of the Village Zoning Code provides that for each application for a special use, the ZBA shall report to the Board of Trustees of the Village its findings and recommendations, including the stipulations of additional conditions and guarantees that such conditions will be complied with when they are deemed necessary for the protection of the public interest; and

WHEREAS, Section 5-10-7(E) of the Village Zoning Code establishes standards which must be met before the ZBA may recommend approval of a special use; and

WHEREAS, at the close of the public hearing, the ZBA made all necessary findings of fact as to compliance with the standards set forth in Section 5-10-7(E) of the Village Zoning Code, and recommended on a unanimous vote of the six members present and voting that the special use be granted, as are set forth in the Findings of Fact and Recommendations in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Board of Trustees may grant or deny any application for a special use; provided, however, that in the event of written protest against any proposed special use, signed and acknowledged by the owners of twenty percent (20%) of the property adjacent to the property proposed

for a special use, and filed with the Village Clerk, such special use shall not be granted except by the favorable vote of two-thirds ($\frac{2}{3}$) of all the members of the Board of Trustees; and

WHEREAS, as reported by the ZBA, a petition setting forth a written protest against the special use sought in the application has been filed with the Village Clerk, which has been signed and acknowledged by the owners of property adjacent to the property proposed for a special use, therefore consideration must be given as to whether the protest requires the heightened vote for approval of the special use requested by the Applicant.

NOW, THEREFORE, BE IT ORDAINED, by the President and Board of Trustees of the Village of Barrington Hills, Cook, Kane, Lake and McHenry Counties, Illinois, as a home rule municipality the following;

Section One: The special use permit is hereby granted to allow for the construction, use and maintenance of an artificial lake on the Property, which artificial lake shall be constructed in substantial compliance with the plans submitted for purposes of the ZBA public hearing on September 21, 2015, and that said permit is hereby granted, subject to the following conditions, in keeping with the standards set forth in Section 5-10-7(E):

1. The Village's engineer must first approve final engineering plans submitted, and on the Village's receipt of Army Corps of Engineers permit for the proposed wetland impacts, and Lake County approvals as needed.

Section Two: If any part or provision of this Ordinance shall be held or deemed invalid, such invalidity shall not have the effect of rendering another part or provision of this Ordinance invalid.

Section Three: This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Ayes: Nays: Absent:

PASSED AND APPROVED by the President and Board of Trustees of the Village of Barrington Hills, Illinois, this 26th day of October, 2015.

APPROVED:

ATTEST:

Village President

Village Clerk

October 23, 2015

To: President and Board of Trustees
Village of Barrington Hills

RE: Application for Special Use Permit
To Allow Construction of An Artificial
Lake –789 Plum Tree Road

This is to advise you that at a public hearing of the Zoning Board of Appeals (ZBA) held at 7:30 P.M. on Monday, September 21, 2015, in the MacArthur Room of the Village Hall, where a quorum was present, the ZBA considered the application of the SanFilippo Generation Skipping Family Trust (“Applicant”) for the grant of a special use permit to allow the reconstruction of an existing artificial lake on its property at 789 Plum Tree Road (“Property”), identified as PINs 20-29-126-014; -015; -106; -017; -018; 20-29-127-002; -003; 20-29-176-002; and 20-29-176-005.

Notice of the hearing was published in a timely manner in the Daily Herald as well as posted in the Village Hall. Proof of individual notice, by registered mail, return receipt requested, was submitted for all property owners within 250 feet as recorded in the office of the tax assessor of Barrington Township, and the notice of the hearing was properly posted on the Property.

The Applicant was represented at the public hearing by attorney Andrew Kolb, who testified in support the Application for special use permit, which information was also provided as part of the Application, which is on file with the Village.

A Petition setting forth written objections to the Application and public hearing were filed with the Village prior to the public hearing. A copy of the Petition filed prior to the hearing is attached hereto as Exhibit 1. Resident Sharon Meroni, 1 Surrey Road, who is one of the Petition signers, was present at the public hearing. Ms. Meroni testified in objection to the Application on behalf of herself, and other residents who signed the Petition.

FACTS

Preliminary to the conduct of the public hearing, the ZBA heard testimony relative the Petitioners objection to the public hearing on the basis of lack of proper notice. The Petition in objection states that proper notice under the Village’s Rules of Notice and Petition, paragraph (7) were not followed, and therefore, the hearing should not proceed. Paragraph (7) provides that notice of hearing should be given to “the owners of all contiguous or adjoining properties within 250 feet of petitioner’s property. . . . If petitioner directly or indirectly, owns or controls adjoining or contiguous property, notice shall be given to the owner of the next contiguous or adjoining property.”

Ms. Meroni, on behalf of the Petitioners, testified that due notice of the public hearing was not given because property within the 250 foot notice area was owned by members of the SanFilippo family, and by an employee of the SanFilippos. Given this, Ms. Meroni stated that the area for notice should skip these properties and extend to encompass non-family member property owners.

Attorney Kolb, representing the Applicant, testified that the Village, as a home rule municipality, has expanded the requirements of notice as set forth in Illinois law. The issue is whether the Applicant owns adjacent property, or whether it controls adjoining property. Attorney Kolb testified that the answer to both questions is “no.” Ted Meyers, the attorney who drafted the terms of the trust which is the Applicant testified that the Trust itself does not own or control any adjacent property.

Discussion was held as to whether the fact that individual SanFilippos may own adjoining property implicates the provisions of paragraph (7) relative to notice. The ZBA concluded that this was not intended by the Rules.

Following discussion, a motion was made by Member Goss, seconded by Member Buettner to accept jurisdiction of the matter (overruling the objection made as to notice).

Roll Call: Wolfgram, Buettner, Chambers, Goss, Root and Stieper voting "aye."
One Absent. No "nays." The Motion Carried.

Following resolution of this procedural matter, the hearing continued with presentation of facts in support of the special use and objections made by the Petitioner.

Pursuant to the application, the property is approximately 28.35 acres improved with a single-family residence. The Property contains a 1.98 acre pond and accompanying pump house to serve as a reservoir for fire protection system to the resident. The Applicant proposes to fill approximately 3,700 sq. ft. of the eastern shoreline of the existing pond to accommodate an addition to the west side of the residence with compensatory storage on site. The Applicant proposes to provide compensatory storage on the west end of the pond for the area that will be filled, and to make the necessary modifications of the pond outlet structure, which will include the removal of the storm water control structure from the east side of the pond. At present, the storm water flows from the north into the pond, then runs out a spillway. The water runs to a swale and storm sewer then out to Spring Creek to the south. The proposed modification will have no impact on the amount of the stormwater drainage to Spring Creek.

Standards for special use are addressed in the application, and attached hereto as Exhibit 2. Testimony adduced by the Applicant was in support of these standards.

Ms. Meroni, on behalf of the Petitioners testified in support of the remaining objections contained in the Petition. In this regard, discussion ensued relative to the fact that the Rules require full engineering plans be submitted and that Applicant provide information relative to notice to other agencies, such as the Army Corps of Engineers and the Lake County Watershed Protection District.

The ZBA questioned Village Engineer Strahan as to whether the Village was in receipt of engineering plans sufficient to render its recommendation as to the artificial lake. Mr. Strahan testified that base flood elevation was approved, and final engineering plans were just received. Thus at this time, the Applicant has proposed compensatory storage, but confirmation of the volume is part of final engineering review which has not been completed, and therefore he is not prepared to comment as to the final engineering. The Applicant has also made application to the Army Corps of Engineers for jurisdictional wetlands approval, and to Lake County for additional approval as required. Applicant's counsel stated the ZBA could proceed without final engineering, by making its approval subject to approval of the final engineering plans submitted to ensure that such plans comported with the Village Code.

Ms. Meroni objected to moving forward with the hearing when the Applicant had not presented all documentary evidence as required by the approved Rules. In response, Mr. Kosin outlined that the Village has previously departed from strict compliance with the Rules, where enough information has been provided to allow the Board an understanding of the Application to allow a full hearing. The Board determined to allow the hearing to continue, over Ms. Meroni's objection. Also testifying in opposition to the Application was resident Bonnie Duresa, who presented additional signatures on the written Petition.

Ms. Meroni further objected stating that the ZBA should consider the nature of the addition to the residence which is prompting the need for the special use to modify the existing artificial lake. In this

regard, however, the only matter before the ZBA is the application for a special use for the artificial lake, and not for the construction of the addition to the house.

FINDINGS

The ZBA, after having examined the facts as presented, and taking in consideration the testimony set forth during the public hearing, voted 6 – 0, with one member absent, to recommend approval of the Application for Special Use Permit, finding that the facts set forth in the application for the amendment, and as testified to at public hearing, are sufficient for the amendment to the Special Use, those facts being:

Standards for Special Use Permit:

1. That the establishment, maintenance, or operation of the special use will not detrimental to or endanger the public health, safety, morals, comfort or general welfare.
2. That the special use permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish property or impair property values within the neighborhood.
3. That the establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage and/or other facilities have been or are being provided.
5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets and roads.
6. That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the board of trustees pursuant to the recommendations of the zoning board of appeals.

RECOMMENDATION

The Zoning Board of Appeals recommends that the Village Board approve the request for special use permit to allow an artificial pond in the R-1 Zoning District as applied for, on the following condition:

1. Village Engineer's approval of final engineering plans, and upon receipt of the Army Corps of Engineers base flood elevation, and Lake County approvals as needed.

Respectfully submitted,

Zoning Board of Appeals
Village of Barrington Hills