

## City of Falls Church

Meeting Date:  2-23-09	Title: Resolution Amending And Reenacting Resolution 2004-30, As Amended by Resolution 2007-14 and Resolution 2008-17 To Approve Special Exception SE04-0162 For Mixed Use Development At 400-412 South Maple Avenue, Known As “500 South Maple Avenue” To Atlantic Reality Companies, Inc. And Their Successors (Pearson Square) (TR8-60)	Agenda No.:  10 (a) (1)
Proposed Motion: <b>Move</b> approval of TR8-60.		
Originating Dept. Head: Suzanne M. Cotellessa, GM, Dev.Serv/Planning Director SMC 2-19-09		Disposition by Council:
<b>City Manager:</b> Wyatt Shields 703.248.5004 FWS 2-19-09	<b>City Attorney:</b> John Foster 703.248.5010 JEF 2-19-09	<b>CFO:</b> John Tuohy 703.248.5092 JHT 02-19-2009

**REQUEST:** The applicant – owner of and broker for 410 S. Maple Avenue (Pearson Square) – is petitioning for a special exception amendment to allow retail/service and business, professional, medical and dental office uses in the first floor commercial space specifically designated for retail use under special Resolution 2004-30, which granted the Special Exception for the 500 Maple Avenue/Pearson Square mixed-use project.

**SUMMARY:** The original application presented to the City Council in November 2008 (Attachment 1) sought approval to allow retail/service and medical office uses in the first floor commercial space originally approved only for retail uses including an eatery. The application was modified to request that business and professional offices also be permitted. The application has been reviewed by the EDA and the Planning Commission and the applicant has worked with staff to address concerns expressed by the City Council at first reading, by the EDA and by the Planning Commission. The applicant has indicated acceptance of limitations on the request (a maximum of 8000 square feet of retail service or offices, including no more than 2400 square feet of medical and dental office and no more than 2400 square feet of business and professional office—out of a total of 19,000 square feet) to afford additional flexibility in leasing the space while ensuring retention of the predominant retail use of the first floor of the Pearson Square building.

**RECOMMENDATION:**  
Staff recommends that Council approve Resolution TR8-60 with the following condition:

28 Up to 8,000 square feet of the first floor commercial space may be for retail service  
29 and/or business, professional, medical and dental offices uses, and with the  
30 limitation that of this 8,000 square feet, no more than 2,400 square feet may be  
31 occupied by business and professional office uses, and that no more than 2,400  
32 square feet may be occupied by medical or dental office uses.  
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34 Staff concurs with the Planning Commission recommendation that a restaurant is the  
35 preferred use for the space labeled Retail 9 on an attached exhibit from the applicant.  
36

37 **BACKGROUND:**

38 In July 2004, the City Council approved Special Exception SE 04-0162 to allow a mix  
39 of uses, including residential, on property zoned B-3, located in the 400-500 block of S.  
40 Maple Avenue. The project, as a whole, was known and referred to by the address 500  
41 S. Maple Avenue and included a 230-unit residential building (herein referred to herein  
42 as Pearson Square) and an office building (herein referred to as the Tax Analysts  
43 building), both with first floor commercial space specified for retail use. The site plan  
44 was subsequently approved in December 20, 2004, and the project constructed by  
45 Atlantic Reality Companies. The office building was sold to Tax Analyst Inc.;  
46 Transwestern currently owns Pearson Square. Although separate entities, the buildings  
47 are bound to the special exception conditions and site plan conditions that facilitated  
48 their development; including, most notably, a shared parking agreement.  
49

50 The special exception resolution stated, in relevant part, that the first floor commercial  
51 space shall consist of 25,400 square feet of “retail space which will include an eatery.”  
52 Pearson Square contains approximately 19,272 of the required 25,400 square feet of  
53 first floor commercial space, and, as part of the Voluntary Concessions, Terms and  
54 Conditions associated with the approved special exception, the applicant agreed to lease  
55 approximately 3,000 square feet of this space at a reduced rate for a period of ten (10)  
56 years for use as flex-arts space.  
57

58 The applicant has been offering the subject property for lease since early 2008.  
59 According to the applicant, at the end of January 2009, approximately 82% of the  
60 residential 230 residential units of Pearson Square had been leased; however,  
61 approximately 16,272 square feet of first floor retail space (which is the total square  
62 footage minus the 3,000 square feet of flex arts space) remains unleased. The applicant  
63 has cited challenges to securing retail tenants given the current economic climate, and  
64 that the property is currently considered a “secondary” location in Falls Church  
65 (compared to Broad Street or Washington Street corridors).  
66

67 *Application background and status*

68 The special exception application has been modified since Council last saw the  
69 application on November 10, 2008, which is when Council referred the application to  
70 the Planning Commission and Economic Development Authority (EDA) for a  
71 recommendation. The original application (Attachment 1) was seeking approval to  
72 allow retail/service and medical office uses in the first floor commercial space  
73 originally approved for retail uses. Staff recommended to Council that the uses

74 proposed in the application be limited to 8,136 square feet, which is approximately 50%  
75 of the total square footage of ground floor commercial space (after subtracting out the  
76 3,000 square feet of flex-arts space offered by the developer's voluntary concessions.)  
77 Council referred the application to the Planning Commission and the Economic  
78 Development Authority, and scheduled it for a December 8, 2008 public hearing.  
79

80 The application was modified by a January 27, 2009 letter from the applicant. The  
81 application now requests that retail/service and business, professional, medical and  
82 dental office uses be permitted in the first floor commercial space originally approved  
83 for only retail uses. Due to application modification, the timelines under which the  
84 application could be considered by the Planning Commission and EDA changed, and  
85 Council has been deferring its public hearing pending recommendations from EDA and  
86 the Planning Commission.  
87

88 Staff has worked with the applicant to limit the scope of the proposed expansion of  
89 permitted uses in the first floor commercial space, and recommended to the Planning  
90 Commission that the special exception be amended, as follows:  
91

92 Up to 8,000 square feet of the first floor commercial space may be  
93 for retail service and/or business, professional, medical and dental  
94 offices uses, and with the limitation that of this 8,000 square feet,  
95 no more than 2,400 square feet may be occupied by business and  
96 professional office uses, and that no more than 2,400 square feet  
97 may be occupied by medical or dental office uses.  
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99 The staff recommendation for the special exception amendment would allow more  
100 flexibility in the tenant mix for up to 8,000 square feet, which constitutes approximately  
101 50% of the ground floor commercial space available in the Pearson Square residential  
102 building, after subtracting out the 3,000 square feet of space that is going to be leased as  
103 flex-arts space. It is noted that the amendment does not limit the applicant in the amount  
104 of square footage permitted for restaurant or retail uses.  
105

106 At a February 17, 2009 public hearing, the Planning Commission unanimously passed a  
107 motion to recommend that the Council approve the revised application per the staff  
108 recommendation, with the additional condition indicating restaurant as the preferred use  
109 for the space shown at Retail 9 in the applicant's exhibit. (The Planning Commission  
110 recommendation references space designated Retail 9 as the northern quarter of the  
111 building, but Retail 9 is actually in the easternmost corner of the first floor commercial  
112 space.) The motion of the Planning Commission and the applicant's exhibit are  
113 provided in Attachment 3 and Attachment 4, respectively.  
114

115 The revised application was reviewed by the Economic Development Authority (EDA)  
116 on February 4, 2009. Overall, the EDA was supportive of the application; the specific  
117 comments and recommendations of the EDA, as well as the City's retail consultant, are  
118 in Attachment 5.  
119

120 The applicant will be providing Council with additional information on their modified  
121 application at the public hearing.

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123 Parking

124 Because the first floor commercial space of the 500 S. Maple project met the Code  
125 definition of a “shopping center,” the development was parked at the shopping center  
126 ratio of 1 space per 250 square feet. Therefore, allowing more variety in the permitted  
127 uses does not result in a parking deficit per the Code.

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129 **FISCAL IMPACT:**

130 Minor. The model separates out retail, office and medical/dental uses for cost and  
131 revenue modeling purposes. Using the City’s fiscal impact model assumptions,  
132 business, professional, medical and dental offices have been projected to generate more  
133 net revenue than average retail users. For example, office and retail/service per square  
134 foot values are similar in the mid \$260’s while the medical/dental is about 30 % higher  
135 at about \$380 square foot in assessed value.

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137 **TIMING:**

138 Routine.

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140 **ATTACHMENTS:**

- 141 1. Original application materials
- 142 2. January 27, 2009 letter from the applicant revising the application
- 143 3. Planning Commission February 17, 2009 motion with recommendation to City  
144 Council on the subject application
- 145 4. Applicant’s exhibit showing retail space 9, as referenced in the Planning  
146 Commission motion.
- 147 5. Memos from EDA and Retail Compass, the City’s Retail consultant

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(TR8-60)

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RESOLUTION AMENDING AND REENACTING RESOLUTION  
2004-30, **AS AMENDED BY RESOLUTION 2007-14 AND**  
**RESOLUTION 2008-17, TO APPROVE GRANTING SPECIAL**  
**EXCEPTION SE04-0162 FOR MIXED USE DEVELOPMENT AT**  
400-412 SOUTH MAPLE AVENUE (~~RPC# 52-309-023~~), KNOWN AS  
“500 SOUTH MAPLE AVENUE” TO ATLANTIC REALTY  
COMPANIES, INC. AND THEIR SUCCESSORS **(THE**  
**DEVELOPER)**

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WHEREAS, on May 12, 2003, City Council adopted Ordinance 1734, which amended  
Chapter 38, “Zoning”, of the Code of the City of Falls Church to amend  
the special exception process within the business districts to allow for  
appropriate mixed-uses by special exception; and

165 WHEREAS, an application for a special exception has been submitted by Atlantic  
166 Realty Companies, Inc. ~~(the Developer)~~ pursuant to Section 38-23(c) in  
167 conformance with the procedure set forth in Section 38-4(f) of the City  
168 Code requesting mixed-use development for the property located at 400-  
169 412 South Maple Avenue referred to as "500 South Maple Avenue"  
170 which is a proposed development consisting of proposed mixed-use  
171 project includes a total of 230 residential condominiums at 320,000  
172 square feet (215+ market rate dependent upon up to 15 Affordable  
173 Dwelling Unit condos), a total 100,400 square feet of commercial use  
174 consisting of 75,000 square feet of office space, 25,400 of retail space  
175 which will include an eatery; and  
176

177 WHEREAS, the proposed site of "500 South Maple Avenue" currently consists of two  
178 buildings - a duckpin bowling alley and a warehouse: and  
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180 WHEREAS, the request for the special exception and its amendments thereto has also  
181 been referred to various boards, commissions, and community business  
182 organizations for comment; and  
183

184 WHEREAS, the application for this special exception has been referred to the  
185 Planning Commission which conducted public hearings on June 21, 2004  
186 and July 19, 2004, and unanimously recommended the approval of the  
187 project to City Council and this recommendation has been received and  
188 considered; and  
189

190 WHEREAS, City Council has duly advertised and conducted public hearings to  
191 receive public comment on the request for this special exception with  
192 public hearings were held on May 10, 2004, May 24, 2004, July 12, 2004  
193 and July 26, 2004; and  
194

195 WHEREAS, City Council has considered the application, requirements of Section 38-  
196 4 of the City Code, the recommendation of the Planning Commission,  
197 comments from boards and commissions, and public comments; and  
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199 WHEREAS, City Council considered the subject property's unique characteristics and  
200 the community benefits derived as a result of the subject property's  
201 proposed development, and determined that this particular project is  
202 acceptable for this parcel at this time, with the understanding that a  
203 similar project might not be appropriate on another parcel; and  
204

205 WHEREAS, City Council considered state law regarding special exceptions,  
206 specifically, that special exceptions may be granted by the local  
207 governing body subject to conditions pursuant to Code of Virginia Sec.  
208 15.2-2286(A)(3) that allows their issuance "under suitable regulations  
209 and safeguards" and that each special exception case shall rest on its own  
210 merits and the uniqueness of each piece of land; and in particular, that

211 the ratio of commercial and residential uses approved herein are unique  
212 to this site; and  
213

214 WHEREAS, City Council also considered the public interest in improving the subject  
215 property as part of overall economic development efforts to stimulate  
216 commercial redevelopment and enhance the commercial tax base to  
217 support City services; and  
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219 WHEREAS, ~~the Developer has submitted the~~ “Voluntary Concessions, Terms and  
220 Conditions for 500 South Maple Avenue”, (Developer’s Voluntary  
221 Concessions) dated July 21, 2004 and revised July 9, 2007 were granted  
222 to the City ~~in order~~ to further ensure consistency with the City of Falls  
223 Church’s Adopted Comprehensive Plan and Policies, including the  
224 Affordable Dwelling Unit, Undergrounding and Streetscape Policies, and  
225 to mitigate traffic, school capital costs, recreation/park and mass transit  
226 impacts; and  
227

228 WHEREAS, City Council, in accordance with the Developer’s Voluntary Conditions,  
229 shall consider the final determination on the appropriate mix of  
230 affordable dwelling units within the project and/or funding for other  
231 needed affordable dwelling unit projects in the City no later than  
232 December 1, 2004; and  
233

234 WHEREAS, City Council finds that the proposed project has met all the primary  
235 criteria as listed in Section 38-4 (f) (4) (a) of the Falls Church City Code  
236 as follows: 1) that the resulting development conforms with the City’s  
237 adopted Comprehensive Plan and Design Guidelines; 2) that the  
238 resulting development provides for significant net new commercial  
239 square footage and allows for a mix of commercial and residential uses;  
240 and 3) that the resulting development provides substantial positive net  
241 new commercial and residential revenue to the City; and  
242

243 WHEREAS, City Council finds that the secondary criteria as listed in Section 38-4 (f)  
244 (4) (b) of the City Code have also been met substantially, specifically the  
245 resulting development is not disproportionate to surrounding land uses  
246 and planned land uses in size, bulk, or scale; does not overburden the  
247 existing community facilities, including the school, transportation, and  
248 water and sewer systems; provides community benefits, such as  
249 affordable housing, as described in Section 38-43; contributes to a  
250 vibrant, pedestrian-oriented environment, both on-site and in relation to  
251 adjoining properties, with street level activity throughout the day and  
252 evening; offers creative use of landscaping, open space and/or public  
253 parks, and walkways connecting to adjoining properties; provides a  
254 variety of commercial services and products that are attractive to and  
255 meet the needs of all city residents for entertainment, art, recreation,  
256 dining, retail, and an array of consumable goods; encourages local or

257 independent businesses: encourages multi-modal transportation through  
258 design and other techniques, to reduce the reliance on single-occupancy  
259 vehicles, and supports vicinity sheltered stops for mass transit whenever  
260 feasible.

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NOW, THEREFORE, in consideration whereof, pursuant to Section 38-23 (c) of the Falls Church City Code, it is hereby RESOLVED by the Council of the City of Falls Church, Virginia, that Resolution 2004-30 and Special Exception SE04-0162 for mixed use are hereby amended, granted and approved for 400-412 South Maple Avenue to allow residential development within mixed-use development projects, subject to the following conditions:

1. The Developer's Voluntary Concessions, Terms and Conditions for the 500 South Maple Avenue" Special Exception Development dated July 21, 2004 and revised July 9, 2007 (Resolution 2007-14) is incorporated herein by reference and marked as Exhibit No. 1; all the terms and conditions thereof shall be a condition for the issuance and approval of the Special Exception; and the City Manager is hereby authorized and directed to execute the Developer's Voluntary Concessions, Terms and Conditions on behalf of the City.
2. City Council, in accordance with the Developer's Voluntary Conditions, shall consider the final determination on the appropriate mix of affordable dwelling units within the project and/or funding for other needed affordable dwelling unit projects in the City no later than December 1, 2004.
3. The development of the site shall be in accordance with the Concept Site Plans, elevations and other related plans and exhibits, dated July 2, 2004 that allows up to (two hundred and thirty) 230 residential units, with a minimum of 100,400 square feet of commercial use consisting of 75,000 square feet of office space, 25,400 of retail space which will include an eatery. The retail space on the first floor of the office building at 400 S. Maple Avenue, owned by Tax Analyst Inc. may include medical office uses and/or service uses up to a maximum of forty percent (40%) of the total building retail space. Additionally, such medical office uses and/or service uses shall be limited to occupying a maximum of approximately thirty percent (30%) of the retail storefront linear area measured only along the S. Maple Avenue street frontage for the total first floor retail space. **The retail space on the first floor of the residential building at 410 S. Maple Avenue (Pearson Square) may include up to 8,000 square feet for retail service uses, and/or business, professional, medical and/or dental office uses, with the limitation that of this subject 8,000 square feet, no more than**

**2,400 square feet may be for business or professional office use, and no more than an additional 2,400 square feet may be for medical or dental office use.**

4. The construction of the commercial space, with the possible exception of customized tenant improvements, shall occur concurrently with the construction of the residential portion of the project, pursuant to the Voluntary Concessions, Terms and Conditions for “500 South Maple Avenue” dated July 21, 2004 and revised July 9, 2007. The Developer shall use due diligence to market the retail and commercial space for occupancy concurrent with residential occupancy.
5. The designation of affordable dwelling units, as set forth in the Developer’s Voluntary Concessions, Terms and Conditions shall be memorialized by restrictive covenants and recorded among the land records of Arlington County.
6. Construction of this project shall commence within three (3) years from date of adoption of this resolution.
7. Violation of any of the conditions of this special exception shall be grounds for revocation of the special exception by City Council.
8. Should the developer sell its interests, rights, approvals, or convey a controlling interest to its respective corporations, any purchaser or successor of such interests, rights, approvals, or controlling interest shall be bound by the terms and conditions contained herein, and that no material amendment to these terms shall be considered by the City of Falls Church.
9. All other terms and conditions of Resolution 2004-30 and as revised by Resolution 2007-14 **and Resolution 2008-17** which are not inconsistent herewith, remain in full force and effect.

1<sup>st</sup> Reading: 11-10-08

2<sup>nd</sup> Reading: 12-8-08 (continued to 1-12-2009; 2-23-2009)

Adoption:

(TR8-60)