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March 1, 2002

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3-1-02

VIA HAND DELIVERY

16857

Ms. Jerrily Kress, FAIA
Director
Office of Zoning
441 4th Street, N.W.
Suite 210 South
Washington, D.C. 20001

Re: Request for Authorization to Rescind Covenant Pertaining to 4500 Wisconsin Avenue, N.W., Lot 15, Square 1730

Ms. Kress:

On behalf of HQ Acquisition, LLC, the owner of 4500 Wisconsin Avenue, N.W., Lot 15, Square 1730 (the "Property"), we respectfully request that the Zoning Commission authorize the rescission of a covenant relating to the Property (the "Covenant"). A copy of the Covenant is attached. We would request that the Commission take this action if at all possible at the Commission's March 11, 2002 hearing.

Background

The Covenant was executed in 1940 between the original developer of the site, Sears, Roebuck and Company, and the old District of Columbia Board of Commissioners. The Covenant was connected to an order of the Zoning the rezoning of the property by the Zoning Commission from "Residential 'A' Restricted" to "First Commercial," thus allowing the construction of a commercial (retail) structure on the site.[1] The Covenant also provided that the owner would construct a building on the site in accordance with architectural plans and elevations approved by the Zoning Commission and would obtain Zoning Commission approval before any "change in the any entrance or exit" or any addition was made to the building. While the Covenant supplemented an order of the Zoning Commission, the underlying rezoning order is not at issue in this request.

Pursuant to the Covenant, in 1940 Sears built one of the earliest of its department stores in the country. The Property served the community for over five decades under the Sears

[1] The Property is currently zoned C-3-A.

BZA
Case No. 16857
Exhibit No. 22
Board of Zoning Adjustment
District of Columbia
CASE NO.16857
EXHIBIT NO.22

#22

banner, until 1992. It subsequently housed a Hechingers Store through 1999 and has not been in active use since the current owners acquired the Property from Hechingers. The current owners are now in the process of creating a mixed-use residential/retail development that will bring needed residential units to the neighborhood and enable the Property to once again serve as a central part of the community.

Request for Action

Because the Covenant has been superceded by subsequent zoning regulations and regulation by the Historic Preservation Review Board, the Covenant is no longer necessary to fulfill its original purpose. The owner of the Property has been working therefore with the government of the District of Columbia to rescind the Covenant. On the recommendation of Alan Bergstein of the Office of Corporation Counsel, the owner of the Property hereby seeks the authorization of the Zoning Commission for the District to rescind the Covenant.

The case for rescission is clear. Subsequent regulations and zoning maps as adopted in 1958 and amended from time to time pursuant to sections 100 *et seq.* of the Zoning Regulations appropriately have superceded the zoning function of the Covenant. *See generally* Section 100.2 of the Zoning Regulations of the District of Columbia, 11 D.C.M.R. § 100.2. There is presently no need to rezone the Property and, of course, any proposition to do so would be brought before the Zoning Commission.

The function, moreover, that the Covenant served in 1940 with respect to protecting the agreed-upon building plans for the site is now fully served by current zoning and by the Board of Zoning Adjustment's authority to review requests for variances and special exceptions to that zoning. Indeed, the owner is currently seeking variances and a special exception from the BZA in order to facilitate current development plans, and the BZA is scheduled to review the Application at a hearing on April 9, 2002.

Finally, because the 1940 Sears building is a historic structure, the Historic Preservation Review Board has authority to review any structural changes to the building and has offered strong support for the proposed redevelopment. Since the Property has been zoned since the Covenant and is subject to the full authority of the Zoning Commission, and because numerous safeguards and procedures exist within the zoning system and the Historic Preservation Review Board to monitor any future changes to the Property, there is no need for the Covenant to remain.

Conclusion

The former Sears/Hechinger building at 4500 Wisconsin Avenue, N.W., presents a unique opportunity to bring a creative mixed-use residential/retail development to the District that will be integrated immediately into the Metrorail system. This kind of high-density, transit-oriented development is a paragon of smart growth and significantly advances several important goals set forth in the District's Comprehensive Plan, which calls for residential as part of a

higher-density, mixed-use development on this site. The project is being developed with full commitment both to preserving and restoring the historical legacy of the old Sears Department Store and to bringing the highest quality design to the new residential addition. As a result, it has received tremendous support from the District's Office of Planning, the HPRB, and the surrounding community. Two prior attempts at redeveloping the Property have failed, in part because of the burdens imposed by meeting zoning and HPRB standards, which the owners are committed to doing. The Covenant, however, adds an additional and clearly unnecessary regulatory layer in this redevelopment process. The project is moving forward quickly, and the Commission's authorization of the rescission of the Covenant at the Commission's hearing on March 11, 2002 is a technical but essential step in the successful redevelopment of the Property.

Sincerely,

Nestor Davidson
of LATHAM & WATKINS

cc: Alan Bergstein, Office of Corporation Counsel
Ellen McCarthy, Office of Planning
Toye Bello, Acting Zoning Administrator
Gladys Hicks
Armond Spikell
Richard Lake
Todd Weiss

7504-337

No. 24285 Recorded August 2, 1940 at 11:12 A. M.

137

MAILED TO Raymond Sparks Oct. 8, 1940.

A G R E E M E N T

This agreement made and entered into on the 30th day of July, 1940 between Sears, Roebuck and Company, a corporation, of Chicago, Illinois, (hereinafter referred to as "Company") and M. C. Hazen, John Russell Young and D. McCoach, Jr., and their successors, the Board of Commissioners of the District of Columbia, witnesseth that,

Whereas the Company is the owner in fee simple of Parcels 35/250, 35/282, 35/409 and 35/410 in square 1730 in the District of Columbia; and

Whereas theCompany desires and intends to construct on the land in said Parcels a building to be used in connection with its business; and

Whereas, application has been made to the Zoning Commission of the District of Columbia to change the zoning of Parcel 35/410 from "Residential 'A' Restricted" to "First Commercial"; and

Whereas the Zoning Commission has entered an order to so change the zoning of parcel 35/410 provided certain conditions are complied with, one of which conditions is that the owner of said parcel shall enter into this covenant.

Now, Therefore, in consideration of the change of zoning by the Zoning Commission of the District of Columbia of parcel 35/410 from "Residential 'A' Restricted" to "First Commercial" and the zoning to "First Commercial" of the alley immediately east of said Parcel, the Company, for itself, its successors and assigns, covenants and agrees:

1. That said building will be constructed in accordance with architectural plans and elevations approved by the Zoning Commission, and

2. That no change in any entrance or exit and no addition to said building shall be made without the consent of the Zoning Commission thereto.

It is understood and agreed that this covenant runs with the land.

G. B. Beban
Witness

M. C. Hazen (Seal)
M. C. Hazen

J. Clouser
Witness

John Russell Young (Seal)
John Russell Young

D. Clouser

D. McCoach, Jr. (Seal)
D. McCoach, Jr.

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(Corporate Seal)

Sears, Roebuck and Company

By G. B. Hattersley (Seal)
Vice President

Attest: C. E. Humm
Secy

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District of Columbia, ss:

I, Adam A. Giebel a Notary Public in and for the District of Columbia, do hereby certify that M. C. Hazen, John Russell Young and D. McCoach, Jr., Commissioners of the District of Columbia, parties to a covenant bearing date of July 30th, 1940 and hereto annexed, personally appeared before me in said District, the said M. C. Hazen, John Russell Young and D. McCoach, Jr., being personally well known to me as the persons who executed said covenant and acknowledged the same to be their act and deed.

Given under my hand and seal this 2nd day of August, 1940.

(Notarial Seal)

Adam A.Giebel
Notary Public, D. C.

My commission expires Sept. 15, 1944

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State of Illinois
County of Cook, ss:

I, Carter D. Peebles a Notary Public in and for the State of Illinois, County of Cook, do hereby certify that G. B. Hattersley of Sears, Roebuck and Company, party to a covenant bearing date of July 30, 1940 and hereto annexed, personally appeared before me in saidState and County, the said G. B. Hattersley being personally well known to me as the persons who executed said covenant and acknowledged the same to be his act and deed.

Given under my hand and seal this 30th day of July, 1940.

(Notarial Seal)

Carter D. Peebles
Notary Public

My commission expires November 9, 1942.

NMM