SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LANDMARK WEST! INC, 91 CENTRAL PARK WEST CORPORATION AND THOMAS HANSEN, Petitioners, For a Judgment Pursuant to Article 78 Of the Civil Practice Law and Rules -against- CITY OF NEW YORK BOARD OF STANDARDS AND APPEALS, NEW YORK CITY PLANNING COMMISSION, HON. ANDREW CUOMO, as Attorney General of the State of New York, and CONGREGATION SHEARITH ISRAEL, also described as the Trustees of Congregation Shearith Israel, Respondents.	Index No. 650354/08 (Lobis, J.)

RESPONDENT CONGREGATION SHEARITH ISRAEL'S MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS' MOTION TO REARGUE

INTRODUCTION

Respondent Congregation Shearith Israel (the "Congregation") respectfully submits this memorandum of law in opposition of the motion, filed by Petitioners Landmark West! Inc., 91 Central Park West Corporation and Thomas Hansen (the "Petitioners"), to reargue this Court's August 4, 2009 decision upholding variances that the Board of Standards and Appeals (the "BSA") granted to the Congregation on August 26, 2008. *See Landmark West! Inc v. City of New York Board of Standards & Appeals*, Index No. 650354/08, (Sup. Ct., N.Y. Co. Aug. 4, 2009) (attached as Exhibit A to Petitioners' motion to reargue) (the "Landmark West!

Decision"). Petitioners – who are simultaneously pursuing an appeal of this Court's decision to the First Department – have not raised any "matters of fact or law . . . overlooked or misapprehended" by this Court. *See* CPLR 2221(b)(2). Petitioners' motion to reargue should be denied.

Consistent with their original allegations, Petitioners have focused on "errors" purportedly committed by the Department of Buildings ("DOB"), which is not even a party to this suit. Petitioners assert that the BSA lacked jurisdiction to grant the Congregation a variance because (i) the denial of the Congregation's application for a DOB building permit was purportedly signed by the wrong DOB official (Pet. Mem. at 7), and (ii) the architectural plans upon which the BSA acted were allegedly different from the plans that led to the DOB's denial of the Congregation's building permit (Pet. Mem. at 18).

We show below that these issues were raised before and specifically considered by this Court. *See* Argument, Point A. We also show that they lack merit. *See* Argument, Point B.

Petitioners' position also defies common sense. As the BSA recognized (*see* A 003725-27),[1] it does not matter whether the DOB reviewed the "right" plans or whether the DOB official reviewing them was the "right" DOB employee to do so. The DOB ***rejected*** the Congregation's application for a building permit based on its belief that the Congregation needed a variance. Petitioners do not claim that this DOB determination was wrong; Petitioners ***themselves*** maintain that the Congregation could not pursue the plans that were indisputably before the BSA without a variance. Petitioners' effort to misuse the administrative process to derail the Congregation's project should garner no sympathy.

Petitioners' other arguments (Pet. Mem. at 18-24) are equally unpersuasive:

[1] "A" refers to the administrative record filed in this action by the BSA.

While Petitioners contend that there was "[n]o statutory" support for the BSA's decision to analyze the Congregation's proposed structure as a "mixed purpose" project (*id.* 19-20), this argument does not favor ***Petitioners***. As the Congregation pointed out in its submission on the merits, Section 72-21 of the Zoning Resolution required the BSA to grant the Congregation a variance ***without regard*** to whether an as-of-right alternative would have been able to secure a reasonable return. See N.Y.C. Z.R. § 72-21(b). Here, the BSA imposed a ***tougher*** standard on the Congregation. Given that the Congregation succeeded in meeting that higher standard, it is irrelevant whether this extra hurdle was "unprecedented."

Finally, Petitioners' rehash of its contention that the BSA usurped the authority of the New York City Landmarks Preservation Commission (the "LPC") warrants no reconsideration. Nothing in Section 74-711 of the Zoning Resolution (which Petitioners erroneously claim creates some type of "exclusive" jurisdiction, *see* Pet. Mem. at 23) limits the BSA's authority to find "unique physical conditions" in accordance with its statutory authority under Section 72-21. Second, contrary to Petitioners' assertion, the Congregation never based its claim that it was hampered by "unique physical conditions" on the ground that its "synagogue was a landmarked structure and that the entire property was in a historic district (Pet. Mem. at 22). (*See* A 004566 (setting forth the Congregation's actual position before the BSA)).

Petitioners' effort to relitigate these issues should be rejected. Their motion should be denied.

FACTUAL BACKGROUND

A. The Congregation's Eight-Year Effort To Secure the Land-Use Approvals

In 2002 – almost eight years ago – the Congregation began seeking New York City government land-use approvals to address major deficiencies in the facilities that it has been using since 1896. (*See* A 000131). A key aspect of its plan was to make the landmark Spanish

& Portuguese Synagogue, located at the corner of West 70th Street and Central Park West in Manhattan for over two centuries, accessible to disabled and elderly congregants.

For roughly three years, the Congregation worked with the LPC to develop a suitable plan. (*See* A 000131). The LPC's review of certain aspects the proposal was needed because the site that the Congregation planned to use at 10 West 70th Street is within a historic district.

On October 28, 2005, while the process before the LPC was underway, the Congregation applied to the DOB for a building permit. (*See* A 000018) That application remained pending while the Congregation continued to work with the LPC.

On March 14, 2006, the LPC unanimously approved the Congregation's request for a Certificate of Appropriateness. (A 000030) As one of the Commissioners explained, the Congregation's proposed building was seen as "a very positive addition" to the historic district "that will stand on its own as a landmark." (*id.*)

Nevertheless – as the Congregation knew from the outset – the proposal also required a variance from New York City's Zoning Resolution ("ZR"). Thus, as expected, on March 27, 2007, the DOB Manhattan Borough Commissioner (the "Boro Commissioner") denied the Congregation's application for a building permit. (*id.*) The Boro Commissioner raised eight "objections" (*id.*), *i.e.*, identified eight respects in which the BSA would need to authorize deviations from the Zoning Resolution if the Congregation were to proceed as planned. Under the City's process, this meant that the Congregation would now have to secure a variance from the BSA, which would, hopefully, overcome any DOB objections to the issuance of a building permit.

On April 1, 2007, just four days after the DOB Boro Commissioner denied the building permit, the Congregation applied to the BSA for a variance. (A 000015) Among other things,

the Congregation submitted the Boro Commissioner's building permit denial and architectural drawings of the structure that the Congregation hoped to build. (A 000015, 000018, 000085-103)

Instead of addressing the merits, Petitioners, on May 25, 2007, wrote to the BSA, claiming that the Congregation's application for a variance was "beyond BSA's subject matter jurisdiction." (A 000240) At that point, Petitioners' "jurisdictional" argument was based on their erroneous contention that the plans submitted to the BSA on April 1, 2007 were different from the plans that the Boro Commissioner had when he denied the Congregation's application for a building permit. (A 000238-40).

This false issue was resolved during the proceedings before the BSA. On June 15, 2007, the BSA asked the Congregation to "provide evidence that the DOB issued their current objections based on the current proposal before the BSA." (A 000257) The matter, however, was swiftly mooted. The DOB's eighth objection (based on the Zoning Resolution's prohibition on space between buildings) was obviated by a change in the Congregation's building design. On August 28, 2007, upon being alerted to this change, the Boro Commissioner dropped the eighth objection and issued a new building permit denial (with seven objections). (A 000348) On September 10, 2007, the Congregation responded to the BSA's request for "evidence that the DOB issued their current objections based on the current proposal before the BSA" (*see* A 000308, A000310) by submitting, among other things, (i) the revised plans, dated August 28, 2007, that the Congregation had submitted to the DOB (A 000403-20), and (ii) the Boro Commissioner's revised building-permit denial (with just seven objections), dated that same day (A 000348). Petitioners filed an untimely administrative appeal of the Boro Commissioner's August 28, 2007 decision (A 002511-12) but never followed-up with an Article 78 proceeding.

The BSA, reasonably, accepted the Congregation's documentation and proceeded to consider the merits of the Congregation's application for a variance. (*See* A 000512).

Petitioners continued their search for a technicality, to no avail. They submitted Freedom of Information Law requests to DOB, and even brought suit on one of them. (*See, e.g.,* A 002522, A 002543, A 004135)

Among other things, Petitioners tried to manufacture a lame conspiracy theory based on a false and unsupported allegation that the signatory above the "Boro Commissioner" line on the March 27, 2007 and August 28, 2007 DOB permit denials was not the Boro Commissioner or the DOB Commissioner's designee. (*See* A 002510-11). Petitioners argued that the "Boro Commissioner" signatures on the March 27 and August 28 DOB permit denials were "the same apparent signatures" (A 002511) and that, while the signatures were "difficult to decipher," they did not "appear to be" the signature of an authorized official (A 002510). On March 25, 2008, Petitioners informed the BSA that, on February 13, 2008, they had submitted a Freedom of Information Law request to the DOB for "[d]ocuments identifying the name and title of the person whose signature appears as 'Examiner' and 'Boro Commissioner' on the March 27 and August 28 DOB permit denials. (A 004136). Petitioners did not provide the BSA with the DOB's response. They contended, however, that a document purportedly received from the DOB, which identifies "Kenneth Fladen" as a DOB "Borough Superintendent" (A 004146), somehow proved that the person who signed the March 27 and August 28 DOB permit denials was not authorized to do so (A 004136-37).

The BSA did not find Petitioners' various allegations about the DOB process persuasive. The BSA Vice Chair described Petitioners' position as "bogus," lacking in "any legal basis," and based on imagined "demons." (A 003726) The Vice Chair concluded: "We have an objection

sheet from the Department of Buildings that's based on a review of the same drawings that are in our files." (A 003725) In response to Petitioners' complaint that the Congregation had changed its plans, the BSA Chair said "It doesn't matter" (A 003727) and added "I don't see what the issue is" (A 003725). She explained: "[W]e've seen this many times, people will go to the Buildings Department with a set of plans. They may have an initial set of objections. They may come back and revise their proposal. They may get a different set of objections." (A 003725) The Chair added that the Congregation was only "requesting a waiver" with respect to the seven objections, and could ultimately be unable to build if the withdrawal of the eighth objection was erroneous: "If there's another objection that they did not identify for the Board, there's no waiver to that[.]" (*Id.*) The Vice Chair concurred: "[I]f there's another objection, then [the Congregation will] have to come and get another variance." (A 003727)

On August 26, 2008, the BSA issued a resolution granting the Congregation a variance. The BSA rejected each of the arguments raised by Petitioners here.

In a footnote, the BSA dispensed with Petitioners' claim that the March 27 and August 28 DOB permit denials were signed by an unauthorized official. *See* BSA Resolution at 1 n.2 (attached as Exhibit C to Petitioners' motion to reargue). The BSA held that the issue was irrelevant because the Charter lists many different ways in which the BSA can acquire jurisdiction to grant a variance. The BSA concluded that it could do so even if the DOB's permit denial happened to be signed by the wrong DOB employee.

While the Congregation had argued that should not be required to prove that an as-of-right alternative would be unable to produce a reasonable return, the BSA elicited such proof from the Congregation. Based on this evidence, the BSA found that the variance was required to ensure that the property would produce a reasonable rate of return.

The BSA also found that "unique physical conditions" at the site warranted the variance. Contrary to Petitioners' assertion, this finding was not based on the fact that the Congregation's synagogue was "landmarked" or that the site was in a "historic district." The Congregation summarized the conditions as follows:

> The unique physical conditions peculiar to and inherent in [the Congregation's] Zoning Lot include: (1) the presence of a unique, noncomplying, specialized building of significant cultural and religious importance occupying two-thirds of the footprint of the Zoning Lot, the disturbance or alteration of which would undermine [the Congregation's] religious mission; (2) a development site on the remaining one-third of the Zoning Lot whose feasible development is hampered by the presence of a zoning district boundary and requirements to align its streetwall and east elevation with the existing Synagogue building; and (3) the dimensions of the Zoning Lot that preclude the development of floorplans for community facility space required to meet [the Congregation's] on-site religious, educational and cultural programmatic needs.

(A 004566).

B. <u>The Procedural History of this Action</u>

Shortly after the BSA granted the Congregation its variance, Petitioners filed a complaint demanding a declaratory judgment to invalidate the BSA variance. Around the same time, other opponents of the project (the "Kettaneh Petitioners") filed an Article 78 proceeding (the "Kettaneh Action) to invalidate the same BSA resolution. The two actions were deemed related and assigned to this Court.

On March 31, 2009, the Court heard oral argument in both actions. Counsel informed the Court that the only issues that were raised in this suit but not in the Kettaneh Action pertained to the BSA' jurisdiction. *See* 3/1/09 Transcript at 6-7 ("we believe they raise the same issue") (attached as Exhibit E to Petitioners' motion to reargue). Petitioners did not dispute this.

On April 17, 2009, the Court issued a decision converting the complaint in this action into an Article 78 petition. On May 26, 2009, Respondents submitted answers and memoranda of law. On June 19, 2009, Petitioners served reply papers.

On July 10, 2009, this Court dismissed the Kettaneh Action on the merits. *See Kettaneh v. Board of Standards & Appeals*, Index No. 113227/08, (Sup. Ct., N.Y. Co. July 10, 2009) (attached as Exhibit D to Petitioners' motion to reargue) (the "Kettaneh Decision").

On August 4, 2009, this Court likewise issued a decision rejecting Petitioners' contentions on the merits. *See* Landmark West! Decision. In its decision, the Court incorporated the Kettaneh Decision into its opinion by reference. *See* Landmark West! Decision at 3. The Court also addressed the allegations that were unique to this action.

Petitioners in this action and the petitioners in the Kettaneh Action appealed this Court's decisions. Those appeals are pending. Petitioners filed this motion on October 23, 2009. On November 9, 2009, the petitioners in the Kettaneh Action moved to intervene in this action.

ARGUMENT

THE MOTION TO REARGUE SHOULD BE DENIED

A. Petitioners Have Raised No Matter Overlooked Or Misapprehended By The Court

Petitioners have not raised "matters of fact or law . . . overlooked or misapprehended" by this Court, the *sine quo non* of a motion to reargue. *See* CPLR 2221(b)(2). Instead, Petitioners have rehashed the same arguments that this Court considered and rejected in its Landmark West! Decision. Petitioners' motion can be denied on that basis alone, without any further consideration of the merits.

The purpose of reargument is to afford a party the opportunity to show that a court has misapplied a controlling principle of law or misunderstood relevant facts. *See Foley v. Roche*, 68 A.D.2d 558, 567 (1st Dep't 1979), *appeal denied*, 56 N.Y.2d 507 (1982). A motion for

reargument may not serve as a vehicle to rehash the same arguments that a court has already considered and rejected. *See New York Cent. R.R. Co v. Banton Corp.*, 110 N.Y.S.2d 64, 66 (1st Dep't 1952) ("A motion for reargument is not just a repetitious application by a disappointed lawyer, who feels he ought to have as much further reconsideration as he chooses."); *see also Fosdick v. Town of Hempstead*, 126 N.Y. 651 (1891) (denying motion to reargue issues already decided by the court); *accord Pro Brokerage, Inc. v. Home Ins. Co.*, 99 A.D.2d 971, 971 (1st Dep't 1984).

Petitioners have not identified any gap in this Court's analysis of Petitioners' challenge to the BSA resolution. Even if Petitioners could do so, that would not entitle them to reargue. A court need not address every point raised by counsel in its decision. *See In re Estate of Ancell*, 191 Misc. 2d 252, 253 (Sup. Ct., Westchester Co. 2002); *see also* CPLR 2219. Moreover, the Court, here, ***did*** address all of Petitioners' arguments. *See* Landmark West! Decision (incorporating the Kettaneh Decision and rejecting Petitioners' allegations that purported defects in the DOB Boro Commissioner's permit denial and the Congregation's change in architectural plans deprived the BSA of jurisdiction). The Court's detailed discussion of the issues demonstrates that the Court read the parties' briefs in this action and carefully deliberated over all of Petitioners' arguments.

In short, Petitioners' unhappiness with the result is no basis for reargument. The Court should deny the motion on that ground.

B. <u>This Court Properly Dismissed Petitioners' Action</u>

In any event, this Court properly dismissed this action. Petitioners failed to make the requisite showing that the BSA's decision was arbitrary, capricious, illegal, or an abuse of

discretion. *See* Kettaneh Decision at 15; *see also Soho Alliance v. New York City Bd. of Standards & Appeals*, 264 A.D.2d 59, 62-63 (1st Dep't 2000), *aff'd*, 95 N.Y.2d 437 (2000).

As this Court observed in the Kettaneh Action, New York courts give special deference to the determination of local zoning boards. *See* Kettaneh Decision at 15. Further, courts must make every effort to accommodate a religious use of real property. *See Halperin v. City of New Rochelle*, 24 A.D.3d 768, 773 (2d Dep't 2005), *appeal dismissed*, 7 N.Y.3d 708 (2006).

On reargument, Petitioners have not even attempted to show that the BSA lacked a rational basis to make each of the "five findings" that the BSA may invoke when issuing a variance under the Zoning Resolution. Indeed, this Court correctly found the BSA's findings well-supported by the record:

> The "(a) finding" – The BSA had a rational basis to find that the Congregation's property lot has unique physical conditions, when considered in the aggregate in light of the Congregation's programmatic needs, Kettaneh Decision at 6-19.
>
> The "(b) finding" – The BSA rationally found that the Congregation is a not-for-profit corporation (such that a "(b) finding" need not be made) and that, in any event, the Congregation would be denied a reasonable return in the absence of a variance, Kettaneh Decision at 19-25.
>
> The "(c) finding" – The BSA rationally decided to grant the variance despite claims that four lot-line windows would be blocked and assertions that there might be some incremental shadow impacts, Kettaneh Decision, at 25-27;
>
> The "(d) finding" – There was no support in the record for any claim that the hardships faced by the Congregation were self-imposed, Kettaneh Decision, at 27-28; and,
>
> The "(e) finding" – The BSA reasonably found that the modifications to the Congregation's proposal, which reduced the variance for the rear yard setback, was the minimum required to afford relief, Kettaneh Decision, at 28.

Instead of addressing the merits, Petitioners argue here that (1) the BSA lacked jurisdiction to grant a variance; (2) the BSA applied an "unprecedented" standard in making its "(b) finding"; and (3) the BSA usurped the LPC's jurisdiction. These contentions are meritless.

1. The BSA Had Jurisdiction Over The Variance

Petitioners' attack on the BSA's jurisdiction is premised on their claims that the DOB building-permit denials were signed by the "wrong" DOB official (Pet. Mem. at 7) and that that official reviewed the "wrong" architectural plans (*id.* at 18). As this Court held in its Landmark West! Decision, the BSA acted well within its discretion in construing the Charter as vesting it with jurisdiction to grant variances without regard to these erroneous contentions. *See* Landmark West! Decision at 5. The BSA, as held by the Court (Landmark West! Decision at 4-5), had jurisdiction pursuant to City Charter Sections 668 and 666(5) and thus was not required to comply with the requirements of Section 666(6)(a), the provision relied on by Petitioners. Nevertheless, there are numerous ***additional*** grounds on which this Court may reject Petitioners' "jurisdiction" challenge.

First, Petitioners' own assertions on page seven of their brief are sufficient to vest the BSA with jurisdiction. There, they assert that "the 2005 and 2007 DOB Notices of Objections were issued by Kenneth Fladen, a 'provisional Administrative ***Borough Superintendent***'" and that the BSA is vested with authority "'[t]o hear and decide appeals from and review . . . any . . . decision or determination of the commissioner of buildings or ***any borough superintendent*** of buildings acting under a written delegation of power from the commissioner of buildings.'" (Pet. Mem. at 7 (citing Petitioners' Exhibit J and City Charter § 666(6)(a)) (emphasis added). Thus, if, as Petitioners assert, Mr. Fladen signed the notices of objections, and if, as Petitioners assert, Mr. Fladen was a "borough superintendent," the BSA clearly had the authority to "hear and decide appeals" from his determination. Since Section 666(6)(a) does not require the signature of a "borough commissioner" and does not divest the BSA of jurisdiction where architectural plans submitted to the DOB are amended upon appeal to the BSA, Petitioners' assertions that

Mr. Fladen was not a "borough commissioner" and that the plans that he reviewed were subsequently amended are misplaced.

Second, Petitioners' factual assertions about the process before DOB are not supported by the administrative record. For example: (1) The March 27, 2007 and August 28, 2007 DOB permit denials are both stamped "Boro Commissioner . . . Denied." (A 000018, A 000348) The BSA could reasonably have inferred that these permit denials were either signed by the Boro Commissioner or another authorized employee. The document that Petitioners claim to have received as a response to a Freedom of Information Law request (A 004146) is nothing more than Mr. Fladen's appointment letter. It states nothing about his role, if any, in this matter. It does not compel the conclusion that the permit denials were unauthorized. (2) The record also shows that BSA reviewed the same plans that were before the DOB. In response to the BSA's request that the Congregation "provide evidence that the DOB issued their current objections based on the current proposal before the BSA" (A 000257), the Congregation submitted plans, dated August 28, 2007, that were before the DOB (A 000403-20) and DOB's revised permit denial, signed that same day (A 000348). The DOB was not required to adopt Petitioners' speculations about what plans the DOB reviewed.

Third, at most, Petitioners' complaints about the DOB process bear on the DOB's decision to ***deny*** the Congregation a building permit. Petitioners did not file an Article 78 challenge to overturn the DOB denial nor did they name the DOB in this suit. Petitioners cannot challenge the DOB permit denials in this suit.

Fourth, Petitioners are not claiming that the DOB permit denials were erroneous. Indeed, Petitioners' position is that the DOB – regardless of the official or architectural plans involved – ***correctly*** concluded that the Congregation's plan would require a variance. It would

make absolutely no sense to deprive the BSA of jurisdiction to grant a variance in such circumstances.

2. The BSA's "Mixed Purpose" Analysis Does Not Aid Petitioners

Petitioners' contention that the BSA did something unprecedented when it required the Congregation – a not-for-profit organization – to meet the "reasonable return" test with respect to certain aspects of the project (Pet. Mem. at 19-20) could not be more curious. To the extent that the BSA strayed from the strict language of Section 72-21 of the Zoning Resolution in granting the Congregation a variance, its deviation only made it ***harder*** for the Congregation to get a variance, not easier.

As this Court has already explained, Section 72-21(b) of the Zoning Resolution states that "'this finding [concerning reasonable return] ***shall not be required*** for the granting of a variance to a non-profit organization.'" Kettaneh Decision at 20 (quoting N.Y.C. Z.R. § 72-21(b)) (emphasis added). In this case, however, the BSA concluded that "the exemption from this requirement did not apply when a non-profit was seeking variances for a total or partial for profit building," *i.e.*, a mixed purpose development. Kettaneh Decision at 20. The Congregation respectfully disagrees with the BSA's decision to stray from the clear language of Section 72-21(b). Nevertheless, in light of the BSA's decision to ***grant*** the Congregation a variance, the BSA's decision to impose a ***heavier burden*** on the Congregation than is permitted by statute is harmless. Petitioners, certainly, have no cause to complain. As this Court noted, "the BSA specifically requested that the Congregation submit reasonable return analysis" – even though it was undisputed that the Congregation was a "non-profit organization" within the meaning of Section 72-21(b). The BSA's imposition of a tougher standard on the Congregation cannot possibly warrant Article 78 relief in Petitioners' favor.

3. The BSA Did Not Usurp The LPC's Jurisdiction

Finally, Petitioners' claim that the BSA usurped the LPC's authority under Section 74-711 of the Zoning Resolution (Pet. Mem. at 23) is plainly meritless. ***First***, contrary to Petitioners' assertion, Section 74-711 does not vest the LPC with "exclusive" jurisdiction. Section 74-711 does not use the term "exclusive" and does not imply that any power that it vests in the LPC is to divest the BSA of corresponding authority. Certainly, nothing in that provision purports to cut back on the BSA's authority under Section 72-21 of the Zoning Resolution to designate aspects of zoning lots as "unique physical conditions" under the Zoning Resolution. ***Second***, in any event, the BSA did not invoke the landmarked status of the synagogue or the historic-district status of the remaining property to find "unique physical conditions" at the Congregation's property.[2] Indeed, the Congregation would have suffered from "unique physical conditions" even in the absence of any historic preservation law. The Congregation made the requisite showing by showing that (1) development is hampered by the zoning district boundary on the property and the need to align the streetwall and east elevation with the existing Synagogue building; (2) the dimensions of the lot are insufficient to meeting the Congregation's on-site religious, educational and cultural programmatic needs; and (3) the Synagogue consumes a large part of the property and cannot be altered because it is of significant cultural and religious importance to the Congregation. (A 004566) Petitioners' claim that the BSA usurped the LPC's authority is meritless.

[2] Petitioners try to change the BSA's reference to the "location of the landmark Synagogue" into a reliance by the BSA on the City's landmarks preservation law, rather than on the importance of the landmark structure to the Congregation's mission. *See* p. 10 of the BSA Resolution, attached as Exh. C to Petitioners' Motion to Reargue.

CONCLUSION

For the reasons stated above, this Court should deny Petitioners' motion for leave to reargue.

Dated: New York, New York
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PROSKAUER LLP

By: Courtney Devon Taylor
Louis M. Solomon
Claude M. Millman
Courtney Devon Taylor

1585 Broadway
New York, New York 10036-8299
(212) 969-3000
(212) 969-2900 (fax)

Attorneys for Respondent Congregation Shearith Israel