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July 6, 2022

ELIZABETH SANDERCOCK  
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By Email

ALJ Astrid Gloade  
OATH  
100 Church Street, 12<sup>th</sup> Fl.  
New York, NY 10007

Re: Matter of American Package, OATH Index No. 22-1754  
Matter of Gray, OATH Index No. 22-1758

Dear Judge Gloade:

This letter is submitted in reply to correspondence sent to you by Christina Browne, Esq. dated June 29, 2022 opposing the consolidation of the above captioned applications.

The above captioned American Package case is the third access application served on Theodore Lockhart, the respondent in the American Package case and the protected occupant of unit G12 at 226 Franklin Street, Brooklyn, NY ("the Building"). The two prior applications were dismissed as defective. The above captioned Matter of Gray is a harassment application in which four units at the Building assert, among other things, that they are being harassed by the owner's legalization plans and the breach of the owner's oral agreement to do PAA's to correct interior configuration issues after the issuance of a building permit.

Lockhart is a petitioner in Matter of Gray and asserts that he has been harassed 1) by the landlord's repetitious defective access applications and 2) by the manner in which his unit is to be legalized. Failure to consolidate the applications will almost certainly mean that American Package will be decided before Matter of Gray, and if American Package is decided against him, Lockhart will have to provide legalization access for his unit to be legalized pursuant to the very plans he is disputing in Matter of Gray. In other words, failure to consolidate the two applications will moot Lockhart's assertion that the legalization plans for his unit constitute harassment.

There are some background facts which may assist your decision in this matter. The vast majority of IMD tenants in this Building were bought out by the landlord in 2019. Only a handful of protected occupants remain in the Building; most are parties to the pending harassment application as it appears the landlord is punishing those who did not accept buyouts to encourage them to waive their Loft Law rights and leave the building. The Lockhart unit was covered under Loft Board Order 4815 (10/18/18), which was mailed to Lockhart the day before

the 45 day clock on legalization was started by the Loft Board. Lockhart never attended a narrative conference (the last relevant conference at which interior unit configuration was addressed took place in September 2017 before he was covered) and he was pro se in applying for coverage. He first had legal counsel with respect to his Loft Law rights in September 2020 and first consulted with an architect concerning the legalization configuration of his unit in late 2020.

To the extent opposing counsel contends that there was no agreement to do PAA's and that the tenants should have done alternate plans, annexed hereto as Exhibit A are minutes of the last narrative conference addressing interior configurations which show otherwise.

In addition, Lockhart is married and shares his loft with a male roommate who is simply his roommate, there is no other personal relationship. There presently are two separate sleeping areas in the loft and two separate sleeping areas can be retained. Annexed hereto as Exhibit B and incorporated by reference herein are a report and two alternative legalization drawings of the Lockhart unit prepared by Alexandr Neratoff, RA, which have been in the possession of landlord's counsel since late 2020 or early 2021. Ms. Browne's statement that the landlord cannot be expected to give carte blanche to unspecified tenant legalization plans is false, since plans for the Lockhart unit, as well as the other units grieving their respective configurations on the owner's plans, have been known to the landlord for a year and a half. Likewise, her implication that two bedrooms cannot be provided because there is no legal way to do so, is equally false. The tenants' plans, produced by a skilled conversion architect, demonstrate that two bedrooms can legally be provided. The tenants have also offered to obtain the approval of these plans at their own cost and expense.

Further, while access notices were served on two other units in 2020, those access notices have not been pursued, and no legalization work has started. The only unit being peppered with access notices is the Lockhart unit. Failure to provide access is not interfering with ongoing legalization work actually and currently taking place at the building – there is no such work taking place. Legalization simply has not started.

Finally, the legalization plans for the Lockhart unit will make it one big room, and MDL Section 31.6(a) provides that “no room shall be occupied for sleeping purposes by more than two adults.” Ms. Browne's contention that the Department of Buildings approved the plans so they must be alright fails to account for the fact that DOB does not know how the space is being used and is probably not cognizant of Loft Law diminution of services considerations.

The landlord's demand to legalize the Lockhart unit right now is inextricably bound up with the tenants' harassment application and necessarily the same witnesses, Alexandr Neratoff and Christian Gray, the head of the tenant association, would have to repeat virtually identical testimony in both cases.

The cases must be consolidated.

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OATH  
July 6, 2022  
Page 3 of 3

Thank you for your consideration.

Sincerely,

  
Margaret B. Sandercock

MBS/jo  
Encs.  
cc: Christina Browne, Esq.  
client

# EXHIBIT A

AA

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[If you have a mold or leak problem fill out this survey tonight.](#) I need to send it to Petrucci

Thursday, 9/7, by 10am.


The Loft Board wasn't buying Marty's excuses for not hiring a licensed mold inspector, so they're going to schedule an appointment for us thru Petrucci for their Inspector, Sumeet Sood, to and test. If their inspector determines there is a mold or leak problem Marty "will be responsible" for repairs. Costa tried to explain some mold causes might not be remedied until legalization repairs are made but the Loft Board understands tenants can't live with mold. We need to send an updated list to Bob tomorrow.

Today's conference was 3.5 hours long.

In attendance: Michael Bobick, Assistant General Counsel for the Loft Board acting as mediator, Marty, Burden, Costa, Jessica, Bob



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Today's conference was 3.5 hours long.

In attendance: Michael Bobick, Assistant General Counsel for the Loft Board acting as mediator, Marty, Burden, Costa, Jessica, Bob and Arthur. Christian, Lou, Cody, Kate (left early), Lauren / Andy, Erez, Alan, Ian, Sonya (late). Christian spoke for David May and Lou spoke for Kate.

Notes about meeting and next steps:


Bobick did a solid job of being a mediator, staying calm, letting both sides talk it out but holding all to standards - I thought he was very fair.

**Bobick will get back to all parties regarding a timeline of next steps in the next few days.**

Jessica said she needs at least three weeks to adjust the NS and background plans in response to today's comments. As I recall, at



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**Bobick will get back to all parties regarding a timeline of next steps in the next few days.**

Jessica said she needs at least three weeks to adjust the NS and background plans in response to today's comments. As I recall, at that time we should get a copy (of at least the NS) while they file the plans to clear objections with the DOB. The Loft Board will want the tenants and Marty to draft a PAA within 45 days after the plans are filed for objections (or cleared?). Petrucci said we'd need their cleared plans for Arthur to draft our proposed PAA work for Marty, the Loft Board wasn't keen on that extra delay but understood the necessity. The specifics of how this will actually work will be in the timeline email the Loft Board will send us next. Earlier in the meeting Jessica had said, "once the background is done we'll shoot them over (to the DOB?) and then share with you".

There was some discussion about how the



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There was some discussion about how the tenants will hold Marty to make a PAA agreement once the plans are filed. Marty said he "promised". Bobick specifically said, he will "put a hold on the project after certification until Marty comes to a signed PAA with the tenants (and lawyers" - he will, "hold Marty to his word" that this will get done by threatening to hold the project.

A few other notes about the plans and NS:

Having neighbors represent missing tenants at the table was a helpful for Arthur and Costa.

We learned Marty plans to hire a General Contractor (GC) who will "meet with each tenant before each project to discuss the details". Any questions about materials, locations, minute details will be discussed then.



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There will not be any electrical plans per say. Outlets will be standard and can be discussed with GC when work is being done.

Costa does not care if existing doors, fixtures, etc are salvaged during demo, tenants can ask GC to reuse in other places (specifically regarding doors) or reinstall for rebuilds (specifically this was regarding lights). It was said existing deadbolts can be reinstalled when doors are flipped for ADA. Tenants can supply material for tiles, etc - discuss with GC, inform Marty when notice of work is announced. GC will be ordering materials when notice is sent so notify Marty to prevent extra ordering if providing.

Costa does not yet know how existing factory windows that need additional venting for light/air will happen exactly. He seemed be weighing both sides of the argument explaining this perhaps Marty doesn't want to



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Costa does not yet know how existing factory windows that need additional venting for light/air will happen exactly. He seemed to be weighing both sides of the argument explaining this, perhaps Marty doesn't want to come to Jesus about replacing them in full. This does not apply to most people. Costa suggested a window contractor will be hired to consult best solution.

Some descriptions in the NS are meant to be read as "baseline", or - not literally what will happen but the minimum goal that needs to be reached. This was specifically said in reference to venting existing windows but could apply to other things.

All "mezzanines" will hence forth be called "platforms" for DOB approval.

All fixed skylights will somehow be made operable. Details tbd.





Costa will "send a diagram" explaining how the additional wire mesh security screens for existing plain glass skylights may be installed. He thought it would go below the glass but above the handle, mounted inside the opening. The mesh would have 4" gaps. It is to protect people above and below from a broken skylight.

All public entrances on the 2nd floor (hallway doors) must be ADA compliant but nothing inside those units must be.

Re: the details in the mechanical plans (Jessica to update after background plans are cleared of objections), Jessica said, "if a room will be demolished or added it's safe to assume a duct will be demolished or added".

Units can not have multiple thermostats. Ducts can be adjusted in each room to adjust air flow thru vents. Mech plans specify different



# EXHIBIT B

December 13, 2020

## COMMENTS ON ACCESS APPLICATION FOR PROPOSED LEGALIZATION WORK

Re: 226 Franklin St., Brooklyn, NY 11222 – B 2512 L 1 BIN 3336829 – Alt. 1 #320914347 – IMD 30077

At the Loft Board Conference regarding Emergency Structural and Waterproofing repair work at 226 Franklin Street, held on October 20, 2020, questions were asked by the tenants (present in person as well as virtually) regarding the appropriateness of the Loft Board Certification issued on January 08, 2019 after the expiration of a 45-day clock that started on October 25, 2018. The Loft Board notice referenced the Alt. 1 Plans and Narrative both dated August 2, 2018.

Neither Counsel Margaret Sandercock or I were involved with the building at that time. I was only retained in September, in connection with the structural problems at the Franklin Street side of the building. However, a quick review of the approved plans and the existing configurations revealed rather surprising configurations that appear to needlessly disrupt the protected tenants living and sleeping spaces. The additional problem of the two units that are being affected by the structural and waterproofing work also having been affected to different degrees by a flood from the 2nd floor, and the coverage of one additional unit just as the 45-day clock was starting, added a further degree of confusion to the process and the communications around it.

The normal process tenants go through in the review of Narrative Statements and plans includes a submission of a legalization scheme presented by the owner's team by written and graphic means, that is then reviewed by the tenants' team of professionals, usually a lawyer and an architect. It is assumed that the owner's proposal is submitted once, reviewed and negotiated once, and either agreed to or if not, becomes the subject of comments or an alternate plan. This presupposes that the most disruptive configuration is submitted at the outset so if any comments or alternate plans are warranted, that is determined at the first review when the tenants have the benefit of a team of professionals the tenants share the cost of and that is performed efficiently as it is done at one time for the entire group.

What I found to be startling in reviewing this process is that while the first two Loft Board conferences ran conventionally, the process after the last conference appears to have broken down. Instead of differences converging resulting in an acceptable scheme being approved and built, in this case, the proposed configuration started to drift away from the one agreed at the last conference as tenants started to lose rooms, alcoves, mezzanines, and instead, their units started to fill up with useless closets they did not ask for. What is worse, this process was slow, varied from unit to unit, and most tenants did not understand the process or that they had to re-engage an architect to assess if the newly proposed modified configuration still represented something they could live with.

I do understand why some of the major changes had to be made to achieve Department of Buildings approval and that these conditions were unexpected by the architect at the outset: the DOB's recent inventions (some are listed in the "Project Guidelines") include the following affecting this building:

- light only travels 30 feet in from a window thus one has to fill the rest of the space with closets or separate size-limited foyers;
- an additional misreading of this rule is that ventilation is similarly restricted: it is not!
- only one alcove is permitted per apartment;
- new skylights are not permitted as sources of light and air for residential purposes;

While I completely disagree with the misguided recent decisions and interpretations promulgated by the Department's leadership, a failure to obtain an approval as a result of these decisions has to be explained to the tenant and the tenant has to be given a chance to rethink their earlier response. The solution might have to be completely new if the previous response is made inapplicable by the new DOB interpretations. The tenant has to be given an opportunity to assess and suggest improvements to the owner's new proposal, or be given a new opportunity to file comments or alternate plans if necessary. Otherwise, you end up with a situation where a tenant and a roommate who had two separate and private bedrooms will unbeknownst to them end up sitting on suitcases in a big open space without a single private bedroom. Now what? Not a result to be proud of.

After considerable research, here is how I would subdivide and summarize the past four years of this process for the four units I represent as architect: G-21, G-22, G-12 & G-51 (F-2 awaits status update).

1. Initial Plan Set dated 12/08/15 (no equivalent Narrative) is the earliest documentation I have;
2. Loft Board Conference 05/09/16 resulted in plans dated 05/18/16, Narrative dated 05/16/16;
3. Loft Board Conference 09/06/17 was based on revised Plans dated 05/04/17 and further revised Plans and Narrative dated 07/11/17; I understand that not all the IMD units were even discussed because of time or other limitations. However, a so-called "PAA Agreement" was discussed to allow the resolution of remaining open issues directly and to memorialize them by filing PAAs at the Department of Buildings and the Loft Board (Ex. X1).
4. Revised Plans and Narrative both dated 08/02/18 introduced substantial changes to some unit configurations (see below) but for some reason I cannot understand, did not result in any Loft Board Conference.
  - The 08/23/18 cover letter (Ex. X2) to the tenants from landlord stated "we are providing these plans by email for ease of your review";
  - It is clear from other evidence that some tenants did not see the plans until a year later (Ex. X3 09/24/19 and X4, landlord response a day later).
  - However, a 45-day clock started on 10/25/18 just a little over two months hence; and
  - Loft Board Certification was issued on 01/08/19.
  - No "PAA agreement" was entered into; I am not aware of any negotiations to resolve open issues and no actual PAA for such changes was filed at the Department of Buildings.

A revised Narrative Statement dated 03/14/19 sent to tenants on 04/16/19 clearly captions on its 1st page the main Alt. 1 application #320914347 and covers residential IMD unit interior work (as well as other work covered by other applications listed).

This is written in response to Amy Lee's letter dated 12/09/20 stating that the Loft Board conference scheduled for 03/24/20 was for the auxiliary applications only, not for the Alt. 1 application, stating:

"I have reviewed the Loft Board's records, and it appears that the narrative statement conference, which was scheduled for March 24, 2020 and which was subsequently cancelled, was for Job Nos. 321785154, 340670465, and 340670456. It was not for the Alt. 1 application (Job No. 320914347)".

- a. Stephan Clarke acknowledged on 11/13/19 (in the first Loft Board to the 03/14/19 Narrative) that the 03/14/19 Narrative Statement had changed the original Narrative Statement and asked if the tenants had any comments and if they would request a new conference (Ex. X5);
- b. On 12/13/19, Stephan Clarke restated that a conference will be scheduled if tenants have any issues or concerns with the 03/14/19 Narrative Statement (Ex. X6);
- c. On 12/31/19, David May sent Stephan Clarke a letter expressing concerns with the entire process and the plans configuration (Ex. X7);
- d. Having received expressions of concern from the tenants, Stephan Clarke stated on 12/31/19 that a new Conference will be scheduled to discuss all outstanding issues (Ex. X8).
- e. As a direct consequence of these exchanges regarding the 03/14/19 Narrative Statement, thus incorporating the Alt. 1 application into this process, Stephan Clarke scheduled a new Narrative Statement Conference for 03/24/20, incorporating (as the 03/14/19 Narrative had stated as well) the related applications.
- f. This conference was then cancelled by Stephan Clarke on 03/17/20, due to Covid.

So it does appear the Loft Board was willing to re-open this conference process to resolve remaining open issues it acknowledged exist. This appears to refer to the so-called "PAA Agreement" that was never drafted or signed, which was something that should have happened after the last conference.

**Unit G-12** – Here is how Unit G-12 was affected by these four phases of development:

This second-floor unit has a living space facing Green Street, two bedrooms flanking a central hallway in the middle portion of the unit (the larger west Bedroom #1 equipped with an operable skylight), a kitchen and dining space doubling as a foyer with a large skylight and a large 3-fixture bathroom with a closet. Bedrooms have storage-only mezzanines, as does the bathroom entrance and closet area.

1. The 12/08/15 plan shows two 4'-0" x 4'-0" operable skylights being installed in the bedrooms, the mezzanines and stairs being removed, and the kitchen skylight being made operable. One double-hung window is added to the street façade's two existing double-hung windows.
2. The 5/18/16 plan deletes the new skylights from the bedrooms, turning both into sleeping alcoves without privacy; deletes the operable modification for the kitchen skylight, making the kitchen into a mechanically-exhausted kitchenette with a 12" drop arch, and the rest of the space into a foyer. The mezzanines and stairs are still shown as being removed. The new window is shown enlarged to be a double window (both of its parts double-hung).
3. The 5/04/17 plan seals the existing doors into the former bedrooms, calls the east alcove a "dining" space. Neither this or the previous plan recognize the west bedroom's skylight. The 7/11/17 amended plan removes the entire west wall of the east "alcove" so it ceases to be a defined space; the dining function is now merged with the living. The new window continues to be a double window.

4. The 8/02/18 plan now responds to the 30'-0" claimed depth of living space rule by adding a 48 SF walk-in closet where the east bedroom used to be, but keeps the west alcove by recognizing that the west 2'-0" x 4'-0" skylight over what used to be the west bedroom is existing and openable. A note is added that the walls at the alcove are 8'-0" tall (which they are not according to the photographs I saw). The 8/02/18 Narrative states that two double-hung windows facing Green Street would be replaced with casement windows to increase the ventilating area, while the new window ceases to be a double window, going back to the 2015 plan. It remains unclear how the shortage of glazing is dealt with, to address natural lighting requirements (as the kitchen skylight is separated from the living area by a hall less than 8'-0" wide). Adding skylights as the 2015 plan did, would solve this. However, replacing double-hung windows with casement ones to increase the ventilation area will be undermined by some of the windows having to be sealed shut in response to the toilet/kitchen exhaust (see M-101) termination location that requires adjacent windows to be sealed shut.

This unit's plans started well with a perfectly acceptable plan in 12/08/15, and it then underwent a totally unnecessary downward spiral since then. Two bedrooms exist here and two bedrooms are required to exist. Two options exist to preserve a two bedroom configuration:

- A. The general outlines of the 2015 plan are kept: the existing configuration is preserved, two bedrooms remain in place, #1's existing operable skylight is enlarged, #2 gets a new operable skylight, the kitchen skylight (described in Angelo Costa's 12/17/19 letter as being replaced) will be modified to be partially-operable to maintain the open kitchen configuration. The bedroom mezzanines can remain if the clearance below them is 7'-0" and the rest of the bedroom is at least 80 SF and 8'-0" high, or be rebuilt to meet those standards. The skylights must not be blocked and must be in the full-height part of the room. Bedroom size can be reduced to keep the skylight enlargement to a doubling in size by adding a closet to each room.

This configuration really should be approvable, as the claim made by the Department of Buildings that only existing, enlarged or modified skylights are allowed as legal sources of light and air, is simply not included in any NYC or State law. This interpretation would make Bedroom #2 not approvable. However, since battle may take months to win, I propose another configuration option to deal with this problem:

- B. Any failure to get Bedroom #2 approved does not mean that this unit is not entitled to two bedrooms: that function is a requirement, and the owner is obligated to explore other options to accomplish this. Option B shows one such viable option: the replacement Bedroom #2 is simply relocated to the west wall so it uses the proposed new street-facing window; the living space now incorporates the space from the removed bedroom #2 and the kitchen skylight, modified to be operable, serves the living space from the north side eliminating the 30 foot rule restriction simultaneously eliminating the need to change the open kitchen into a kitchenette. A closet is added to the new Bedroom #2 so it would be properly served by the new window that would be of the same size as the two existing street-facing windows, as proposed by the owner's plans.

This unit was granted Loft Law coverage by a document mailed on 10/24/18 (received no doubt two or three days later), just one day before the 45-day notice was issued on 10/25/18 (and it too received a few days later). The two documents must have been received on or about the same time.

There was clearly not enough time for this occupant to have understood his rights under coverage, the issues and the applicable procedures, in time to be able to properly respond. If coverage is only a possibility, one's focus on a process is not the same as when it becomes real. The tenant would have then hired an architect to assist the review. It also does not appear likely that the tenant even saw the 2018 plans: he had likely seen the initial 2015 set, that was circulated according to what I heard from others, and had he examined those plans, he would have concluded that everything was fine and the proposed configuration was acceptable. In the ensuing three years, the landlord's new configuration proposed to remove all of the unit's improvements making it into a one-person studio apartment, which contradicts the existing use of a two-person dwelling unit.

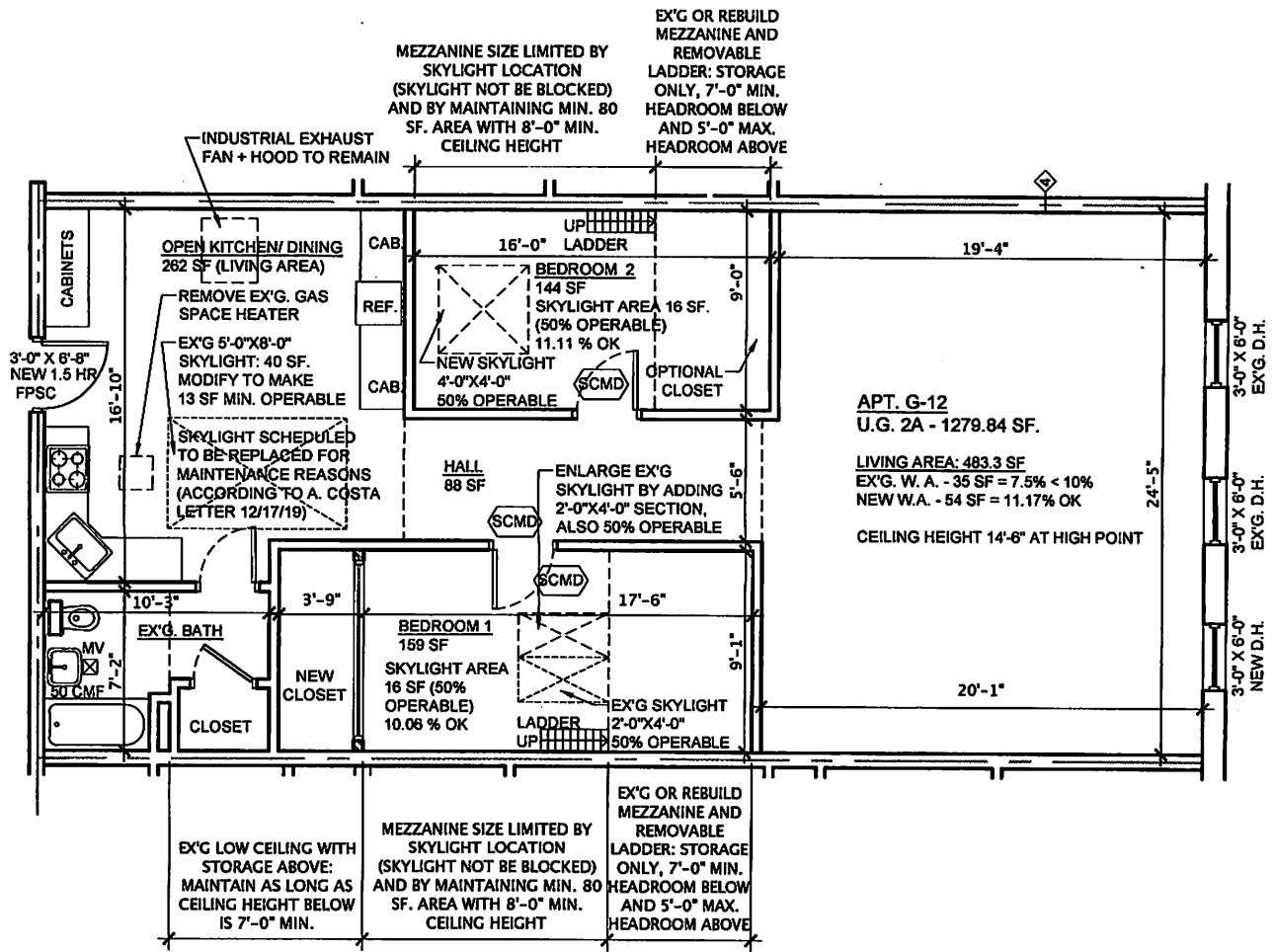
That is what has to be corrected in this process. The unit has other issues, such as roof leaks and wild temperature swings from extreme cold to heat, as there is no insulation under the roof. I have not studied the new heating and cooling system but some amount of insulation at the roof underside would help make that new system more efficient, and would address new energy code efficiency standards that may be triggered as of the effective certification date.

Respectfully submitted,



Alexandr Neratoff  
Architect





DATE ISSUE/REVISION

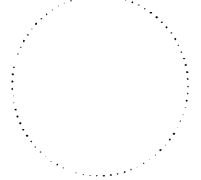
**ALEXANDR NERATOFF**  
ARCHITECT

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NEW YORK, NY 10012  
212 431 0011

226 FRANKLIN STREET  
BROOKLYN, NY 11222

Block: 2512 Lot: 1 Map: 12C  
Zoning: M1-2/R8A Special: MX-8  
CB: 301 IMD: 30077  
BIN: 3338829 ALTI: 320914347

SEAL & SIGNATURE



DATE: December 10, 2020

PROJECT NO. :

DRAWING BY: B.L.

CHK BY: Alexandr Neratoff

UNIT NO.  
**2nd FL-UNIT G-12**  
**option A**

JOB FILE NAME:  
Building Conversion/

DWG. NO.

**A-003A.00**