DOB issues:

In the 1980's and 1990's, the DOB seemed eager to legalize IMD loft buildings providing liberal interpretations of the Codes and making suggestions as to how issues may be resolved, however currently the DOB has an unfriendly attitude toward IMD tenants. I'm sure the Plans Examiners are providing rulings that are fueled from above. I was never aware of the DOB staff having a political agenda in the past, their task being the technical review of documents presented by licensed professionals for conformance with established laws and procedures. Likes and dislikes have no place in the DOB review process.

The issues raised are of significant interest to the residents of I.M.D. buildings since the recent determinations dramatically impact their homes and are, in the opinion of several knowledgeable architects, without basis in the Code. Theoretically, if there is a clean interpretation of the Code the "opinions" of the Plans Examiners, Group Chiefs and other staff members wouldn't be relevant. A DOB Bulletin or Technical Memo would clarify these issues and speed up and simplify the process of leglazation.

Skewed Interpretations:

The laws that pertain to the legalization/conversion of a loft building have been around for almost four decades with very few changes. What has changed is the way these laws are being interpreted by the Department of Buildings Plans Examiners and Group Chiefs. Some of this is due to an amazingly low level of training for these staff members who are intended to provide technical review but, in fact, have very little actual knowledge and experience in the areas to be reviewed.

Home Occupation: (Ref. Item 1) The Zoning Resolution (Article 1, Chapter 5) provides for a Home Occupation provision in most of the districts involved with loft conversion in amounts of either 25% or 49% of the floor area of the dwelling unit. This is regularly rejected by Plans Examiners, despite a 35 year history of acceptance in loft building conversions. The uses of these spaces range from artist workrooms, carpentry shops, offices, music studios, rehearsal studios and a range of uses that, in many instances was the justification for the tenant to occupy the dwelling unit in the first place.

The DOB has now determined that these spaces must be "habitable" spaces and therefore must have natural light and ventilation and meet minimum dimensions of habitable rooms. Despite the fact that normally, and in the 35 year history of these spaces, the uses mentioned would be considered "occupiable" space and able to be mechanically ventilated and have smaller dimensions than "habitable" space. The standard response in this situation is to demolish an 8'-0" X 8'-0" opening which effectively destroys the intended use of the space.

Mezzanines: (Ref. Item 2) This is interconnected with the Home Occupation issue. The New York State Multiple Dwelling Law (Sect. 277.7,d) provides for a mezzanine with 7'-0" of headroom. Again, the consensus opinion of the DOB staff is that these too are to be considered "habitable" spaces and therefore, must have an 8'-0" headroom and natural light and ventilation. The standard response is to demolish these mezzanines. Legitimate work/studio areas are routinely being demolished rather than elevated to the new 8'-0" standard. Occupants of loft dwellings relied on the statute voted in place by the New York State

Legislature, and are now being told that their formerly accepted mezzanines are to be demolished. Many of these spaces could be made legal as "occupiable" Home Occupation spaces.

These two issues alone are indicative of a shift in the way I.M.D. loft spaces are being viewed by the DOB. There is a presumption of guilt which turns an enforcement issue into a legalization issue. The Plans Examiner reviews drawings with no knowledge of the uses of space other than the drawings presented, yet there is a presumption that the occupant is illegally using a home occupation or a mezzanine for sleeping purposes without any actual inspection or review of the situation. An analogy would be a police officer seeing you sitting in your car at a red light and giving you a ticket because he/she KNEW that at sometime in your life you would run a red light. The use of Home Occupation and mezzanine space for sleeping purposes is an enforcement issue and not a legalization issue.

Other Issues:

Sleeping Alcoves: (Reference Item #1) - CCD1 #48606 was filed due to an Objection indicating that the opening for an alcove to obtain light and ventilation must directly face the windows providing light and ventilation to the space. The statute which this stems from is DOB TPPN #9/93 which makes no reference to the direction of the source windows. This issue has been raised by other Plans Examiners, and rightfully, the CCD1 rejects this Objection. The CCD1 does not approve the appeal, but denies approval based on unrelated grounds. The CCD1 goes beyond the requested interpretation and indicates that only a single sleeping alcove may be served by any adjacent space. The justification for this opinion is given as §30 M.D.L. This statute is not referenced in Article 7-B and has never been applied in these situations. It is interesting to note that Article 7-B does include §31(6) M.D.L. but not the quoted statute. A statement that the additional considerations of §30 M.D.L. are to be somehow ignored has been provided without justification. The confused state of the CCD1 is compounded by reference to the 1200 square foot minimum size of a Joint Living Working Quarters unit, which is totally irrelevant. The subject building is located in Greenpoint, where JLWQ is not allowed under the Zoning Resolution.

Minimum window requirements: (Ref. Item 3) Sect. 277.7 (b,1,A) M.D.L. requires one window that is a minimum of 15’-0” feet from the property line. Very few of these buildings were built to have substantial rear or side yards. DOB TPPN 9/93 provides for the distance of a window from the property line to be expanded over the property line to provide natural light and ventilation. Section 277.7 M.D.L. accepts windows that are a minimum of 5’-0” from a property line as legally providing natural light and ventilation. Very few Plans Examiners are aware of this and will require all of the windows in a dwelling unit to be, at a minimum, on a legal court .

Mean spirited attitudes must not be allowed to impact peoples’ lives so drastically.

Handicapped access: There was a letter from the Executive director of the Loft Board, about two years ago, and distributed to the professionals, which indicated that the DOB had decided to only require the Ground floor of an I.M.D. loft building conversion to be made handicapped adaptable. This seems to have gotten confused and the issue of elevator and non-elevator buildings has been raised on a number of occasions. Buildings that have elevators as existing are being required to be made handicapped adaptable throughout, Buildings where the building owner is choosing to install a passenger elevator are being required to be made

handicapped adaptable throughout. Clarification of the DOB position here would be extremely helpful.

Roof recreation areas: (Ref. Item 4) I recently viewed a formal pre-consideration for the requirement to provide a roof recreation area as required by Article 1, Chapter 5 of the Zoning Resolution. This was signed by a senior DOB staff member, supposedly with greater training than the standard Plans Examiner. The reasoning behind the waiver was that the building was already "legal" due to I.M.D. status. The Zoning Resolution provides for waivers of the requirements of this Chapter by the Chairman of the City Planning Commission only, and not the DOB.

Alternate plans filings: (Ref. Item 5) DOB Plans Examiners have had no experience with and have no understanding of the Loft Board Code Compliance Regulation with respect to the occupants ability to file an ALT. 2 for alternate opinion. They don't seem to understand the nature of the application and the information available to the applicant of this application. DOB Plans Examiners ask to provide Loft Board Certification and previously approved plans for both the tenants ALT. 2 and the building owner's ALT.1. There is little understanding that these applications are provided without the authority of the building owner.

Skylights:

CCD1 (#49089) has determined that somehow the skylight must be "fully within the room it serves" and therefore a skylight may not be "split" to serve more than one space. No Code citation is provided for this opinion and none exists. CCD1 #49089 goes further to indicate that only existing skylights may be used to provide natural light and ventilation to a loft space. This statement disregards §C26-1202.2 and §C26-1205.5 of the 1938 Building Code, under which this building, and the overwhelming majority of loft building conversions, are filed. Skylights: Some Plans Examiners do not believe that skylight provide legal light and ventilation despite Building Code citations from the 1968 Code as specifically cited in Article 7-B MDL to the contrary. Additionally, some Plans Examiners will not accept an exterior door as a legal source of ventilation despite C26-1202.2.

Travel Distance:

An objection to comply with §C27-360(b) was lodged to indicate a maximum travel distance of 40' for this building. CCD1 #49093 indicates that this maximum travel distance must be complied with. Somehow this building, filed under the pre-1968 Building Code is being reviewed under the post-1968 Building Code. §C26-273(5,d) of the 1938 Building Code, under which this building is filed, provides for a maximum travel distance of 125'-0" for this building and would eliminate the proposed disruption required under the post-1968 statute.

In one instance in a building in Bushwick, the provision of legal windows on three sides of the building were a problem. The North side has a 10’-0” deep side yard. The East side (rear) of the building has a 10’-0” yard to the rear wall of the opposite building. The South side is built right up to the lot line. Sect. 277.7 MDL requires one window 15’-0” in a line perpendicular from the lot line. The remainder of the windows only have to be a minimum of 5’-0” from the lot line. This one magic window needs to be overlooking a street, yard or legal court. A legal court is a minimum of 100 square feet in area. The solution from the building owner's architect was to propose to cut 10’ X 15’ holes in the building on 3 sides. It is not reasonable to expect people to stay in their homes during this work.

My solution to the problem was rather than cut into the building with the attendant structural modifications in an occupied building, I proposed to build a “bay window” of sorts to provide the legal window. The "bay" provided angled windows which were 15"-0" from the property edge on a line which was perpendicular to the window.

The one side of the building that is built full to the lot line must be treated differently. The building must be cut on this side to provide a legal window. My approach was to minimize the cut as much as possible. Six units are affected. I used a concave “bay window” to accomplish this which required a cut into the building that was only 6'-7" deep instead of the 15'-0" being proposed.

The important point here is the DOB response relayed to me by the building owner's architect. The issue was taken up, under a reconsideration, by a Deputy Commissioner who said that he “didn’t like” the bay window attachments, the North side didn’t need any modifications, and that the South cutout needed to be bigger, in fact 140 sq. ft. was required as opposed to the 100 sq. ft. required by Code. If we can’t provide solutions to nasty problems that track the **exact language** of the Code then the whole tenant review process is worthless. This type of arbitrary response cannot be relied upon on any level. Someone’s mean spirited attitude must not be allowed to impact peoples’ lives so drastically.