

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DELMAR AND C. LUCILLE SALA

File No. S-80-036

from a determination of the  
Director, Department of  
Construction and Land Use

The appeal is DENIED and the Findings and Decision  
of the Director of the Department of Construction  
and Land Use are affirmed.

#### Introduction

Appellants, Delmar and C. Lucille Sala, filed an appeal  
from a decision by the Director of Construction and Land Use  
(CLU) to deny a use permit for a duplex at 2608 - 58th S.W.

The appellants exercised their right to appeal pursuant to  
Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: C. Lucille Sala for  
appellants, and Leigh Ann Collings for the Director.

This matter was heard before the Hearing Examiner on  
August 4, 1980.

For purposes of this decision, all section numbers, unless  
otherwise indicated, refer to the Zoning Ordinance (86300, as  
amended).

After due consideration of the evidence elicited during the  
public hearing, the following findings of fact and conclusions  
shall constitute the decision of the Hearing Examiner on this  
appeal.

#### Findings of Fact

1. The subject property is located in a Duplex Residence  
High Density (RD 5000) Zone at 2608 - 58th Avenue S.W. The  
property was zoned R2A, permitting duplexes, from 1923 to 1957  
when it was zoned RD 5000.
2. It is an attractive dwelling that appellants purchased  
in approximately 1965.
3. Prior to finalization of the purchase appellants  
inspected the structure, and were apprised of its use as a  
duplex.
4. The basement apartment ceiling height is generally  
76 inches; ceiling height in the entry and hallway is less  
than 6 feet.
5. Appellants urge that renting the basement apartment  
is important to their fiscal security, and that the apartment  
is light and airy with good ventilation and seldom rented to  
tall people.
6. Department records for living room, foundation, and  
garage alteration permits from approximately 1924-1931 show  
the dwelling as single family.

7. Submitted were affidavits that the basement apartment of the subject property has been rented continuously "since 1957, even before the present owners occupied this property."

8. The possible conflict with the Building Code came to light after a recent inspection of the furnace by the Fire Department. Appellant recalls no other City inspections from the date of purchase.

#### Conclusions

1. The Director's determination is to be regarded as prima facie correct. Section 25.44. The burden of proof is on the appellant.

2. Floor to ceiling minimum regulations of 7 ft. 6 in. appear in Section 702, Seattle Building Code (Ordinance 72200, effective November 1, 1942); in Section 1405(d), Seattle Building Code (Ordinance 85500, effective 1956, and repealing 72200); and in Ordinance 108508, effective October 17, 1979, supplementing the 1979 edition of the Uniform Building Code, and designated the Seattle Building Code.

3. Ordinance 108508, Section 102 reflects the purpose of providing "minimum standards to safeguard...public welfare..." The provisions apply to occupancy of any building or structure within the city. Section 103. Section 104 provides that buildings legally constructed and occupied in accordance with then provisions may continue under conditions specified. This is consistent with the requirement for legalization of a nonconforming use. Zoning Ordinance Section 3.21.


4. It is unclear when the subject dwelling was converted to a duplex with the basement apartment. We conclude nevertheless that appellant has not met her burden of proof.

5. Appellants' affidavits show use as a duplex for an extended period of time. However, compliance with applicable codes necessary for present legalization was not shown. That is to say, extended use of a building in violation of applicable restrictions, including height regulations, cannot support subsequent legalization of that use as nonconforming. Thus, while personal circumstances of the appellants, and the desired height characteristics of prospective tenants have been considered, the Director's determination should be affirmed. The principle of equitable relief is not appropriate to this case.

#### Decision

The appeal is DENIED and the Findings and Decision of the Director of the Department of Construction and Land Use are AFFIRMED.

Entered this 15th day of August, 1980.

  
Leroy Mc Cullough  
Hearing Examiner

#### Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1977).