

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2012

CITY OF COCOA BEACH, FLORIDA,

Petitioner,

v.

Case No. 5D11-4433

BRUCE FOUNTAIN AND JENNIFER FOUNTAIN,

Respondents.

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Opinion filed April 27, 2012

Petition for Certiorari Review of Decision  
from the Circuit Court for Brevard County  
Acting in its Appellate Capacity.

James A. "Skip" Fowler and Mary L.  
Sneed of Fowler, O'Quinn, Feeney &  
Sneed, P.A., Orlando, for Petitioner.

Jason Gordon of Gordon & Cornell, Cocoa  
Beach, for Respondents.

PER CURIAM.

Petitioner seeks review of an order that reversed the decision of its Code Enforcement Board ("the Board"). The Board determined that Respondents violated two distinct city ordinances by parking a large sailboat on property zoned for residential use. In reversing the decision of the Board, the lower court addressed one of the potential violations<sup>1</sup> but failed to address the Board's conclusion that Respondents also violated section 4-76 of the ordinance. That section prohibits, among other things, the

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<sup>1</sup> Cocoa Beach, Fla., Code § 15-23.1 (2010).

parking of boats in excess of twenty-six feet in a residential zone unless certain exceptions apply. The exceptions require, inter alia, that the boat "be operable," as well as "in regular use, and have a current license and current registration." Cocoa Beach, Fla., Code § 4-76A.3.i. (2010). The instant boat meets none of these criteria.

Respondents postulate that the lower court must have determined that the object in question is not a "boat," because it is under construction and not yet completed. To reach such a conclusion, however, the lower court would have departed from its permissible standard of review by invading the fact-finding province of the Board and applied an incorrect legal standard in its construction of the ordinance. Accordingly, we quash the decision under review.

PETITION GRANTED; ORDER QUASHED.

SAWAYA, TORPY and COHEN, JJ., concur.