

KIRKMAN WHITFORD BRADY BERRYMAN & GORDON, P.A.

ATTORNEYS AT LAW

POST OFFICE BOX 1347

MOREHEAD CITY, NORTH CAROLINA 28557-1347

TELEPHONE (252) 726-8411

FACSIMILE (252) 726-6974

E-mail: lawyers@kirkmanwhitford.com

www.kirkmanwhitford.com

STREET ADDRESS:

710 ARENDELL STREET - SUITE 105
MOREHEAD CITY, NC 28557

NEIL B. WHITFORD
CAROLYN B. BRADY*
MELISSA BERRYMAN
JANE A. GORDON**

* ALSO LICENSED IN GEORGIA

**ALSO LICENSED IN NEW YORK

October 4, 2022

Ms. Diane Miller, Manager
Town of Oriental
507 Church Street
Oriental, NC 28571

Re: M & J Marine, LLC, d/b/a Sailcraft Service
Boatyard at 1216 Lupton Drive

Dear Ms. Miller:

We have been engaged by M & J Marine, LLC, d/b/a Sailcraft Service in connection with the uses permitted to them, from a zoning perspective, on their boatyard at 1216 Lupton Drive which is a part of the Sailcraft Service complex. As you know, Sailcraft is a full service boatyard. It is my understanding that in 2018 the Town of Oriental took the view that while boats could be stored on 1216 Lupton, any work on such boats would violate the Growth Management Ordinance in that the lot is zoned R-1, a residential district, and that work on the boats would be a commercial operation not permitted in the R-1 zone. Though the Town has not officially contacted my client since 2019 about its operations on 1216 Lupton, my client has found it impossible to maintain the lot solely for boat storage and from time to time work has been performed on the boats there. While the town has not officially objected, there have been occasional comments from town representatives, most often a commissioner, that Sailcraft's operations on the lot are violating the GMO. Michael and Jennifer Pawlikowski are weary of worrying about a legal skirmish with their town and thus they have asked me to investigate and give them an opinion of the legality of their operation. I have done that and it is summarized below.

I want to start with the nature of a boatyard. Boats too large to store on typical boat trailers are most often 'permanently' kept afloat usually moored to a dock. Typically they are not pulled from the water and placed on stands for storage except in the rare

case of hauling them from the water for safe keeping in the face of a hurricane. When a boat too large to keep on a trailer is pulled from the water and placed on stands in a boatyard, it is most often for work on the boat. The work can be bottom scraping and painting, fiberglass repair, repair or replacement of woodwork, repair to windows and hatches, engine servicing, engine repair, engine overhauling, engine replacement, electrical work, plumbing work, HVAC work, mast and rigging repair, sail and canvas repair or replacement - essentially any maintenance, repair or servicing the boat needs.

The work on boats of this nature is done by three classes of people or companies. First is the boat owner on a "do it yourself" (DIY) basis. Second is by personnel employed by the boatyard. Third is by independent contractors hired by either the owner or the boatyard.

Now back to a 2019 written communication from the Town. It acknowledges that previously, 1216 Lupton had been used for boat storage and that storage was "grandfathered" but that repair work was not. Here was the problem with that position. When the Town acknowledged that boats were stored on the lot, for the large boats on stands, they were there primarily for work as I have described in the two previous paragraphs. So with the Town's acknowledgement that boats had been stored on the lot, given the inherent nature of boatyards, this was an admission that work on those boats had also taken place and such work was also grandfathered.

Your GMO was adopted in 1999. Any nonconforming uses that existed at that time could continue under the grandfather clause of Section 191.1 of the GMO. Prior to 1999, 1216 Lupton was used to repair and service boats that had been hauled from the water. That kind of work has continued on the lot until today. This work has not occurred every single day since 1999, but there has never been a time when such activities have been abandoned for a consecutive period of 180 days.

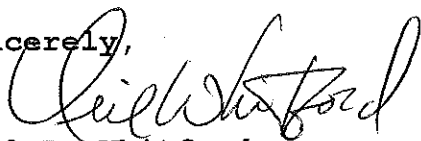
In developing the facts that support this opinion, we have procured written statements from ten individuals attesting to the fact that 1216 Lupton has been used for boat servicing and repair long before 2019 and, for the individuals with decades of knowledge of the area, such work has gone on for more than 25 years. These letters are attached.

Michael and Jennifer Pawlikowski through M & J Marine, LLC, d/b/a Sailcraft Service are good corporate residents of your town. They provide valuable service to many boat owners in the "Sailing

Capital of North Carolina." Yours is a water dependent community and one would think you would support your legitimate water related businesses.

To support this business and remove any cloud relating to 2019 communications to them, I ask that you send them a letter acknowledging that in light of the information we have provided to you, the repair and serving operations on 1216 Lupton are grandfathered. At a minimum, I ask that you not bother them again with any threat of enforcement action. There is a curious statute that allows an individual successfully challenging a municipal action to recover attorneys' fees in certain situations. I am confident we can prove the repair and servicing work on 1216 Lupton to be grandfathered and thus we will be successful challenging any enforcement action the Town may take. But my clients do not want legal actions and stress. They simply want to operate their business in peace.

Sincerely,

A handwritten signature in cursive script, appearing to read "Neil B. Whitford".

Neil B. Whitford

Cc: Michael and Jennifer Pawlikowski

Enclosures

To Whom It May Concern:

I have been familiar with operations at the boat yard in Oriental known as Sailcraft Service since at least 1985, if not before. During that time, my late husband and I have had several boats stored and worked on in the two lots occupied by Sailcraft. The work included bottom painting, fiberglass repair, painting, cleaning, and woodworking. We did some of the work, and Sailcraft staff did other tasks.

For more than the last 25 years, the Sailcraft Service boat yard has used two lots that are connected. The street addresses for the lots are 1216 and 1218 Lupton Street. 1218 Lupton is the lot where the boat yard has buildings. 1216 Lupton is west of and adjacent to 1218. 1216 Lupton has no buildings and is an "open" lot.

From my personal observation over this time, boats have constantly been placed on blocks on 1216 Lupton, and either the boat owners, contractors, and/or the owner operator of Sailcraft have performed typical boat maintenance work on the boats while in that yard. Over at least the last 25 years, there has never been a time of 180 continuous days or more, about six months or more, that some work on boats on blocks at 1216 Lupton, typical of boat yard operations, did not take place. While 1216 Lupton Street is an open lot, it has been continuously used for typical boat yard operations, that includes work on boats, for 25 years or more.

AS Parker 7/15/22
ANNE S PARKER
160 BLACKWELL POINT LOOP
ORIENTAL, NC 28571

To Whom it May Concern:

For the past 25+ years I have been a client of Sailcraft Service through 3 different owners. During those years we had a slip at Sailcraft Marina and owned a townhouse at Windward Views on Tosto Court which is adjacent to the boatyard. We never had any issues with the work or activities going on at Sailcraft Service, they were always a great neighbor! During those 25+ years the boatyard used the open lot 1216 Lupton Street to place boats and to perform needed services. I never remember a time that that space was not used for those purposes and never was contacted about it be a problem. This space is very important to Sailcraft Service and it's customers to be able to perform timely services. If lot 1216 is restricted from doing the work it has done for years then you are negatively affecting their income! Our town should be doing all we can to help our business partners grow and prosper.

Thanks

Chuck Gordon

June 21, 2022



June 24, 2022

To Whom it May Concern:

Deaton Yacht Service, Inc has been located at 1306 Neuse Drive since 1985 and at that time, Sailcraft Service was operating as a service facility.

While never personally having done any work on the lot to the west and adjacent to Sailcraft Service, 1216 Lupton Drive, it has always been my impression that commercial work associated with the repair of vessels has taken place on the so mentioned lot.

Regards,

John Deaton

A handwritten signature in black ink, appearing to read "John Deaton", is written over a horizontal line. The signature is stylized with large, flowing loops.

June 22, 2022

To Whom It May Concern:

I have worked in the marine industry for the last fifty years as a marine mechanic, boat builder and owner of a cordage enterprise and battery business in New York and the Caribbean. In 2010 I retired and purchased a home in Oriental, with plans to build a 37 foot catboat from a one hundred year old design that would be suitable for sailing on the Neuse River. I entered into a contract with Alan Arnfast former owner of Sailcraft boat yard to build the boat on the area of the boatyard at 1216 Lupton, where marine work was being conducted on an open lot. I built a platform and put up a shelter Logic building 50' x 30' x 20' and proceeded to build a one of a kind catboat during the next two years. Construction continued on a daily basis on that site until the boat was launched in July 2014. During construction marine work continued on the open lot all around the building I had constructed, at the request of Alan Arnfast I left the building standing and the yard then used it for marine repairs.

If you require any additional information or clarification, please feel free to contact me at (252) 249-7299.

Sincerely,



Art Halpern
306 Whittaker Point Road
Oriental, NC 28571

Robert Luhrs
65 Point Lane
Merritt, NC 28556

July 11, 2022

To Whom It May Concern,

I have recently heard that there is an issue with the use of the lot at 1216 Lupton St. in Oriental by Sailcraft Service. I have lived in the area for 16 years and have used Sailcraft Service a few times. They provided a valuable, helpful service to me for my boat repair and maintenance, and I know many other people who have benefited from their services as well. Not only is this a valuable service for Oriental and Pamlico County, but it also provides a positive economic impact to us all. I hope Sailcraft will be able to continue their services, at both 1216 and 1218 Lupton St., as they have been doing for many years.

Sincerely,

A handwritten signature in black ink that reads "Robert Luhrs". The signature is fluid and cursive, with the first name "Robert" and last name "Luhrs" clearly legible.

Bob Luhrs

To Whom It May Concern,

I have lived in the Oriental area for over 30 plus years. For most of those years, I have lived at my present address on Starboard Circle, around the corner from Lupton Road and from Sailcraft Service. I have friends who live or have lived on Tosto Circle, just past Sailcraft, and frequently have driven by or walked one of my dogs by Sailcraft's boat yard and operations. On occasion, have also had business and visits with one of the previous owners.

During all those years, have observed boat owners, contractors, and Sailcraft employees at work on the properties at 1216 and 1218 Lupton Road. The primary buildings are at 1218. The adjacent lot, 1216, has no buildings on it. I have frequently and consistently over the years seen boats on blocks on that property, 1216 Lupton, as well as 1218 Lupton, with typical and varied boat yard work and services being performed by Sailcraft, boat owners, and contractors on both properties.

I am not aware that there has been any period of 180 continuous days, that some typical boat yard work on boats on blocks did not occur during that period on the lot at 1216 Lupton Road

Always seemed to be boats coming and going, workers of all sorts coming and going from boats on blocks on both of Sailcraft's working lots.

Aug 11, 2022

Missy Tenhet

From: Kathryn Garcia <kpaddles@yahoo.com>
Date: July 11, 2022 at 10:06:40 AM EDT
To: jennifer@sailcraftservice.com
Subject: Support for M & J Marina
Reply-To: Kathryn Garcia <kpaddles@yahoo.com>

To Whom It May Concern:

My husband and I have been familiar with Sailcraft boat yard, now M & J Marine, since we moved to Pamlico County in 2005. We have had work done at this boat yard. Our son worked there from 2006 - 2007 cleaning hulls, painting and striping boats. His work took place on the 1216 Lupton lot where the buildings are located. The 1218 lot was being used by the Sailcraft rigger who was working on numerous masts and other rigging needs. In 2012 we visited our friend Art Halpern who put up a tent to build a boat on the 1218 lot. We watched his boat take shape under this tent. In a county where boating is so important. We are grateful to the marinas who do this work.

Respectfully,
Kathryn and Enrique Garcia
S/V Pelican

K E N L A S E R A R C H I T E C T, P L L C
PO Box 447, Oriental, NC 28571 Ph:252/249-0422 C:917/763-3826 e-mail: ken@kenlaser.com

July 21, 2022

To Whom It May Concern:

I have been a customer of and frequent visitor at the boat yard Sailcraft Service in Oriental for more than the last 11 years. As part of their operations, boats are hauled out of the water and placed on stands where boat owners, contractors, or the yard operators work on them. The work going on there includes cleaning and painting hulls and bottoms, wood and fiberglass repair, engine repair, electrical, electronic, plumbing and air conditioning work, window/porthole, door repair and replacement, boom and mast repair and replacement, as well as rigging, and canvas work. During the time I have been a customer, the Sailcraft Service boat yard has used two contiguous lots. The street addresses for the lots are 1216 and 1218 Lupton Street. 1218 Lupton is the lot where the boat yard has buildings. The 1216 Lupton lot is west of number 1218, has no buildings and is an open lot. From my personal observation for more than the last 11 years, boats have constantly been placed on stands on 1216 Lupton, and either the boat owners, contractors, and/or the owner operator of Sailcraft have performed work on the boats while in that yard. Typical of boat yard operations, boats on the 1216 Lupton lot are continuously being worked on. Over the last 11 years, I have never witnessed a time that some work on the boats on blocks at 1216 Lupton, was not underway on that open lot.

Respectfully,

Ken Laser

Ray's Creek Side Marina, Inc.

336 Blackwell Point Loop Road, Oriental, NC 28571

Mailing Address: P. O. Box 593, Oriental, NC 28571

Tel: 252-249-2777 Cell-Billy: 252/617-2316 Cell-Donna:919-631-0934 E-mail:
creeksideoriental@gmail.com

June 5, 2022

Re: Work Done at Sailcraft yard 1216 Lupton Dr., Oriental, NC 28571

TO WHOM IT MAY CONCERN:

I've been sailing my boats in Oriental, NC for more than 40 years, over that time I have worked on and had work done to my boats at Sailcraft Service at 1216 Lupton Drive, Oriental NC. There were often others also working on their boats at the same location. Feel free to contact me if you have questions.

A handwritten signature in cursive script, reading "Billy J. Creech". The signature is fluid and stylized, with a long horizontal flourish extending from the end.

Billy J. Creech
Ray's Creekside Marina, Inc.

June 2, 2022

To Whom It May Concern:

I have been familiar with operations at the boat yard in Oriental known as Sailcraft for more than the last 25 years. By the very nature of boat yard operations, boats are hauled out of the water and placed on blocks where boat owners, contractors, or the yard operators work on them. The work on boats in a boat yard is quite varied. It includes cleaning and painting hulls and bottoms, wood and fiberglass repair, engine repair, electrical work, electronic work, plumbing work, air conditioning work, window/porthole and door repair and replacement, boom and mast repair and replacement, rigging, and canvas work. This is just a partial listing of the work that takes place at a boat yard. For more than the last 25 years, the Sailcraft boat yard has used two lots that are connected. The street addresses for the lots are 1216 and 1218 Lupton Street. 1218 Lupton is the lot where the boat yard has buildings. 1216 Lupton is west of and adjacent to 1218. 1216 Lupton has no buildings and is an "open" lot. From my personal observation for more than the last 25 years, boats have constantly been placed on blocks on 1216 Lupton, and either the boat owners, contractors, and/or the owner operator of Sailcraft have performed customary work on the boats while in that yard typical of boat yard operations. Over the last 25 years, there has never been a time of 180 continuous days or more, about six months or more, that some work on boats on blocks at 1216 Lupton, typical of boat yard operations, did not take place. While 1216 Lupton Street is an open lot, it has been continuously used for typical boat yard operations, that includes work on boats, for more than the last 25 years.

Signature

A handwritten signature in blue ink, appearing to read "Aron P. Myrick". The signature is fluid and cursive, with a stylized "M" and "R". There are some additional marks to the right of the name, possibly initials or a date.