

**Garcia, Jay**

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**From:** Dennis D. O'Neil [doneil@hewittoneil.com]  
**Sent:** Friday, January 11, 2008 3:28 PM  
**To:** Garcia, Jay  
**Cc:** ckonrad@ldxx.com; hye4usc@earthlink.net  
**Subject:** Modification Permit No. MD 2007-089 (PA2007-247)  
**Attachments:** Scan001.PDF

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JAN 11 2008  
CITY OF NEWPORT BEACH

Attached is a letter on behalf of the property owner at 2215 Bayside Drive in opposition to Modification No. 2007-089. Please submit this into evidence for the hearing on this matter on Monday January 14, 2008.

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**Via E-mail and U.S. Mail**

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January 11, 2008

## VIA E-MAIL AND U.S. MAIL

Jay Garcia  
Zoning Administrator, Planning Dept.  
City of Newport Beach  
3300 Newport Blvd.  
P.O. Box 1768  
Newport Beach, CA 92663

RECEIVED BY  
PLANNING DEPARTMENT

JAN 11 2008

CITY OF NEWPORT BEACH

Re: Modification Permit No. MD2007-089 (PA2007-247)

Dear Zoning Administrator Garcia:

This law firm represents Mr. David Jenkins, the owner of the residence at 2215 Bayside Drive, Newport Beach ("Jenkins Property"). Mr. Jenkins has been made aware that the owner of the adjacent property at 2209 and 2201 ("Tabaz Properties") has filed an application requesting administrative relief from the City's zoning code provisions to permit the encroachment of shoring, caissons and foundation structures on the Tabaz Properties. The modification application requests encroachments into the 4-foot sideyard setbacks, shoring and foundation systems that span both of the Tabaz Properties, and to increase in the maximum height of the permitted 6-foot walls to 8 feet 6 inches.

On behalf of Mr. Jenkins, I want to be on record opposed to the granting of the modification because of the concern that the proposed excavation and construction of the caissons and retaining wall will interfere with the lateral and subjacent support of the wall and residential structures on the Jenkins Property. The damage caused by the potential subsidence and collapse of the structures on my client's property will subject Mr. Tabaz, and possibly the City, to liability. In this regard, the applicant should at least be required to post a bond and obtain insurance to protect Mr. Jenkins and the City from incurring damages from this potential liability.

Jay Garcia  
January 11, 2008  
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Further, there is no evidence to support granting a variance from compliance with the Zoning Code will:

- Not adversely affect the health or safety of persons residing in the neighborhood; or
- Not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.

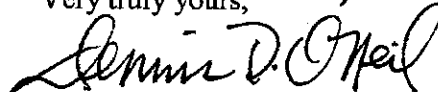
Quite to the contrary, the proposed construction that would be authorized by the granting of the modification could be very detrimental to the general welfare and injurious to the Jenkins Property. Therefore, the Zoning Administrator cannot make the required findings under Section 20.93.030 of the Municipal Code justifying the granting of the modification.

Further, Mr. Jenkins is opposed to the granting of the modification on the grounds the construction would violate a condition of the California Coastal Development Permit prohibiting shoreline protective devices from being constructed to protect the development of the residences on the Tabaz Properties from damage or destruction from waves, erosion, flooding, storm conditions, or other natural hazards. Environmental studies need to be conducted to address storm and ocean water intrusion, erosion and related significant environmental impacts.

Finally, the modification permitting the shoring system and foundation slab connecting both properties and crossing the property lines would violate the City's General Plan designation and zoning for this area allowing single-family detached residential units.

For these reasons, Mr. David Jenkins opposes the granting of Modification Permit No. MD2007-089 (PA2007-247).

Very truly yours,



Dennis D. O'Neil

DDO/clt

cc: David Jenkins