



STAFF REPORT ACTION REQUIRED

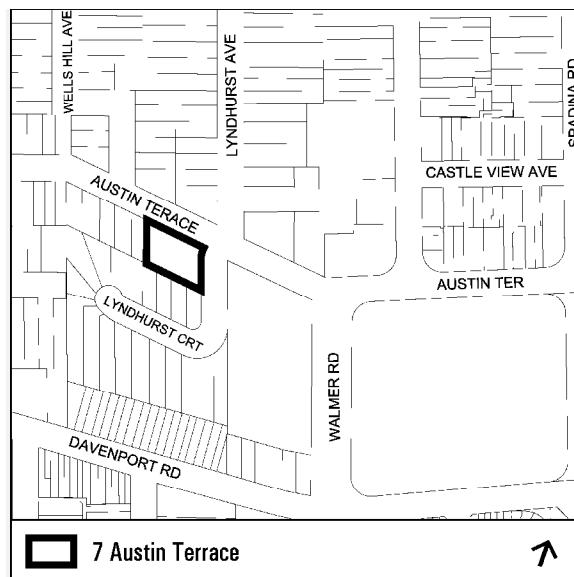
7 Austin Terrace – Residential Rental Demolition Application under Municipal Code Chapter 667 & Residential Demolition Application under Municipal Code Chapter 363 – Final Report

Date:	January 27, 2011
To:	Toronto and East York Community Council
From:	Director (Acting), Policy and Research Director, Community Planning, Toronto and East York District
Wards:	Ward 21 – St. Paul's
Reference Number:	09 158104 STE 21 RH & 09 158207 DEM 00 DM

SUMMARY

On August 14, 2009, the applicant submitted an application to demolish existing rental housing at 7 Austin Terrace under Chapter 667 of the Toronto Municipal Code and Section 111 of the *City of Toronto Act*. On the same day, the applicant made an application to demolish residential housing under 363 of the Toronto Municipal Code and Section 33 of the *Planning Act*. These applications propose to demolish a ten unit residential building, of which nine units are rental housing. The owner is proposing to demolish the building in order to construct eight townhouse units and a six unit rental replacement apartment building. The demolition of residential rental housing is prohibited under Chapter 667 of the Toronto Municipal Code unless a permit has been issued under Section 111 of the *City of Toronto Act*.

Under Municipal Code Chapter 363, where there are six or more residential units, a report on the proposed demolition is forwarded to Community Council for



consideration and recommendation to City Council. If a building permit has been issued to erect a new building on the site of the residential property sought to be demolished, Council must issue a demolition permit, but may impose conditions. This report recommends issuance of the demolition permit pursuant to Section 33 of the Planning Act and Municipal Code Chapter 363 subject to conditions.

This report also reviews and recommends refusal of the Rental Housing Demolition application under Section 111 of the *City of Toronto Act* as the proposed development and rental replacement plan does not fully conform to the Official Plan housing policies. The proposed development also requires the demolition of the existing building, which City Council has notified it intends to designate under the *Ontario Heritage Act*.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council refuse the application for a permit under Municipal Code Chapter 667 (Section 111 of the *City of Toronto Act*) to demolish rental housing at 7 Austin Terrace;
2. City Council approve the application under Municipal Code Chapter 363 (Section 33 of the *Planning Act*) to demolish the residential building subject to the following conditions that:
 - a) prior to the issuance of the demolition permit, the owner receive a demolition permit under the Ontario Heritage Act;
 - b) the owner shall provide and maintain at least six residential rental units, at least three of which shall have affordable rents and three which shall have mid-range rents on the subject property;
 - c) prior to the issuance of the demolition permit, the owner shall enter into one or more agreements with the City of Toronto to secure the conditions as detailed in Recommendation 2, that may be registered on title to the property to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning Division;
 - d) prior to issuance of the demolition permit, the owner shall provide the City with a Letter of Credit to secure the rental replacement units satisfactory to the City Treasurer and City Solicitor, in the amount of \$913,440, to be increased annually after submission by an amount that is indexed in accordance with the Non-Residential Construction Price Index for the Toronto CMA;
 - e) prior to the issuance of the demolition permit, the owner shall register a Section 118 Restriction under the Land Titles Act, to the satisfaction of the City Solicitor, restricting all transfers or charges of any part of the lands

- without the written consent of the Chief Planner and Executive Director, City Planning Division or his designate, to ensure that the rights and responsibilities under any agreement with the City shall be enforceable against subsequent owners and encumbrancers of the lands;
- f) prior to the issuance of the demolition permit, the site plan has been approved pursuant to Section 114 of the *City of Toronto Act*, 2006;
 - g) prior to the issuance of the demolition permit, the owner provide plans showing how they will replace the existing rental housing units in accordance with the building permit issued on November 16, 2009; and
 - h) prior to the issuance of the demolition permit, the owner amend the building permit application issued on November 16, 2009, if necessary, to be consistent with the foregoing conditions.
3. If any of the conditions of the Municipal Code Chapter 363 (Section 33 of the *Planning Act*) application are appealed to the Ontario Municipal Board, the City Solicitor and City staff be authorized to appear before the Ontario Municipal Board in support of City Council's position.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

Heritage Designation

At its January 26, 2010 meeting, City Council stated its intention to designate the property under the *Ontario Heritage Act*. City Council's decision and the related staff report can be viewed through the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.TE30.96>

The intention to designate was appealed by the owner to the Conservation Review Board (CRB). The owner has since withdrawn their appeal to the CRB without proceeding to a hearing.

Residential Demolition

In fall 2009, the applicant submitted an application to demolish the building under Section 33 of the *Planning Act*. Shortly thereafter, the applicant submitted plans for a building permit for an "as of right" single detached 3-storey house. Despite the fact that the applicant submitted redevelopment plans reflecting eight townhouse units and a six unit apartment building, the Chief Building Official (CBO) was obligated to issue the building permit under the *Building Code Act*. However, the CBO did not issue a demolition permit for the existing building. The applicant appealed the CBO's non-issuance of the demolition permit to the Ontario Superior Court. The matter was heard by the Court on December 30, 2009. The Court found that a demolition permit would

have been premature and that, ultimately, the authority to refuse (if no replacement building permit has been issued) or approve the demolition permit with conditions rests with City Council.

Related Applications

The applicant submitted the following related development applications: Minor Variances (A0504/09TEY) to permit the development of townhouses on the site; Demolition under the *Ontario Heritage Act*; and Site Plan Approval (09 158112 STE 21 SA).

The Minor Variances are scheduled to be heard by the Committee of Adjustment on February 23, 2011. Heritage Preservation Services staff are preparing a report in response to the demolition application under the *Ontario Heritage Act*. This report will be considered by the Toronto and East York Community Council at its meeting on February 16, 2011. The application for Site Plan Approval was submitted to the City on August 14, 2009 and was appealed to the Ontario Municipal Board on December 8, 2010.

ISSUE BACKGROUND

Proposal

The applicant is proposing to demolish the existing rental housing building in order to construct eight townhouse dwelling units along with a six unit rental replacement apartment building on the site. The rental replacement building would be located at the eastern end of the site. Unit entrances for the rental replacement units are proposed from both the Austin Terrace frontage and Lyndhurst Court. The rental building's exterior would generally mimic the frontage of the proposed townhouse units, while the Lyndhurst Court side would appear as more of a typical duplex or triplex style dwelling.

The applicant has proposed to replace six of the nine existing rental housing units. The replacement units are all proposed to be 1-bedroom units, ranging in size from approximately 441 to 840 sq ft. In lieu of replacing the remaining three rental units, the applicant proposes that the six rental units have lower rents than would have otherwise been secured.

Site and Surrounding Area

The existing building is located at the southwest corner of Austin Terrace and Lyndhurst Court. The building is known as the Maclean House due to its association with John B. Maclean, the well known magazine publisher. It has a total of ten residential units. The building was designed by the well known Canadian architect John M. Lyle, who was commissioned by Maclean to design the building. The building is currently vacant and has been boarded up for over a year.

The building has a long history as rental housing and has been a valuable part of the neighbourhood's and City's rental housing stock. City archival records show that beginning in 1952, the residence was divided into seven residential rental units. Sometime thereafter, three additional units were created in the building. Owner documentation and City records show that the building was tenanted up until 2008. Of the ten residential units, one of the units was owner occupied for most of its rental history, and as such, does not meet the definition of rental housing. These records demonstrate the existence of a total of nine residential rental units in the building for up to 55 years.

The property is located in a residential neighbourhood. Directly east of the site is 5 Austin Terrace, also known as the Lenwil building, a notable heritage building. To the north, south and west of the site are single family houses. Two other heritage buildings, Casa Loma and Spadina House, are also located in the nearby vicinity.

There are eight trees situated on the subject property that qualify for protection under the City's Private Tree by-law, which are all proposed to be removed to facilitate the development. The applicant is required to submit an application for a "Permit to Destroy Privately Owned Trees" to Urban Forestry staff. In addition, there are four trees situated on City of Toronto property along the Austin Terrace frontage, which are proposed to be removed to facilitate the development. The applicant is also required to submit an application to remove City owned trees, as per the Municipal Code, Chapter 813, Article II. The applicant was notified of these requirements in December 2009 as part of the site plan approval process.

City of Toronto Act, Section 111

Section 111 of the *City of Toronto Act, 2006* authorizes Council to regulate the demolition and conversion of residential rental properties in the City. By-law No. 885-2007 (the Rental Housing Demolition and Conversion By-law), which established Chapter 667 of the Municipal Code, was enacted by City Council on July 19, 2007.

The By-law makes it an offence to demolish, or cause to be demolished, the whole or any part of a residential rental property unless approval has been granted for a Section 111 permit for the demolition of the residential rental property. Approval of related planning applications is typically conditional upon the applicant receiving a Section 111 permit. In the case of a minor variance application, City Planning staff provide recommendations to the Committee of Adjustment, which include such conditions of approval. The City's decisions to refuse or approve a Section 111 permit are not subject to appeal to the Ontario Municipal Board.

Planning Act, Section 33

Under Section 33 of the *Planning Act* and Municipal Code Chapter 363, Council has the authority to refuse or approve demolition permits for residential properties. However, where a building permit has been issued to construct a new building on a property, the Courts have held that City Council cannot refuse the demolition permit. As previously indicated, the applicant was granted a building permit for an “as of right” single detached 3-storey house in fall 2009.

City Council does have the authority to apply certain conditions on a demolition permit where a building permit has been issued. Section 33 of the *Planning Act* allows the imposition of conditions of approval to require that a new building be constructed within a specified period of time (not less than two years after demolition has commenced), and that a maximum charge of \$20,000 may be added to the tax bill for each approved residential unit not completed within the specified period of time.

In addition to the power granted under Section 33 of the *Planning Act*, the former City of Toronto was given additional authority to regulate demolitions under special legislation enacted in 1984, 1985 and 1991. These provisions are still in effect today and apply to the subject lands. The 1991 special legislation authorizes Council to impose conditions on demolition permits beyond those identified in Section 33 of the *Planning Act*. Under this legislation, Council may impose any condition, which in its opinion, is reasonable, having regard to the nature of the residential property to be demolished including, but not limited to, the preservation of significant natural features, and the erection and maintenance of structures and enclosures around the residential property.

Staff recommends that Council approve the demolition application under Section 33 of the *Planning Act* as it is legally required to do so. Staff strongly oppose the demolition of the building due to the unresolved heritage, rental housing and other planning issues. In order to address the outstanding planning matters, staff recommend that a number of conditions be imposed on the demolition approval, including the replacement of the rental housing, site plan approval and approval of the demolition under the *Ontario Heritage Act*.

Coordination of Section 111 and Section 33

Where both Section 111 and Section 33 apply, a single report on the applications is forwarded to Council for a joint decision. Under Municipal Code Chapter 363, a demolition permit under Section 33 may only be issued once preliminary approval under Section 111 has been granted, unless Council provides otherwise. While the two processes are connected, they are also governed by different legislation and require separate consideration and approvals. In the case of the Section 33 application, Council's decision may be appealed to the Ontario Municipal Board, whereas Council's decision on the Section 111 application may not be appealed to the Board.

Provincial Policy Statement and Provincial Plans

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council's planning decisions are required to be consistent with the PPS.

Housing policies in the PPS require planning authorities to provide for an appropriate range of housing types and densities to meet the requirements of current and future residents, the provision of housing affordable to low and moderate-income households, and to direct housing to locations with appropriate levels of infrastructure and services. The PPS also requires the conservation of significant built heritage resources.

The Growth Plan for the Greater Golden Horseshoe provides a framework for managing growth in the Greater Golden Horseshoe including: directions for where and how to grow; the provision of infrastructure to support growth; and protecting natural systems and cultivating a culture of conservation.

City Council's planning decisions are required by the *Planning Act*, to conform, or not conflict, with the Growth Plan for the Greater Golden Horseshoe.

Section 3.1 of the Growth Plan states that "In the case of housing, there is an underlying societal need for affordable housing in many municipalities that is heightened by growth pressures."

Official Plan

The Official Plan provides for a full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods. The City has well-established practices set out for the protection of rental housing in the case of redevelopment. Applications to demolish six or more units, except where all rents are above mid-range, must replace the demolished rental units with the same number, size and type of rental housing units. The units must be maintained with similar rents as exist on the site.

Specifically, Official Plan Policy 3.2.1.6 states:

“New development that would have the effect of removing all or a part of a private building or related group of buildings, and would result in the loss of six or more rental housing units will not be approved unless:

- a) all of the rental housing units have rents that exceed mid-range rents at the time of application, or
- b) in cases where planning approvals other than site plan are sought, the following are secured:
 - i) at least the same number, size and type of rental housing units are replaced and maintained with rents similar to those in effect at the time the redevelopment application is made;
 - ii) for a period of at least 10 years, rents for replacement units will be the rent at first occupancy increased annually by not more than the Provincial Rent Increase Guideline or a similar guideline as Council may approve from time to time; and
 - iii) an acceptable tenant relocation and assistance plan addressing the right to return to occupy one of the replacement units at similar rents, the provision of alternative accommodation at similar rents, and other assistance to lessen hardship, or
- c) in Council’s opinion, the supply and availability of rental housing in the City has returned to a healthy state and is able to meet the housing requirements of current and future residents...”

Comments

The building currently contains nine rental housing units, made up of three bachelor, five 1-bedroom and one 2-bedroom units. The last rents paid for the units included a mix of affordable (at or below average market rent for the City of Toronto), mid-range (above affordable but below one and a half times affordable rents) and high-end (exceed mid-range rents) rents, with two affordable, three mid-range and four high-end units.

The City’s Official Plan policy 3.2.1.6 requires all rental units to be replaced unless all of the units have high-end rents. Given that the existing building included both affordable and mid-range rents, the policy exemption does not apply. Further, policy 3.2.1.6 requires that the units be replaced with the same number, size and type and with similar rents.

The applicant’s rental replacement plan does not propose to replace the same number of rental units as currently exists on the site, which is in conflict with the Official Plan’s

housing policies. Additionally, the plan for the rental replacement units does not adequately replace the size and type of the existing rental units.

The total proposed gross floor area for the six rental units is 365 square metres. In comparison, each of the eight townhouse dwelling units are proposed to be, on average, 297 square metres. As the existing rental units are proposed to be replaced in what is only a slightly larger sized building than one of the townhouse dwelling units, many of the rental units appear to have been squeezed into the building, creating units of an awkward size and design. Four of the six units are proposed as 2-storey units, requiring interior stairwells which reduce the usable living space in the units. Additionally, based on the submitted plans, four of the units do not appear to have windows in the bedroom, making them unsuitable as replacement units and are not appropriate replacement unit types by bedroom type.

As previously indicated, all of the rental units are currently vacant. As of October 2007, five of the units were occupied. Any tenants remaining at the time the owner purchased the property, in 2008, have since moved out.

Community Consultation

The applicant organized and held an Open House meeting on October 6, 2009. City staff attended the meeting as observers. Roughly 70 people attended the meeting. The general response to the proposal at that time was negative. In particular, concern was expressed that the proposal did not appropriately respect the heritage nature of the building and the surrounding neighbourhood built form, in addition to comments that the rental housing replacement units were inferior and inadequate.

As required under Municipal Code Chapter 667, a Community Consultation meeting was held on January 20, 2011 at the City of Toronto Archives to discuss rental housing matters. Approximately 45 neighbourhood residents attended the meeting, including the local member of provincial parliament. There was unanimous opposition to the redevelopment and demolition proposal from the residents. Concerns from residents included:

- the proposed rental replacement plan does not adequately replace the existing character of the rental housing;
- the owner has already effectively demolished the rental units by keeping them vacant, in disrepair and through the removal of certain building components;
- the owner is not maintaining the property, allowing it to be incrementally demolished by neglect;
- the enforcement of property standards has been lacking or non-existent;
- concern that previous tenants were forced out or encouraged to leave prematurely; and
- the City is not proactive and does not do enough enforcement of Municipal Bylaws relating to rental housing and heritage preservation.

Conclusion

The rental housing demolition and replacement proposal requires the demolition of the existing rental building, which Council has notified it intends to designate as a heritage property. As well, the rental units are proposed to be replaced in an unsatisfactory manner that is not in keeping with the Official Plan. The current proposal to demolish the building and redevelop the site is not in keeping with the intent of the Official Plan and does not represent good planning.

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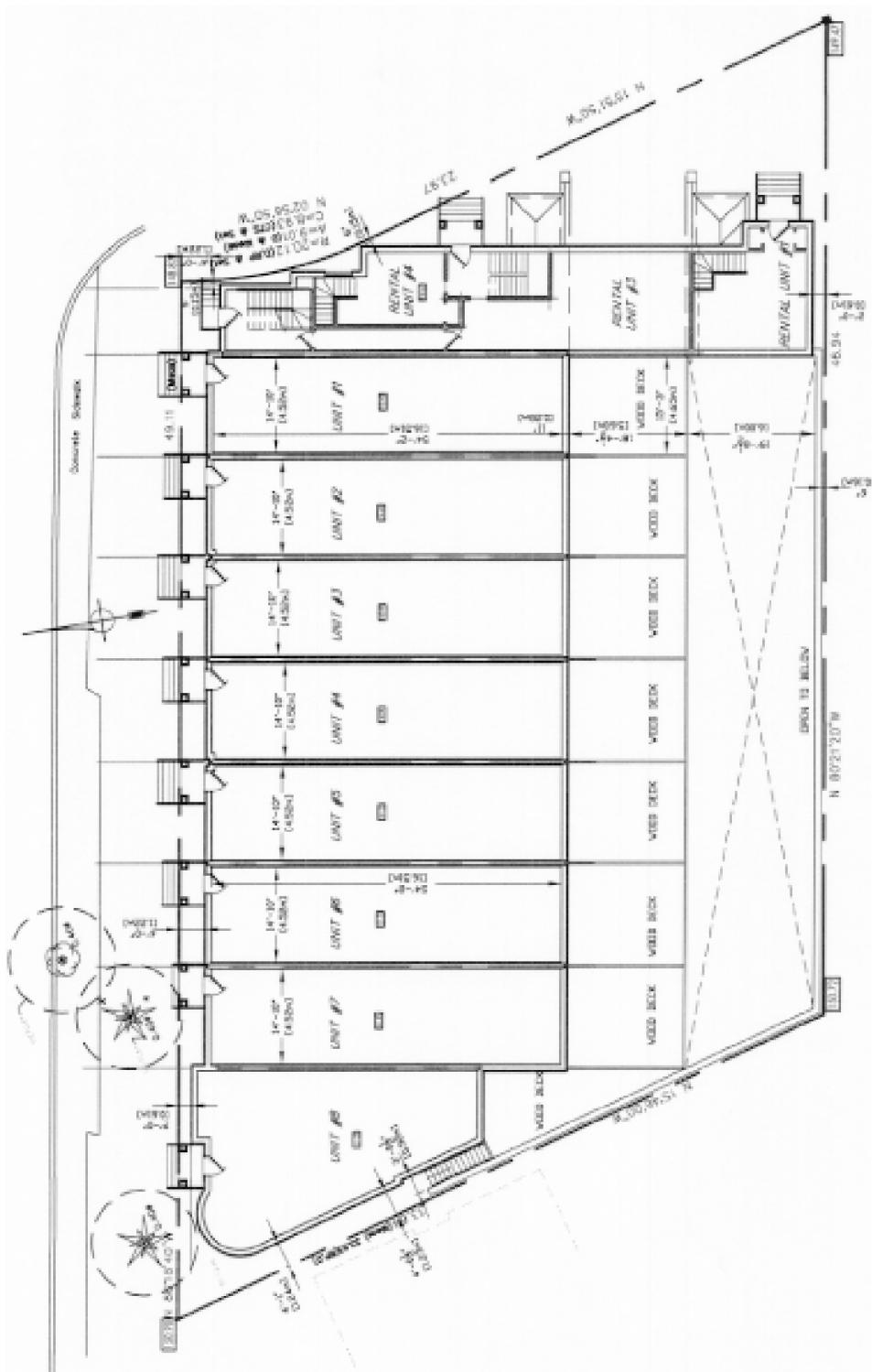
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ATTACHMENTS

Attachment 1: Site Plan
Attachment 2: North Elevation
Attachment 3: East Elevation

Attachment 1: Site Plan



Site Plan

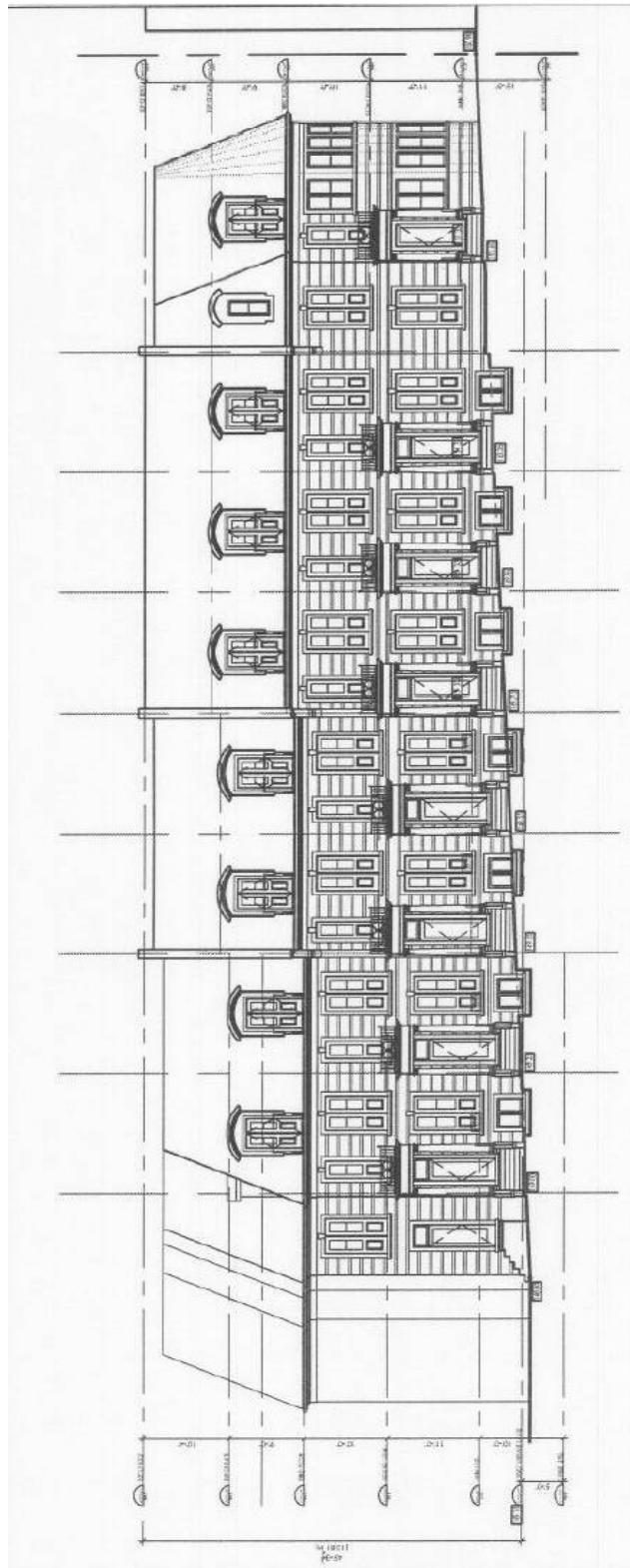
Applicant's Submitted Drawing

Not to Scale
01/07/2011

7 Austin Terrace

File # 09 158104

**Attachment 2: North Elevation
(Applicant's Submitted Drawing, September 4, 2009)**



**Attachment 3: East Elevation
(Applicant's Submitted Drawing, September 4, 2009)**

