

Mr. Alex Forbes
Manager Planning & Heritage
Planning & Heritage Department
70 Kent Street
Charlottetown, PE
C1A 1M9
Planning@charlottetown.ca

July 2, 2021

Dear Mr. Forbes,

I, Andrea Battison, as an aggrieved person respectfully request that the City of Charlottetown reconsider the approval of the site specific exemption amendment for 199 Grafton Street (207-BYL-21) which passed second reading of Council on June 14, 2021. This request is made under provisions 3.15.3.a and 3.15.3.c of Section 3.15 Reconsideration, of the Charlottetown Zoning and Development Bylaw (hereafter referred to as 'the *Bylaw*').

1. ***New material facts or evidence not available at the time of the initial order or decision have come to light.***

A. Shadow Impacts

Council failed to consider the impact shadows cast by this large building will have on the surrounding buildings. Tables of predicted shadow length were compiled using the National Research Council guidelines for Charlottetown, PE then used to construct estimates of shadows from this proposed project (Appendix A). The greatest impact will be during the late fall – winter – early spring when daylight is at a minimum and shadows are longer. Note in particular, the effect at 198 -200 Kent Street which is an apartment. Decreased access to sunlight is known to have a negative impact on wellbeing and health. In the winter, these morning shadows could extend to Langille House (<https://peicommunitycare.ca/facilities/langille-house/>).

The shadow diagrams in Appendix A, are not as accurate nor as complete as professionally prepared ones for a shadow impact study which would comprise cumulative shadows and show a change in shadows. They do however, at a minimum, indicate that shadows could be a relevant feature of this proposal and that a shadow impact study would be valuable in assessing to what degree the height and length of the building will affect neighbouring residents.

The 500 Lots Standards and Guidelines (hereafter referred to as the 500 Lots Standards) adopted by Charlottetown City Council clearly provide the rationale for pursuing such studies:

“Supporting Studies: to be determined on a case-by-case basis, additional studies and analysis may be required to ensure that the additional height and/or its massing are meeting the desired performance standards with respect to mitigating visual, shadow, wind, traffic and heritage impacts.”

which are also codified in the Bylaw, Section 3.12.5.e, under ‘Bonus Height Applications’:

“Such additional information as deemed necessary by the Development Officer, including studies or analyses to ensure that the proposed Bonus Height and/or its massing meet the desired performance standards with respect to mitigating visual, shadow, wind, and traffic impacts.”

Under Section 3.3 of the Bylaw, ‘Development and Building Permits’, negative health impacts are a reason for rejecting a building permit application.

3.3.8 An application for a Development and/or Building Permit shall be rejected if:

e. The proposed Development would be detrimental to the convenience, health or safety of the occupants or residents in the vicinity or the general public.

Additionally, new shadows generated by the proposed project could potentially limit or eliminate the ability to effectively use solar panels on the roofs or exterior walls on existing buildings to reduce their greenhouse gas emissions.

Given the potential for negative impact on health due to decreased access to sunlight that the current residents on Kent Street are accustomed to and limitation of the use of solar panels, it is argued that a shadow impact study is required.

B. Clarke Street rendering

A rendering of the Clarke Street view was requested of the developer by Council at the public consultation meeting held April 27, 2021, as the provided rendering was partially obscured and distorted by cartoon characters in the foreground. The developer promised to provide new renderings, but these did not appear in any meeting package on record presented to the Planning Board or Council. Appendix B contains three-dimensional models using similar software (SketchUp) and measurements provided by the developer on their website. As you can see, the proposed building towers considerably over adjacent buildings, dominates the streetscape as no graduated stepbacks are included, and creates a significant safety hazard for pedestrian traffic on Prince Street as they approach the intersection with Clarke Street. Again, the 500 Lots Standards and Bylaw Section 3.12.5.e, Bonus Height Applications, provide the rationale for supplementary studies on the effects of additional height and massing.

“Such additional information as deemed necessary by the Development Officer, including studies or analyses to ensure that the proposed Bonus Height and/or its massing meet the desired performance standards with respect to mitigating visual, shadow, wind, and traffic impacts.”

Given the potential for negative visual impacts due to the near doubling (an average of 70.4 feet compared to the 39.4 feet currently allowed) of the building height over what is currently permitted and probable pedestrian safety hazards, it is argued that visual and traffic impact studies are required.

The proximity of the proposed building to Queen’s Square and its heritage buildings designed by notable architects (Harris, Chappell, Alley, and Smith), numerous restored homes on Prince Street, and Zion Presbyterian church is significant. The building as proposed is likely to dominate the skyline and nearby buildings. The 500 Lots Standards indicate that the potential impacts of additional height and/or its massing on heritage should be considered.

“Supporting Studies: to be determined on a case-by-case basis, additional studies and analysis may be required to ensure that the additional height and/or its massing are meeting the desired performance standards with respect to mitigating visual, shadow, wind, traffic and heritage impacts.”

Given the potential for negative visual impacts with respect to local heritage architecture, it is argued that a heritage impact study is required.

2. *There is a clear doubt as to the correctness of the order or decision in the first instance*

A. Drawings were provided for a six-storey building only but the site-specific exemption amendment (SSEA) included options for a six *OR* a four-storey building.

- I.** Bylaw 3.3 'Building and Development Permits' requires submission of information on the proposed building (see Section 3.3.5 below). None of this information was submitted for a four-storey building included in the resolution read during the May 10, 2021, meeting of Council. Note the use/implication of the singular.

3.3.5 Every person proposing to Erect a Building or undertake a Development shall, when applying for a Development and/or Building Permit, submit the following if applicable:

a. Construction plans and elevation drawings for Building construction.

b. A site plan including:

i. The precise location of Building(s) both existing and proposed, in accordance with the applicable provisions of this by-law;

ii. Details of driveway size and location, on-site paved Parking Spaces and vehicle circulation lanes, Loading Spaces, and fire safety access lanes;

iii. Location and design of urban beautification features;

iv. Location and design of screened trash storage and handling areas;

v. Location and design of appropriate Landscaped Areas; and

vi. Details of Utility Services connections to the Building and the location of existing and proposed Municipal Services.

c. A surface drainage plan showing the existing and proposed Grade elevations and proposed surface drainage flow patterns in relation to adjacent properties.

d. An approved Heritage Permit for any Development on a property that is identified as a Designated Heritage Resource or that is located within a Heritage Preservation Area as defined in the City of Charlottetown Heritage Preservation By-law.

e. Any other information as may be required or which may be necessary to ensure compliance with the provisions of the City of Charlottetown Building Code By-law.

- II.** No concept drawings of a four-storey building could be located in publicly available records (as of the date of this letter) to submit for a Design Review which should follow passage of the resolution (see point **C** below).
- III.** It appears that Planning staff simply assumed that a four-storey building would be exactly the same as a six-storey building less the upper two floors (see Planning Reports April 6 and May 3, 'Variance Review') without any drawings being presented. One could reasonably assume that a building with 50% less residential units would not require the same amount of square footage allocated to parking and an alternate design would be used.

IV. One would expect, and is what appears to be the norm, a proponent to put their best single proposal forward for consideration. If the first proposal fails, a second proposal is submitted for consideration, with alterations to address concerns raised about the first proposal and required details (see Section 3.3.5 above), and so on, until a project is approved. It is pertinent to note that similar revisions and process were applied to designs for 152 King Street (see Design Review Board Package April 19, 2021).

It is argued that it is highly irregular or improper to include two options for the same building in one resolution, especially as the required drawings and other documentation of one of the options, the four-storey building in this case, were not provided. Allowing multiple proposals to be submitted at the same time could be setting a dangerous precedent.

B. The variances requested (For the six and/or four-storey building were incorrect and/or incomplete.

I. “A. Height variance to six (6) storeys if bonus height can be justified. 60.7 ft. is permitted. The proposed height is 70.4 ft.; therefore, a 9.7 ft. variance is required.

The 500 Lots Standards clearly indicate a maximum height of 60.7 ft, inclusive of bonus height, in the block containing the 199 Grafton Street proposal. This allows for the design principle of progressive diminishing of height from the Downtown Core (DC) zone into the Downtown Mixed Use Neighbourhood (DMUN) Zone.

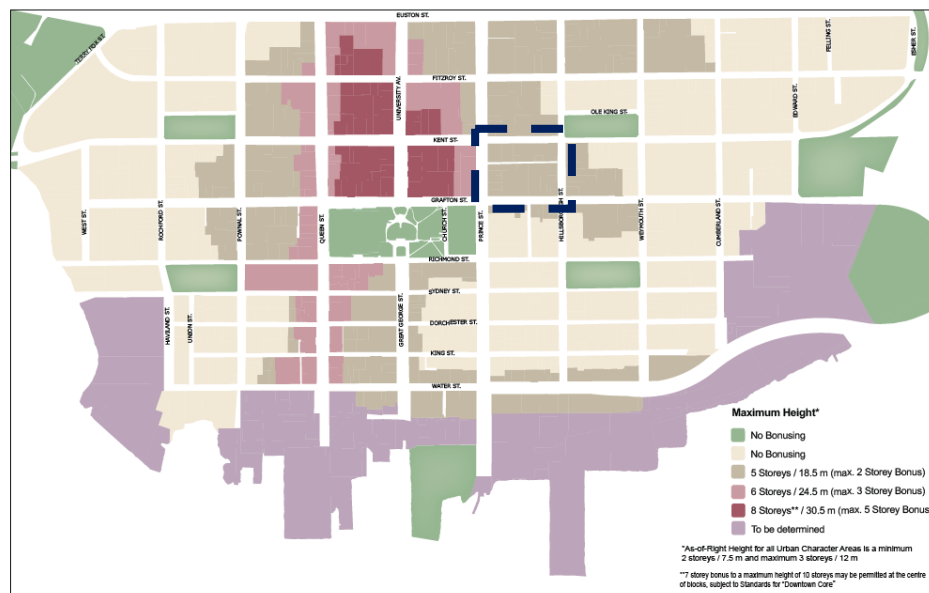


Figure 5. Proposed Appendix "L" - 500 Lot Area Maximum Height Map

Figure 1. Excerpt from page 69, *The 500 Lots Standards and Guidelines*. Note the use of progressively diminishing height away from the Downtown Core (DC) area. The dashed box shows the area of proposed development. Legend indicates a maximum of five (5) storeys or 18 m (60.7 ft) for that area.

It is argued that as the proposed building, at an average height of 70.4 ft, is higher than allowed for the zone, and higher than any other building in the immediate area, it would disrupt the progressive decrease in height from the DC to DMUN zone and so approval of the proposal would reflect poor planning principles.

- II. “ C. Flankage yard variance along Clark Street. 7.9 ft. is required for the base building setback. The proposal is for a 2 ft. setback; therefore, a 5.9 ft. variance is required.

A review of the plans provided by the proponent, clearly shows the building located only one foot (1' 0") from the property line at Clarke Street (Figure 5, letter to residents), not two feet (2 ft) as described in the variance request. It is noted that the design review architect also references a one foot (1') setback from Clarke Street.

Considering the above, it is argued that this variance description is in error and/or the wrong drawings were provided. The submitted drawings indicate the building at one (1) foot from Clarke Street, so a setback variance request of 6.9 ft is required.

- III. “D. Step back above fourth storey on Clark Street. It requires a 9.8 ft. step back from base building; therefore, combined with the required setback, a 15.7 ft. variance is required.”

A review of the plans provided by the proponent, clearly shows the building located only one foot (1' 0") from the property line at Clarke Street (Figure 5, letter to residents; page ___ APM website), not two feet as described in the flankage yard variance request.

Considering the above, it is argued that this variance description is in error and/or the wrong drawings were provided. The submitted drawings indicate the building at one (1) foot from Clarke Street. A 17.7' total (7.9' setback and 9.8' step back) is required. A variance of 16.7 ft should have been requested.

- IV. “ F. Side yard setback to the building located at 142-146 Prince Street. A 3.9 ft. setback is required to be equal to the side yard setback of the existing building at 142-146 Prince Street. The setback for the proposed building is 1.96 ft.; therefore, a 1.94 ft variance is required.

The above setbacks appear to be drawn from the side yard setbacks as defined for Downtown Mixed Use Neighbourhood (DMUN) zone.

However, the property at 142-146 Prince Street represents the flank yard beside a building applying for bonus height. A definition of ‘flank’ does not appear in the Appendices of the Bylaw and so the general definition of a flank as a ‘side’ can be applied.

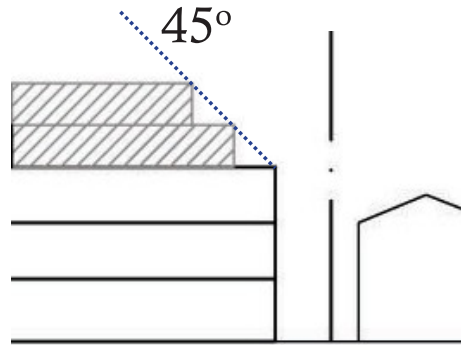
Given that the building at 142-146 Prince Street is residential and that the entire block is zone DMUN, and that Sections 30.3.2.a and 30.3.2.b have been applied to calculate the frontage and step back variance requests for the proposed building, section 30.3.2.c.ii and 30.3.2.c.iii should also apply:

30.3.2 Applications for a Bonus Height are subject to the following regulations:

- a. *A bonus of up to a maximum Building Height of 18.5m (60.7ft).*
- b. *Lot Dimension Requirements:*
 - i. *Minimum Lot Frontage of 30.0m (98.4ft)*
- c. *The portion above the base Building that is a bonus in Height shall be:*
 - i. *A minimum 3.0m (9.8ft) Stepback from the base Building.*
 - ii. *A minimum 5.5m (18ft) Side Yard Setback or Stepback to ensure adequate separation distances of the upper levels from adjacent properties that may also be eligible for a Height bonus.*
 - iii. *A 45-degree angular planes originating from the top of the flank or rear façade of the base Building that faces abutting residential dwellings or within a Downtown Neighbourhood (DN) Zone.*

The excerpt and figure below are taken from the 500 Lot Standards regarding accommodating bonus heights. The figure clearly illustrates the situation in the current proposal (with ‘flank’ indicating ‘side yard’ vs ‘flankage yard’ as defined by the Bylaw) with the word flank being used as a synonym for side. Note also, the distance from the property line is increased for the building with bonus height

- iii. **45-degree angular planes** originating from the top of the flank or rear façade of the base building that face abutting properties that are low-rise residential homes **or** within a Downtown Neighbourhood area. This is to ensure a visible and adequate stepping down of height to adjacent low-rise residential properties.



Given that the height of the fourth and fifth storeys in the proposed building are each 10' 11", and the requirement for a 45° (degree) angular plane per point (iv) above, the side yard step backs for the fifth and sixth storeys should each be 10' 11".

It is argued that the side (flank) yard abutting 142 -146 Prince Street requires step backs of 10' 11" at the fourth and fifth storeys. These variances were not included in the request for a site specific amendment and therefore the request is incomplete.

It is argued that if the City accepts the assumption that this is a through lot, as per the design review, and given that there are residential properties on Kent Street, the side yard step backs at the fourth and fifth storeys also apply to the façade on Clarke Street. These variances were not included in the request for a site specific amendment and therefore the request is incomplete.

Minimum frontage and setback requirements for bonus height were decreased for the current proposal and for the building at 80 Grafton Street. Given this pattern, it is reasonable to assume that similar variances could be granted for other properties on this block (bounded by Clarke Street, Prince Street, Hillsborough Street, and Grafton Street) all of which are zoned as DMUN and therefore eligible for bonus height. As the proposed building is adjacent to the property at 142-146 Prince Street Section 30.3.2.c.ii should also apply.

It is argued that a side yard setback or setback of a minimum of 18 feet (flank) yard adjacent to 142 -146 Prince Street is required. This variance was not included in the request for a site specific amendment and therefore, the request is incomplete.

- V. A variance for a minimum 9.8 foot step back (section 30.3.2.c.i) at the fourth storey on the Prince Street façade is required and was identified in the design review submitted March 10, 2021.

This variance was not included in the request for a site specific exemption amendment and therefore, the request is incomplete.

- VI. “G. A variance is also required to exempt the parking structure from Section 7.11.3 of the Zoning and Development Bylaw which states, “*Where a parking structure fronts on a street,*
- a. *The ground-level façade shall incorporate retail, public or other active uses, as well as provide pedestrian amenities such as an awning, canopy, or sheltered entryway; and*
 - b. *The front façade shall be designed to conceal the parking levels and gives the visual appearance of a multi-storey building articulated with bays and window openings.”*

It is difficult to rationalise this exemption request. The primary purpose of the building would appear to be to serve as a parkade (see below) and as such, the Bylaw regulating parkades should be enforced.

- a. There is more square footage for this building allocated to parking than to residential use.

Table 1. Summary of the square footage allocation for parking and residential use in the Port House as indicated by APM on their website

https://drive.google.com/file/d/1ZiKoSBkhxYMedmI6KJeR3Q_l1O7ZIn2a/view

THE PORT HOUSE SQUARE FOOTAGE ALLOCATION				
	Parking (sq ft)	Spaces	Current Parking	Housing (sq ft)
Lower	32,855	79		0
Main Level	29,855	60		3,000
Second Floor	29,855	78		3,000
Third Floor	0			21,467
Fourth Floor	0			21,467
Fifth Floor	0			21,467
Sixth Floor	0			21,467
	92,565	217	88	91,868

- b. The 217 parking spaces exceed not only the 88 spaces identified in the Design Review Board minutes, March 22, 2021, but also the 69 spaces for the residential units (affordable and market rate combined) or 84 spaces (all market rate) under Bylaw 44.1.2 Parking Space Standards by 60 or 45 spaces, respectively
- For 60 affordable units and 24 market units:
 - 60 affordable units at 0.75 spaces per unit = 45 spaces
 - 24 spaces for remaining market units
 - Total of 69 spaces for housing.
 - For 84 units at market rate = 84 spaces for housing
- c. As of June 15th, CADC reports that there are spaces available for rent in the Fitzroy parkade. This supports that there is no lack of downtown parking.
- d. At the June 14, 2021, council meeting, the City allocated 10 street parking spaces in addition to the normal number of street parking spaces for ‘temporary structures’ (patios). This also supports that there is no shortage of downtown parking.
- e. According to the minutes of the Design Review Board meeting of March 22, 2021, Mr. Banks indicated that “in order to make the parking garage work, they are requesting variances to modify the building footprint.” The parking garage, not the housing component, is dictating the setback variance request for Clarke Street.
- f. From a design perspective, the most prominent and architecturally emphasised entrances and exits of this building are for the parkade, thus reinforcing its primary purpose. The Residential Lobby entrance on Prince Street is relegated to a small doorway covered by a small roof. There is no pedestrian residential entrance featured on the Hillsborough Street façade, only a well set back Commercial Lobby.

Furthermore, these setback variances may not even need to be as large as requested. The design review architect stated (page 4) that “... it seems possible to actually narrow the proposed structure by about three feet as the parking structure could be narrowed in each bay by one foot each. This would result in a total four foot setback whereby the Proponent could provide for at least a narrow (4’) sidewalk and curbs on his property.”

Being a building with more square footage allocated for parking than residential use, this could potentially disqualify the building from Canada Mortgage and Housing Corporation’s (CMHC) - associated National Housing Co-Investment Fund. Under the New construction stream, the applicant must prioritize affordable housing, with the primary use being residential, to obtain funds under this program. (<https://www.cmhc->

schl.gc.ca/en/professionals/project-funding-and-mortgage-financing/mortgage-loan-insurance/multi-unit-insurance/affordable-housing-rental). Similarly, the CHMC Multi-FLEX Affordable Housing program cited by the developer at the March 22, 2021, meeting requires the project to be at least 70% residential in terms of both floor area and the total loan value. Using these criteria, the project, as proposed, would appear ineligible for either funding stream.

If no alternate government funds are available, then the building will have to rely on the provincial program which can only be used to fund up to 50% of the units. This would appear to limit the number of affordable units in the project to 42, rather than the promised 60.

If the bonus height is not granted, staff has simply assumed that a four-storey building would look identical but without the top two floors. Height variances were calculated based on this (April 6, 2021, Planning Staff report for Planning Board). One wonders why that assumption would be made, especially as following that logic the number of residential units would be essentially halved, and therefore so would the number of resident parking spaces. Indeed, this would now most certainly be a primary parkade with a few apartments sprinkled on top. No plans for a four-storey building were provided. It is not a good planning principle to simply assume what a building will look like.

Therefore, it is argued that as the primary purpose of this building is a parkade, based on square footage allocation, the provision of surplus parking spaces despite an apparently adequate amount of downtown parking, and architectural features:

- 1. Section 7.11.3 of the Zoning and Development Bylaw must be applied including the façade facing on Clarke Street; and,*
- 2. As parking structures are not eligible for Bonus Height (Section 30.3.2.d) , the bonus height should not be allowed.*

C. The design review was completed prematurely.

Minutes from the October 23rd, 2018, meeting of council state: “Mayor Lee asked about the process if it has to go through the variance process and then proceed with the design review and Mr. Alex Forbes confirmed. Mr. Forbes also added that without the variances being approved, the design review cannot proceed.”

In the background information for the Dec 3, 2018, meeting package, Planning Staff clearly stated their reasons for wanting to amend the bylaw by removing section 3.13.4 and renumbering accordingly:

“Staff has determined that the design of the building could be finalized through the Development Agreement process once all other approvals have been granted or rejected. Notwithstanding, the applicant needs to submit a design that is sufficiently developed to

indicate to Council and the public what is generally being proposed. The Design Review process in itself is costly for the developer and consumes a lot of staff time in an event the project does not proceed. Staff would like to work with [an] applicant who has a reasonably developed proposal to proceed to a public consultation and provide an opportunity to fully finalize their design through the design review process.”

This request was granted and the Bylaw were amended. (Amendment #2018-11-012).

Amendment No./ Revision No.	First Reading	Second Reading	Minister Approval	Property/ Amendment Reference	Details:
011	02/11/2019	03/11/2019	03/22/2019	Bylaw Amendment #2018-11-012	Amendments to the Bylaw pertaining to Design Review, Home Occupations, Parking, Marijuana Production Facilities and Temporary Use Variances

Additionally, it is believed that some errors or oversights were made during the external design review.

- The external design reviewer made a personal conclusion, “It is my feeling “, that Clarke Street is a mid-block service lane rather than a street and proceeded to assess the project as a through lot rather than a three-cornered lot
- Six-storeys at an average 70.4 ft would require a 9.7 ft variance (per Charlottetown Planning) rather than the 6 ft +/- indicated in the report
- Four-storeys at an average of 70.4 ft would require an 8.2 ft variance (per Charlottetown planning) rather than the 4 ft +/- suggested in the report
- Minimum lot frontage for bonus height in the DMUN zone is 98.4 ft; the external reviewer incorrectly indicated that the frontage on Prince Street exceeded “the 65 ft minimum” required. The 65.6 ft minimum refers to apartment dwellings of four (4) units or more without bonus height.
- The external design reviewer did not apply Bylaw Section 30.3.2.c.iii to 142-146 Prince Street; yet did apply the stepback variance of 18 ft to the Clarke Street façade.
- The external design reviewer approved the use of the metal siding based upon provided images of Grafton Place shown as clad in the same material. In fact, at the time of the review, the recladding application for the Polyclinic, currently in brick, had not been submitted to the Heritage Board for consideration.

- There is approximately six ft (6' +/-) from the sidewalk to the edge of the property line on Prince Street, rather than 10 ft (10') indicated by the external reviewer. This incorrect measurement was used to suggest that the Prince Street façade would be 28 ft total from the sidewalk. It would be more like 24 ft away.
- The external design reviewer failed to comment that the Type 'C' units have no windows in the master bedroom.
- The external design reviewer failed to comment on the lack of a prominent entry to the residential component and the apparent lack of a lobby or entry doorways to the elevators that appear to be of insufficient size to easily accommodate moving furniture and appliances in and out of the building.
- Marked inconsistencies for the dimensions of the mechanical penthouse in diagrams (10 ft on Prince Street x 35 ft along Clarke Street) versus the renderings (estimated 35 ft on Prince Street and 45 ft along Clarke Street)

It is argued that as the design review submitted on March 19, 2021, was completed prior to the variances being approved, the review does not qualify as part of the site specific exemption amendment request procedure. A second design review will be required after the variances have been approved or rejected by the Minister. Furthermore, as multiple errors or oversights are noted in the March 22, 2021, review, it is requested that the second review be conducted by a different reviewer.

D. Acceptance of the prematurely submitted design review could be interpreted as preferential treatment, or bias, by City Hall in favour of this proposal and/or applicant.

A site-specific exemption amendment was requested and passed for the building at 80 Grafton Street. In this case, the steps were taken in the required order: 1st reading, 2nd reading, Ministerial approval, followed by the external design review. Table 2 clearly shows the difference in order between the projects at 80 Grafton Street and 199 Grafton Street despite the amendment requested by Planning staff that the external design review occur only after all other approvals have been granted or rejected (detailed in C above). In the case of the 199 Grafton Street proposal, this would also include approval of the bonus height application based on the provision of affordable housing and Ministerial approval.

It is notable that the request to begin a Development Agreement was made before any other step had been started, let alone completed in a letter dated December 23, 2020.

Also notable is that the request for the Site Specific Exemption Amendment was filed on March 25, 2021, after the design review had been completed (see Weekly Permit Approvals, June 18, 2021).

Under section 3.12 Bonus Height Applications, it is clearly indicated that the Development Agreement process is to begin after the Design Review process.

“3.12.9 Upon completion of the Design Review process and prior to the issuance of a Building and/or Development Permit where a Bonus Height has been granted, the applicant shall enter into a Development Agreement with the City that shall include:”

To summarise, the order indicated in the Bylaw is: 1) approve or reject proposed variances; 2) undergo Design Review, and then 3) enter into a Development Agreement.

Also, per **C** above, the Design Review is to occur after approval or refusal of any required variances by council and Ministerial Approval if required, not before.

Table 2. Comparison of order of process for 80 Grafton Street and 199 Grafton Street Site Specific Exemption Amendment requests.

80 Grafton St		199 Grafton St.	
		Request by proponent to proceed with a Development Agreement	Dec 23, 2020
		Design Review submission (consists of letter and information from Dec 23, 2020)	Feb 21, 2021
		External Design Review Completed	Mar 19, 2021
		Design Review Board Meeting	Mar 22, 2021
		Site-Specific Exemption Amendment Request Submitted by applicant	Mar 25, 2021
Public Meeting	Oct 23, 2018	Public Meeting	Apr 27, 2021
First Reading	Nov 13, 2018	Lot consolidation	May 14, 2021
Second Reading	Dec 4, 2018	First Reading	May 10, 2021
		Second Reading	Jun 14, 2021
Ministerial Approval	Jan 8, 2019	Ministerial Approval	Pending as of June 25 th
		External Design Review Completed	Apr 29, 2019
		Design Review Board Meeting	Apr 30, 2019
		Development Agreement	??

It is argued that were the Planning and Heritage Department to accept this premature review and submission as meeting the requirements for buildings in the 500 Lots and if a development agreement was also begun prematurely it could be considered preferential treatment or bias favouring the proposal and/or the proponent.

E. The design reviewer chose to approach the review as if the lot were a through lot, rather than a three-cornered lot bordered by Prince Street, Hillsborough Street, Grafton Street, and Clarke Street.

The reviewer questioned whether Clarke Street is truly a street. The rationale cited included:

- i. “that no buildings fronted on Clarke Street and only two buildings about it.”

In contrast, a review of the City lot plans shows that prior to the lot consolidation by the proponent, at least four lots had frontage on Clarke Street and, even after consolidation, one lot with a building at 37 Clarke Street, and one lot without a building remain.

- ii. Described as an “... extremely narrow right of way there are no sidewalks, curbs, ...”

The presence of street signage (Stop, One Way, Clarke Street) and any map indicate it is a street with a name.

As mentioned in the March 22, 2021, Design Review Board meeting minutes, report for the Planning Board meetings of April 6 and May 3, and Council meeting May 10th, Planning staff was “working with the Manager of Public Works to ensure that Clarke Street was not compromised by encroachment.... will not affect other operations such as snow removal.” This would suggest that the City is treating Clarke Street as a street with respect to providing services.

That the City has neglected to provide sidewalks for pedestrian safety certainly reflects poorly on the City Administration but should not demote Clarke Street to a service alley. (As an aside, there are no other ‘service lanes’ in the 500 Lots area.) Sadly, there appear to be no Bylaw or regulations that require the City to provide lighting, sidewalks, or storm drainage for any street. Failure to provide these facilities, therefore, can not be used as an argument to relegate the status of Clarke Street to a mere service alley.

The reviewer aptly comments that there is a pedestrian safety issue on Clarke Street. Currently pedestrians, who are able, can step over the low fencing surrounding the surface parking lot were they to encounter oncoming traffic. This may not be possible for certain groups of people e.g., older individuals, children, the infirm, or those using wheelchairs. Locating the building only one foot (as indicated in the submitted plans) or two feet (as requested in the setback variance) would further compromise pedestrian safety.

In addition to Clarke Street providing access for: multiple delivery trucks per day to the pub and pizza restaurant; delivery drivers to pick up orders from the pizza restaurant; supply delivery to the long term care facility; commercial and residential garbage collection, it is the only access for residential and commercial tenants of Kent Street to their parking lots. Construction of a large building within one foot, or even two feet, of the property line is bound to significantly disrupt residents and commercial properties that rely on unfettered access to Clarke Street.

Clarke Street has been in existence since 1878 and had buildings on it up until a fire in late 1971 when the Thomas H Mills Meat Market and other building burned. Appendix C clearly shows the built history of this street.

Furthermore, the City also appears to consider Clarke Street a Street. In addition to point E.ii above, the City has requested a flankage yard variance rather than a side yard variance on Clarke Street. The definition for a flankage yard in the Bylaw “*means the Side Yard of a Corner Lot, and which Side Yard abuts a Street or proposed Street shown on an approved survey plan. Required Flankage Yard or minimum Flankage Yard means the minimum Side Yard required by this by-law where such Yard abuts a Street.*” By using the term flankage yard, the City is defining the Clarke Street and Prince Street corner and the Clarke Street and Hillsborough Street corner as Corner Lots.

Consequently, it is argued that Clarke Street is a Street serving the local residents and businesses, and any design review should be conducted using the perspective of the lot being a corner (actually three-cornered) lot and not a through lot. Similarly, elements of any Bylaw pertaining to Corner Lots must also apply including, but not limited to:

4.10 SIGHT TRIANGLE ON CORNER LOTS

4.10.1 Notwithstanding any other provisions of this by-law, no Building or Structure shall be Erected on a Corner Lot within 6 m (19.7 ft) of the triangular space included between Street Lot Lines.

4.10.2 No Structures or vegetation shall be placed, erected, planted or maintained at a Height over 1.0 m (3.3 ft) on a Corner Lot where it may obstruct the view from a vehicle within 6 m (19.7ft) of the point of intersection of the Street Lot Lines.

7.2 BUILDING ORIENTATION AND CORNER LOTS

7.2.2 Buildings on Corner Lots shall:

- a. Orient to both Street Lot Frontages; and,*
- b. Architectural features shall wrap the corner of the Building and address the corner condition.*

F. Renderings of Clarke Street façade were requested by Council, and promised by the developer, at the public consultation meeting April 27, 2021, but not provided for the Planning Board meeting or the Council meeting package.

The provided rendering of the Clarke Street façade view from Prince Street is partially obscured and distorted by the placement of people in the foreground. No renderings of the view down Clarke Street from Hillsborough Street were provided. It is acknowledged that it is likely impossible to provide a view of the entire 428 ft long by 70.4 ft (avg) high Clarke Street façade from the perspective of a person standing on the north side of Clarke Street.

It is argued that this represents a failure of the Planning and Heritage Department and Council to follow through on their request for information deemed pertinent to the project. This could also be seen as bias/preferential treatment for this proposal and/or applicant (see point D).

G. Future safety for pedestrians.

As Clarke Street is a street and given that the proposed building will increase the local population that may use (pedestrian and vehicle) Clarke Street to gain access to their building (submitted plans show vehicle entry and exit on both Prince and Hillsborough Streets), and as the City will hopefully assume its responsibility to provide appropriate sidewalks for said pedestrians' safety and storm drainage in the near future to accommodate this traffic, it is irresponsible for the City to allow the setback on Clarke Street to be only two feet, as described in the variance request, or a mere one foot as shown in the submitted concept plan. This will not provide sufficient room for a sidewalk. Currently, when a pedestrian encounters traffic, they may enter the surface parking area if necessary to avoid a collision (see details point E above). Under the Bylaw, Section 3 Development and Building Permits:

3.3.8 An application for a Development and/or Building Permit shall be rejected if:

e. The proposed Development would be detrimental to the convenience, health or safety of the occupants or residents in the vicinity or the general public.

As this is a corner lot with regular, large vehicle traffic passing through, adequate sight lines at the corner should be enforced as per Section 4.10 Sight Triangle on Corner Lots of the Bylaw. There is also through traffic which uses this as a one way street (personal observation). Further documentation of traffic flow is required.



Figure 2. One of many daily large trucks filling the space in Clarke Street. Note that when necessary for safety purposes, some, but not all, pedestrians might be able to climb over the low fence surrounding the surface parking lot to avoid oncoming vehicles or vehicles approaching from behind.

It is argued that by not requiring a sight triangle as per section 4.10 of the Bylaw for a street with known regular large vehicle traffic and restricting the ability to provide a sidewalk on Clarke Street if a setback variance is granted, the City is being derelict in its duty to ensure public safety and therefore, the site specific exemption amendment request should be rejected under section 3.3.8.e of the Bylaw.

H. Possible failure to inform all property owners within 100 m of the subject property under Section 3.10.4 of the Bylaw.

The property owner for PID 342980 reports not receiving the letter sent to neighbouring properties. This will require determining if this was an error on the City's part to send the letter or if there is some other reason that it was not received.

It is argued that if it is shown that the City failed to send the required letter to the property owner of PID #342980, then the City will have failed to satisfy Section 3.10.4 of the Bylaw regarding this application.

I. Design Review Board members were incorrectly informed about the history of the buildings in the block bordered by Grafton, Prince, Hillsborough, and Clarke Streets.

During the March 22, 2021, meeting, a member of the Planning Board incorrectly stated that "... a huge apartment building used to exist where the current parking lot is located. There are also huge apartment buildings along Clarke [Kent?] Street." Review of historical maps of Clarke Street dating from 1878 - c1917, clearly show no building higher than 3 or 3 ½ storeys. A fire in 1971 destroyed the Thomas H. Mills Meat Market building. Buildings along Kent currently vary from 1 ½ to 3 (3 ½) storeys.

There also seemed to be a desire to maintain the "integrity of Clarke Street" with a new building.

It is argued that incorrect information was presented at the March 22, 2021, meeting which may have swayed Design Review Board members in their decision. It is also argued that by creating a 70 ft high by 278 ft long wall abutting Clarke Street, the effect will be to forever demote Clarke Street to a laneway which is unsafe for pedestrians and would destroy, rather than maintain, the integrity of Clarke Street.

J. Planning Board members at the May 3, 2021, meeting clearly indicated their lack of knowledge regarding the affordable housing process and expressed a desire/need to be able to better understand it in order to make a "sound and/or appropriate recommendation".

It is argued that if Planning Board members are expressing concerns about their lack of understanding of a process which is a major component of a proposal that they are voting on, the vote should be delayed until they are confident in their understanding of the process.

K. Section 3.11 of the Bylaw, indicate that a number of criteria must be satisfied including subsection d) "The proposal does not undermine the overall integrity of any given Zone, is in the public interest AND is consistent overall with good planning principles."

It is argued that the way the City administration managed the following elements of this project was not consistent with good planning principles:

- I.*** Permitting a six-storey building undermines the planning principle of a progressive stepdown in height from the Downtown Core zone to Downtown Mixed Use Neighbourhood (DMUN) zone as clearly indicated in the 500 Lot Standards report adopted by the City and the Bylaw regarding bonus height allowances for the DMUN zone.
- II.*** The proposed height of the building will overpower the nearby historical heritage buildings e.g., St Paul's Church, Zion Presbyterian Church.
- III.*** Failure to consistently treat Clarke Street (named since 1878) as a street in all aspects of the proposal i.e., external design review, public servicing requirements, variance requests.
- IV.*** Failure to take advantage of the opportunities presented by this proposal to enhance and improve Clarke Street itself and the overall ambience of the 500 Lots in general.

- V.** Ignoring that the consolidated lot contains three corners that each require additional attention in the design process according to Sections 7.2 Buildings on Corner Lots and 4.10 Sight Triangles on Corner Lots:
- a. Orient to both Street Lot Frontages; and,*
 - b. Architectural features shall wrap the corner of the Building and address the corner condition*
 - c. Notwithstanding any other provisions of this by-law, no Building or Structure shall be Erected on a Corner Lot within 6 m (19.7 ft) of the triangular space included between Street Lot Lines.*
 - d. No Structures or vegetation shall be placed, erected, planted or maintained at a Height over 1.0 m (3.3 ft) on a Corner Lot where it may obstruct the view from a vehicle within 6 m (19.7ft) of the point of intersection of the Street Lot Lines*
- VI.** Approving a building that has the potential to create extensive shadow impacts on nearby residents and buildings without requiring a shadow impact study.
- VII.** Disregarding, and actually worsening, a public safety issue by allowing construction of a new building that will eliminate the possibility to create a sidewalk on Clarke Street and not enforcing the need for a sight triangle on corners including Clarke Street.
- VIII.** Assuming that a four-storey building would have the same design, less the two top floors without any drawings being provided were the bonus height denied; thus, undeniably creating a parkade (3 storeys of parking and less than 2 storeys of residential use).
- IX.** Failing to consider that adjacent properties, through lot consolidation as in the current case, could be eligible for bonus height and then failing to apply the setback of 18 feet per Section 30.3.2.c.ii.
- X.** The site includes, and the Prince Street entrance is proximal to, a key corner (Grafton and Prince) as identified in the 500 Lots Standards (page 16). Given this location, attention to architectural principles of massing, scale and setbacks are even more important.
- XI.** Acknowledging that both the Prince Street and Hillsborough Street are the most significant streetscapes for the project as proposed and as noted by the external design reviewer "... should be no 'rear' yard as both are really important front yards to their respective streets" yet failing to require applying elevated design standards to these façades. Note that there is no pedestrian entry on the Hillsborough Street façade.
- XII.** Failing to provide any reason in any documentation as to why section 7.11.3 of the Bylaw is to be exempted, the purpose of which is to "conceal parking structures and to provide more activity on the street" (April 6, 2021, Planning Staff report to Planning & Heritage Board). This is particularly relevant as the main purpose of the building appears to be a parkade (see 2.B.V).

SUMMARY:

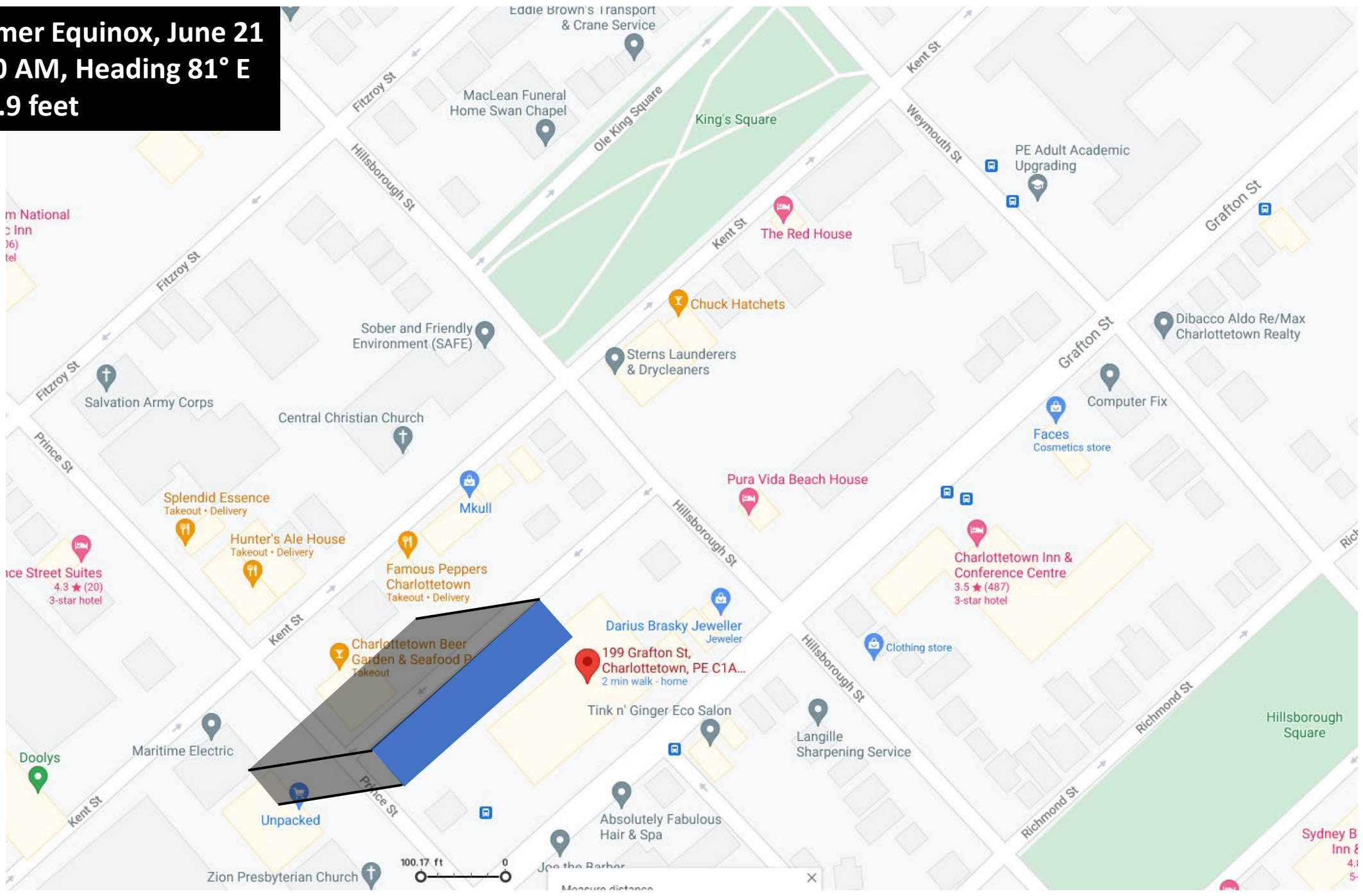
1. The City failed/neglected to request or conduct studies or analyses to ensure that the bonus height and massing of the project would successfully mitigate shadow, visual, and heritage impacts.
2. The City failed to obtain the new renderings of Clarke Street from the developer as requested at the public consultation meeting April 27, 2021, before continuing with their assessment of the project proposal.
3. The City failed to obtain documentation and plans for a four-storey building option that was included in the site specific exemption amendment for the proposal at 199 Grafton Street.
4. The City made errors in the variances that were requested and/or provided the wrong plans for evaluation, and/or omitted variances required for the project to proceed as proposed.
5. The City failed to follow the correct order for obtaining an external design review if it accepts the review submitted March 19, 2021, External design reviews are to occur only after any required approvals have been obtained. At minimum, this shows a careless error or casual oversight in the City's standard review process, at worst, it could be interpreted as bias towards this proposal and/or the proponent by the City Administration.
 - i. The external design review also contained errors and/or oversights with respect to aspects of the 500 Lots Standards and Guidelines.
6. The City has failed to consider the health and safety of occupants, nearby residents and/or the general public, be they pedestrians or motorists, who use Clarke Street or the Prince Street and Clarke Street corner.
7. Design Review Board members were presented with incorrect information.
8. Planning Board members expressed concern regarding an insufficient understanding of the use of affordable housing for bonus height applications which was not clarified prior to their voting on this application.
9. The City failed to follow good planning principles when evaluating, processing, and voting on this application.

Appendix A:

Estimated Shadow Impacts for the
70.4 ft high (average) x 278 ft long
Portion of the Proposed Project at
199 Grafton Street

- The footprint of the portion of the proposed building used for the calculations is shown in blue.
- These drawings are for the taller portion of the proposed 199 Grafton Street project only.
- Shadow lengths are calculated from National Research Council guidelines for Charlottetown at the Summer, Fall (same as Spring) and Winter equinoxes for morning, midday (shortest shadow) and evening.
 - Note, that the times used in the winter are different due to shortened daylight hours in winter and the time change to Daylight Savings Time (DST).
- A daily composite for the three shadows for each equinox is provided after the individual shadows.
- These drawings do not show the compound effect of shadows from other nearby buildings.

Summer Equinox, June 21
~8:00 AM, Heading 81° E
154.9 feet



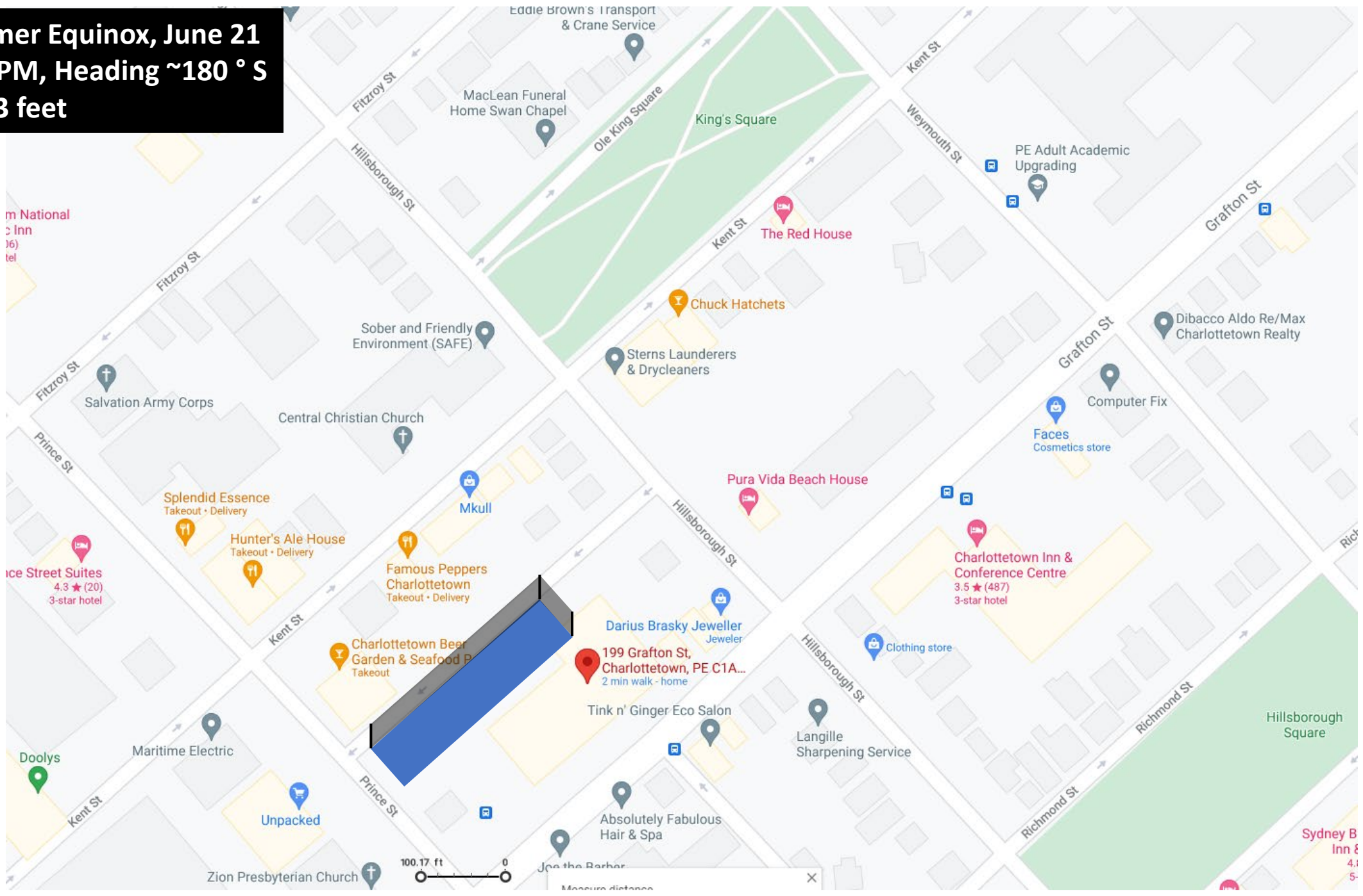
A2

N



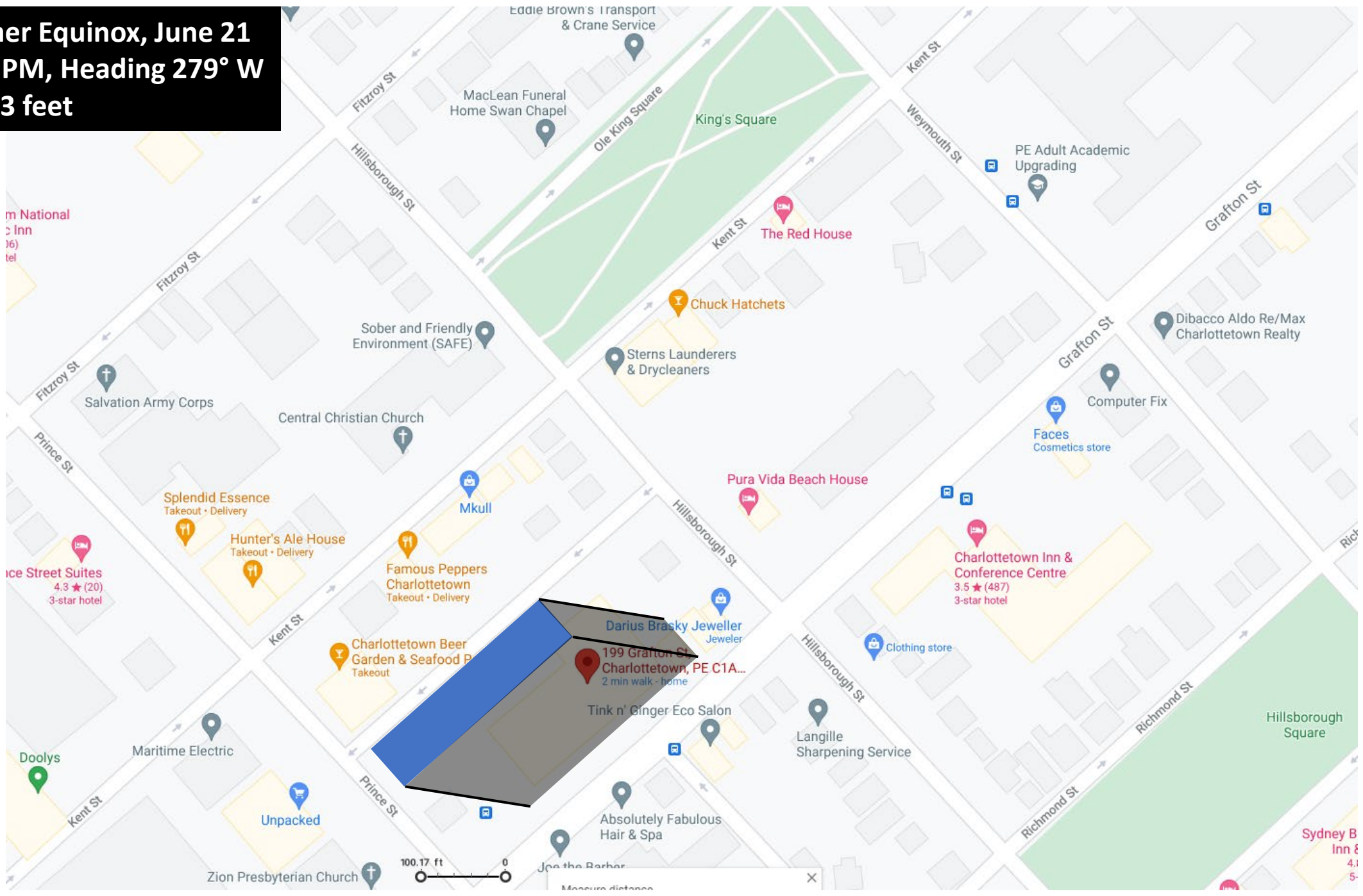
Summer Equinox, June 21
1:15 PM, Heading ~180 ° S
30.3 feet

A3



100.17 ft

Summer Equinox, June 21
~6:30 PM, Heading 279° W
156.3 feet

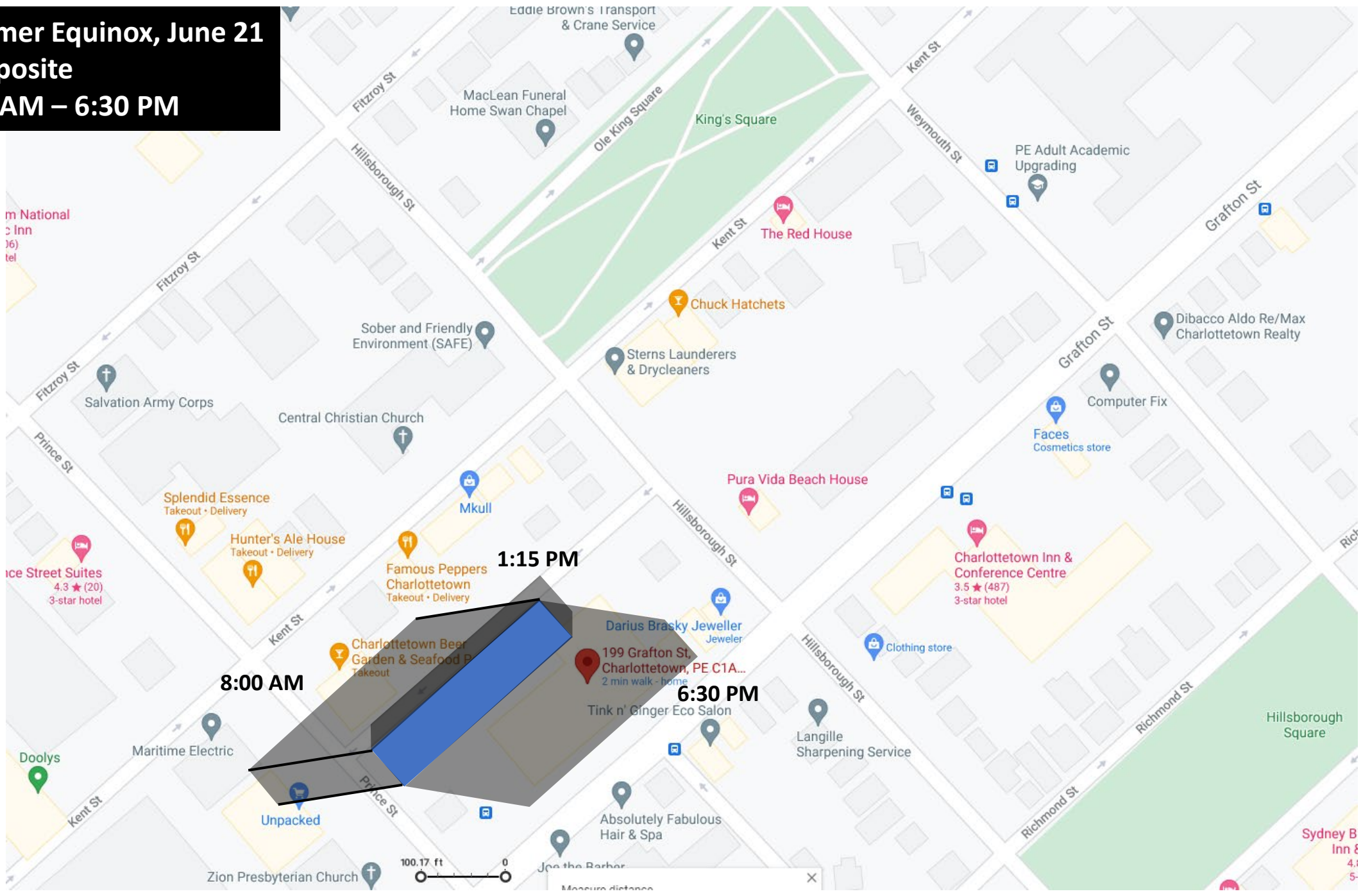


A4



Summer Equinox, June 21
Composite
8:00 AM – 6:30 PM

A5



N



8:00 AM

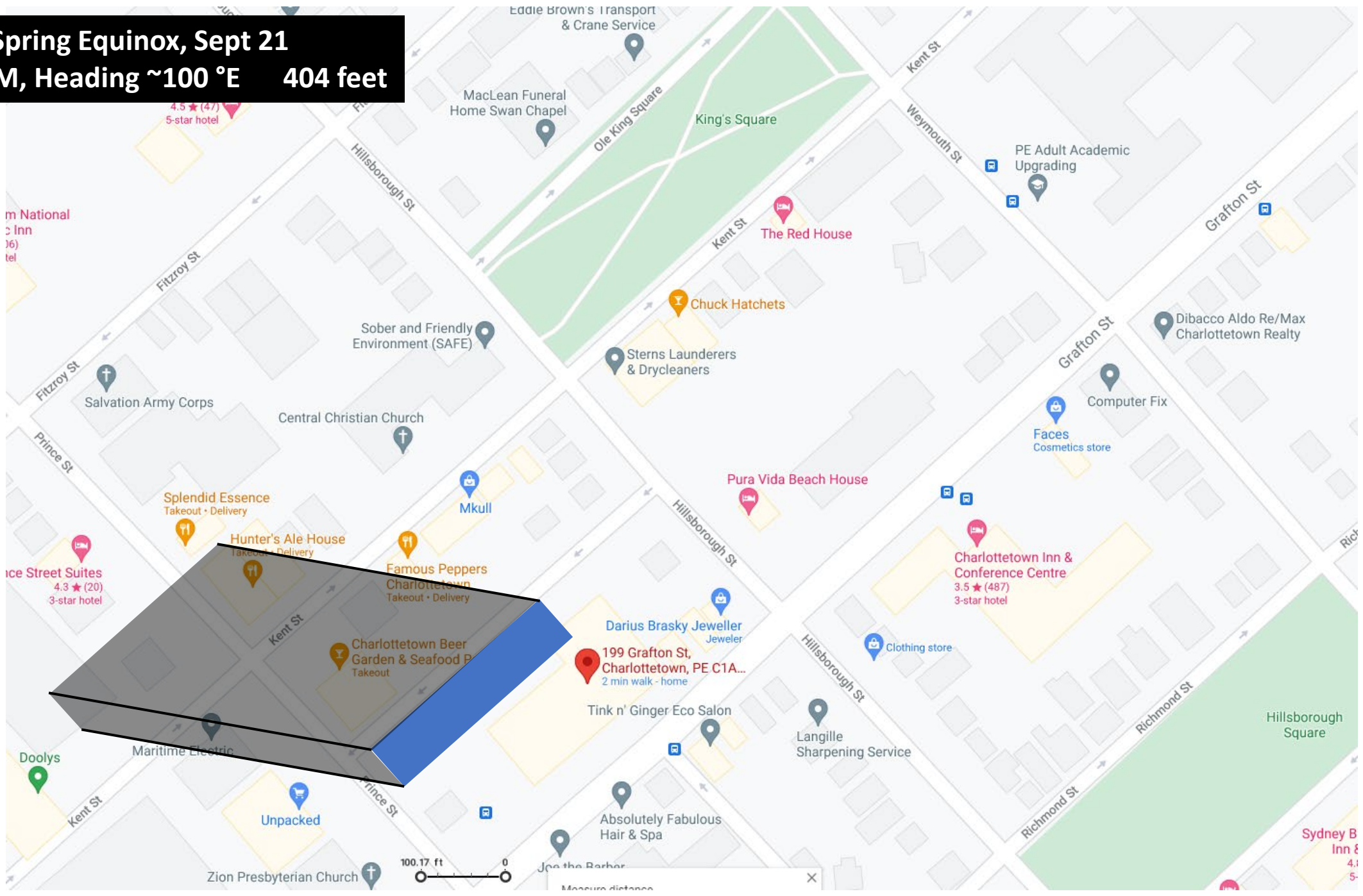
1:15 PM

6:30 PM

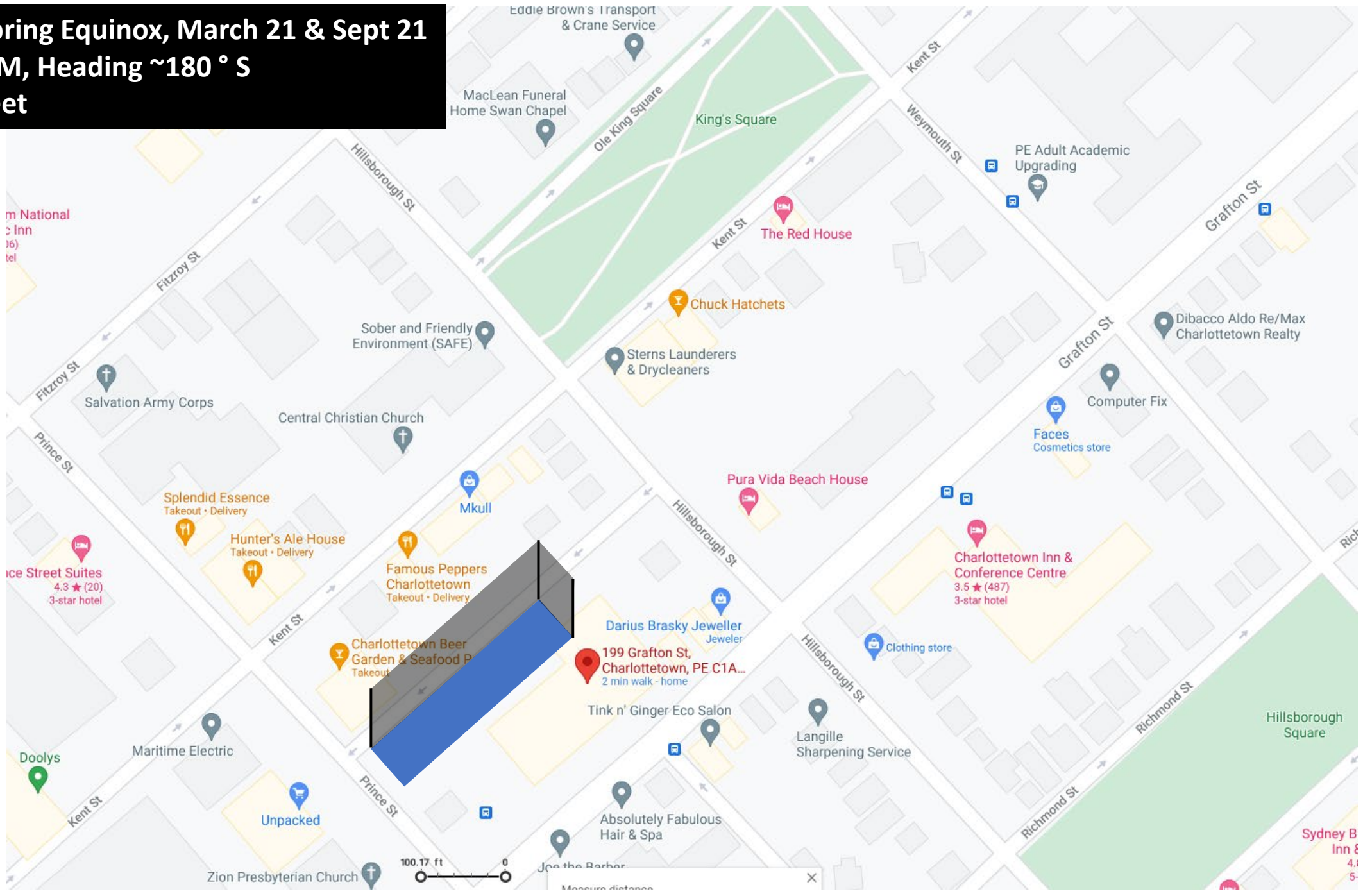


Fall & Spring Equinox, Sept 21
8:00 AM, Heading ~100 °E 404 feet

A6



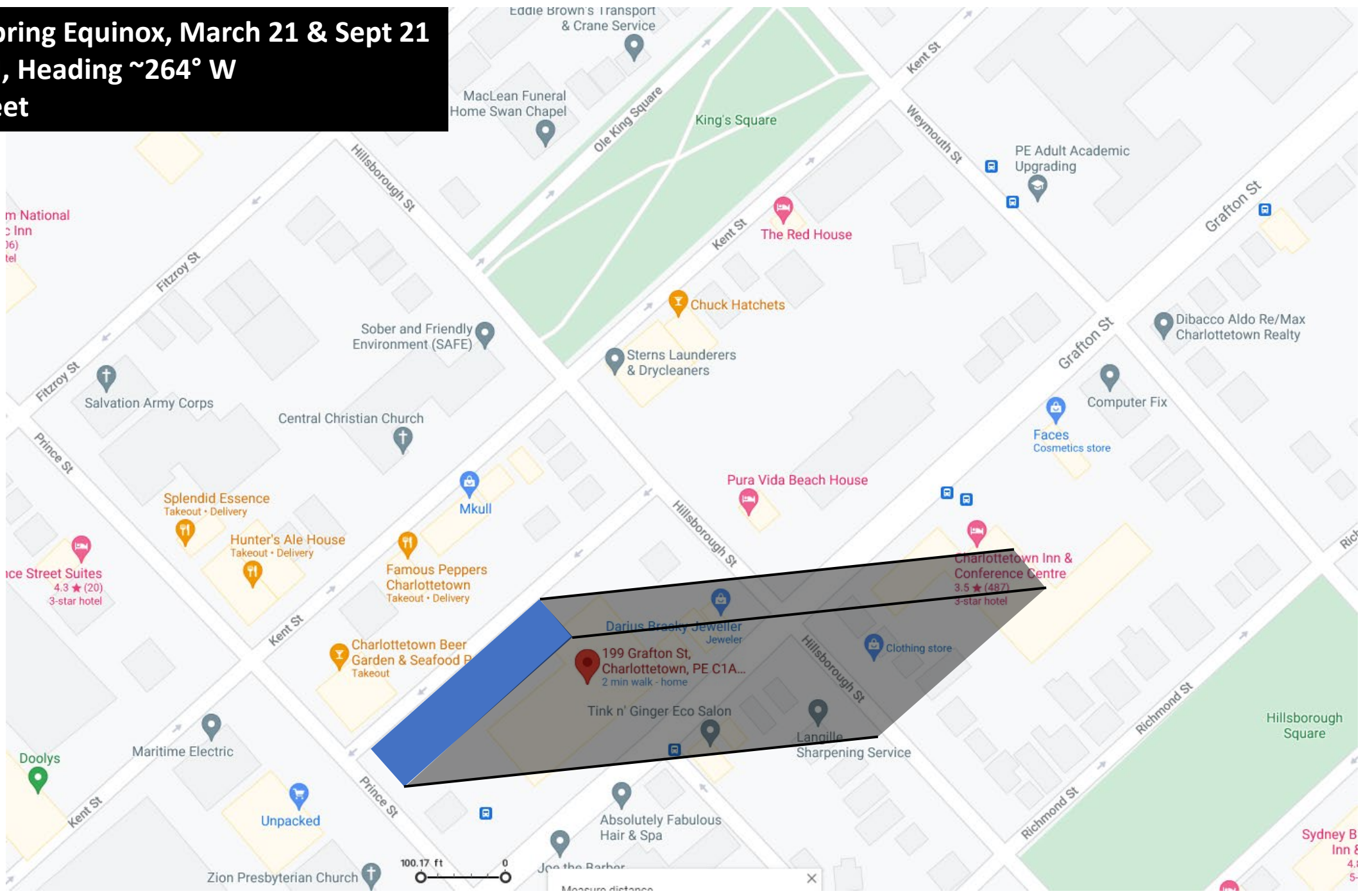
Fall & Spring Equinox, March 21 & Sept 21
~ 1:00 PM, Heading ~180 ° S
72.5 feet



A7



Fall & Spring Equinox, March 21 & Sept 21
6:30 PM, Heading ~264° W
587 feet

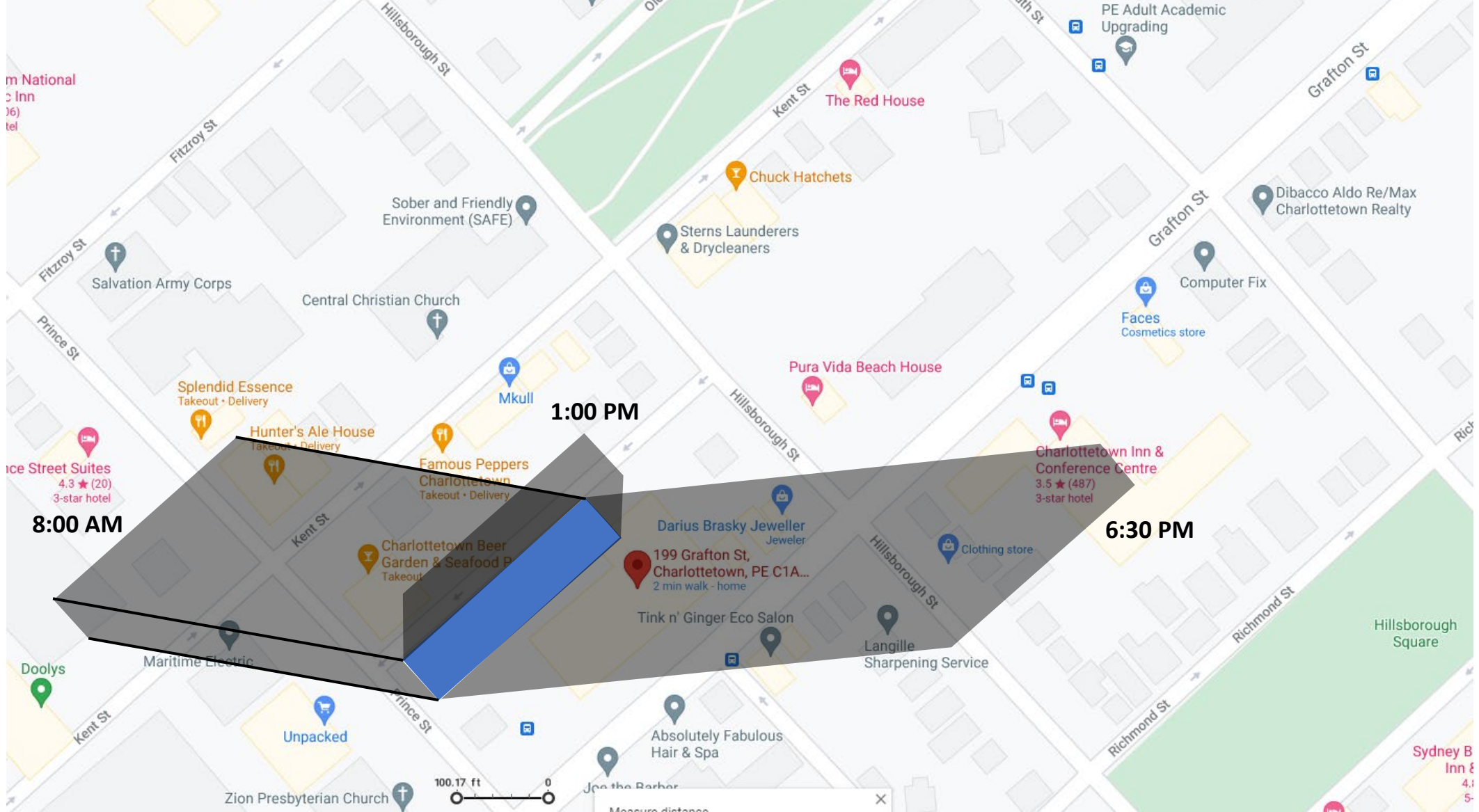


A8



Fall & Spring Equinox, March 21 & Sept 21
Composite
8:00 AM – 6:30 PM

A9



N



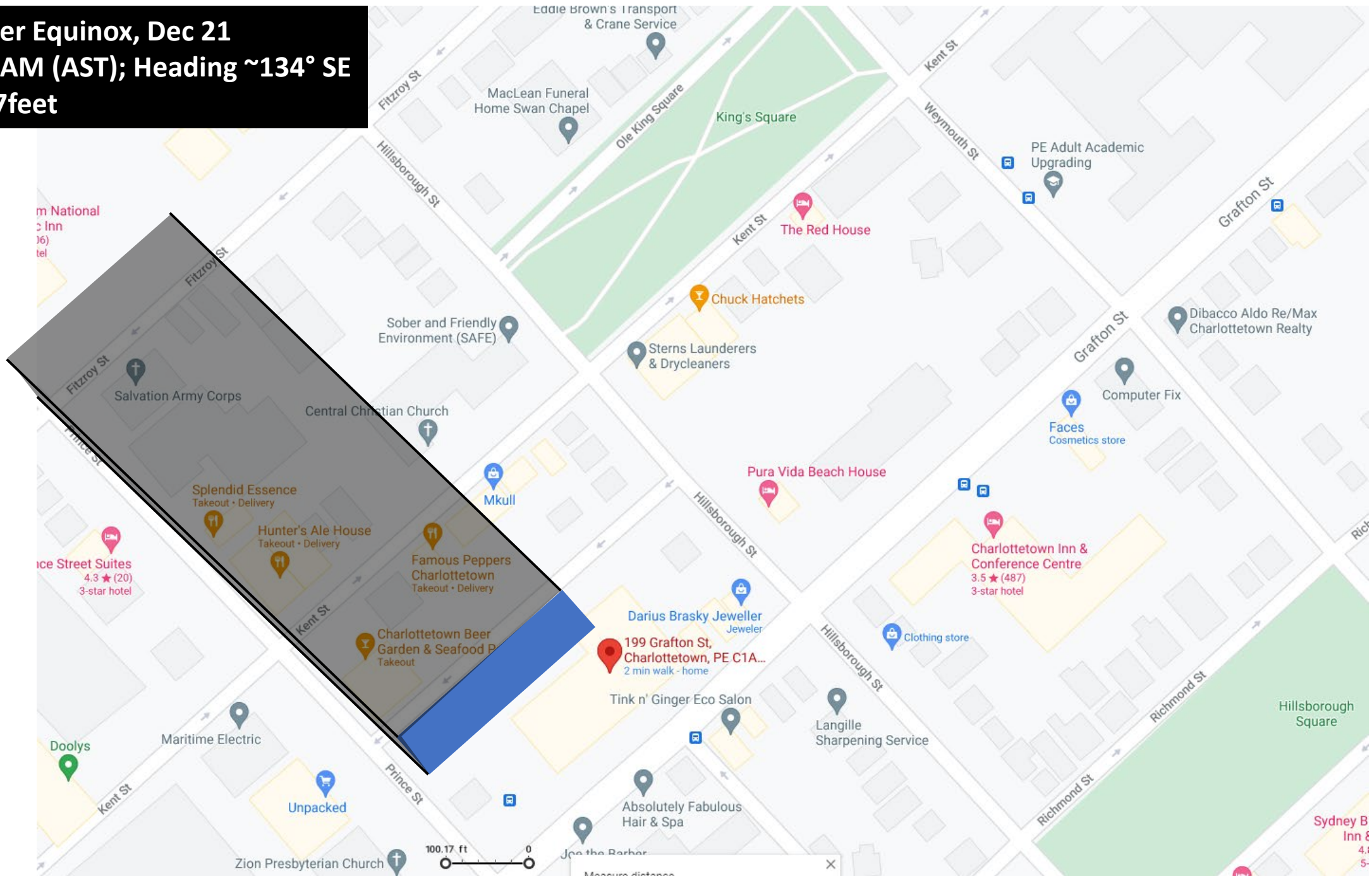
8:00 AM

1:00 PM

6:30 PM

Winter Equinox, Dec 21
8:45 AM (AST); Heading $\sim 134^\circ$ SE
678.7 feet

A10



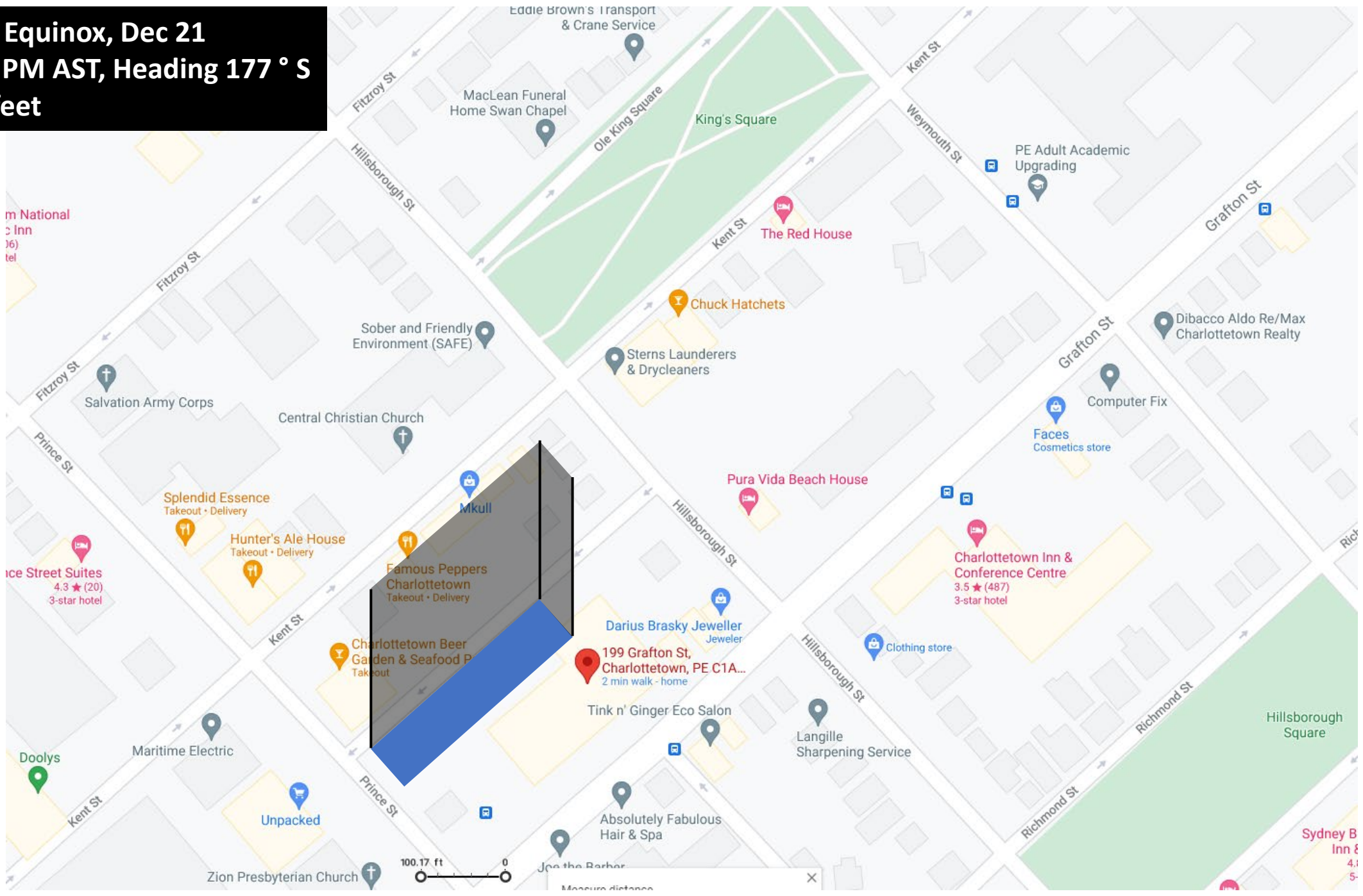
N



Sydney B
Inn &
4.1
5-

Winter Equinox, Dec 21
~12:00 PM AST, Heading 177 ° S
195 feet

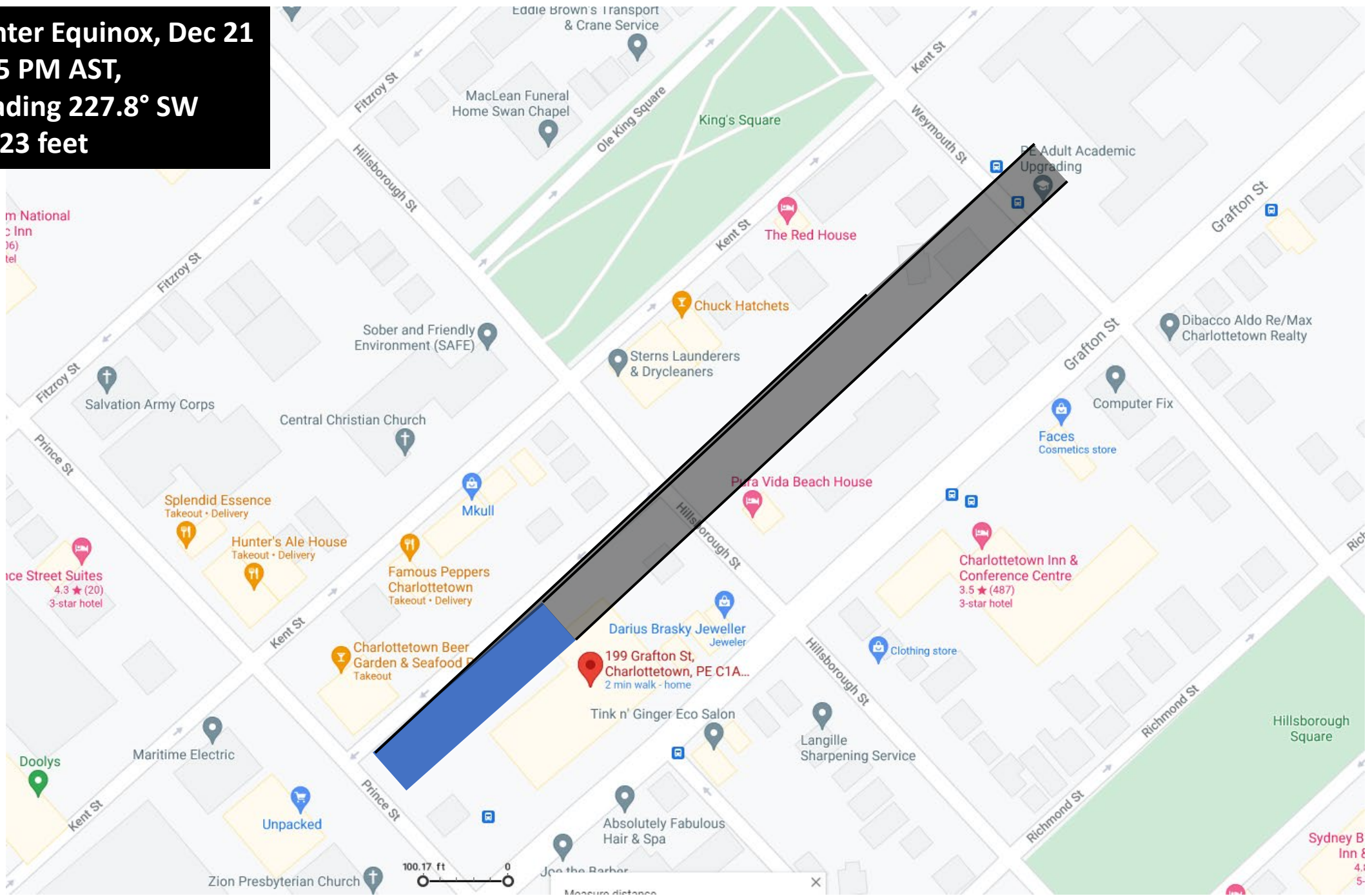
A11



N



Winter Equinox, Dec 21
3:45 PM AST,
Heading 227.8° SW
823 feet



A12



Winter Equinox, Dec 21
Composite
8:45 AM (AST) – 3:45 PM

A13



N

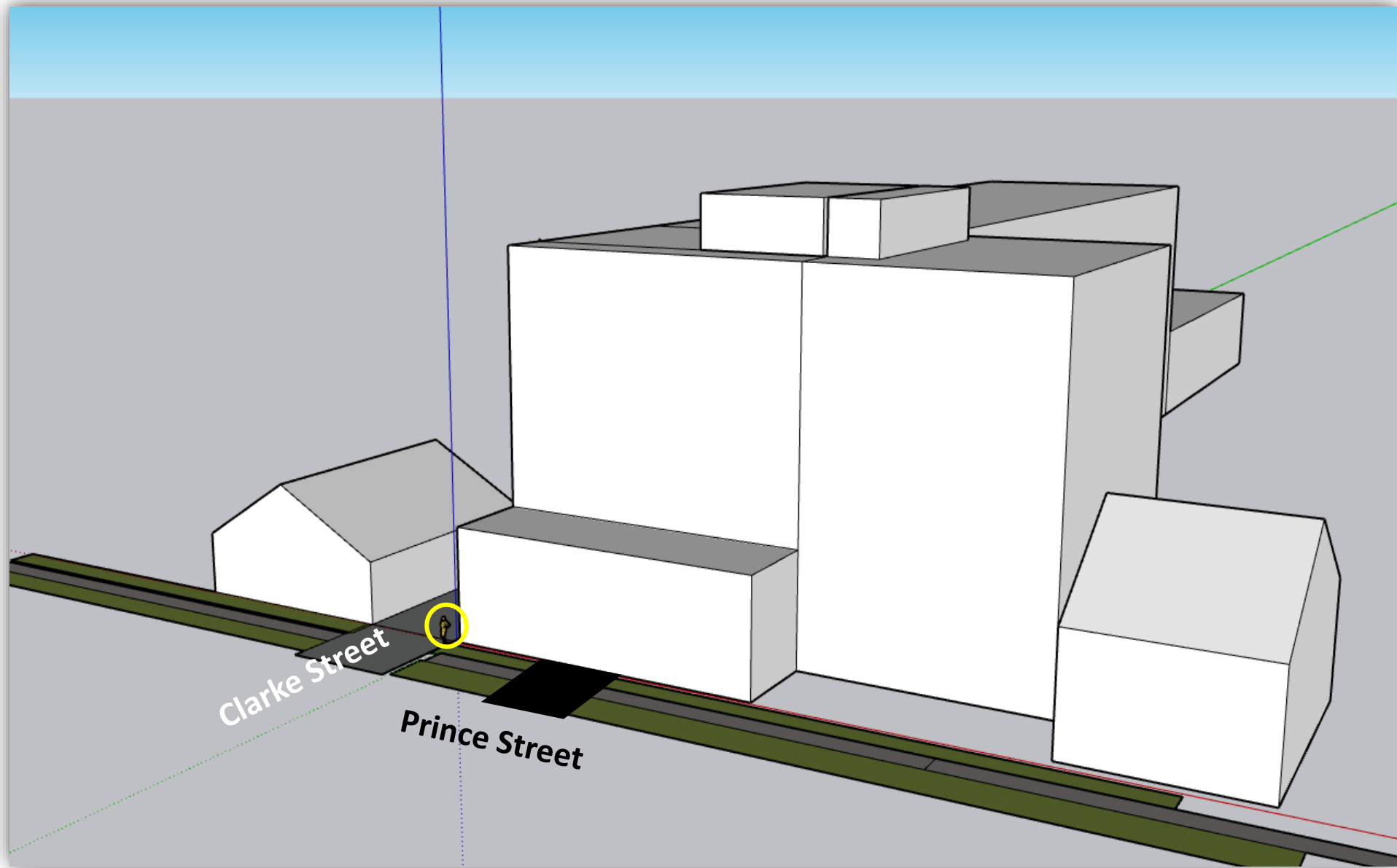


100.17 ft

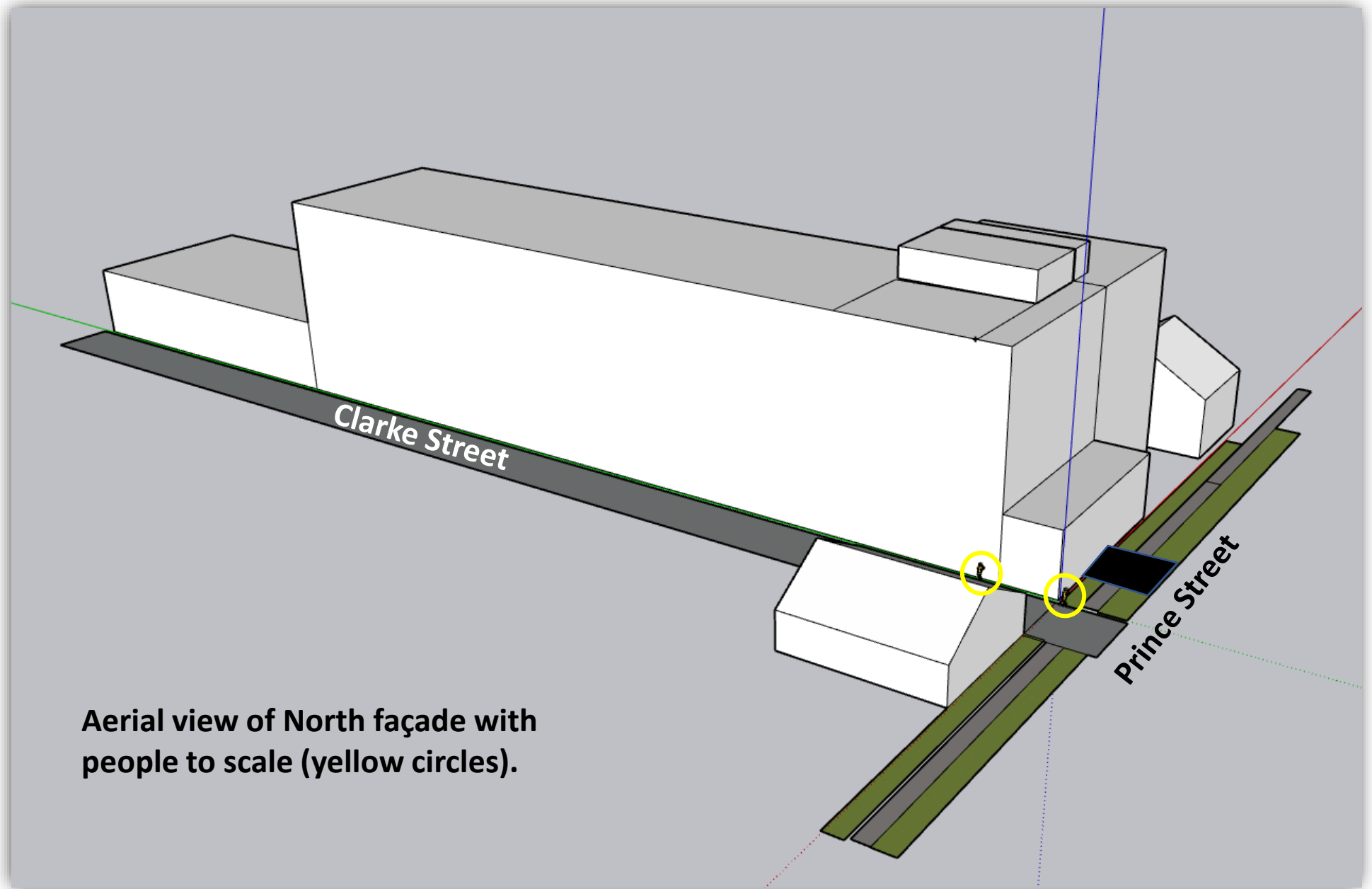
APPENDIX B:

Mass Models of 199 Grafton Street Proposal
(SketchUp software)

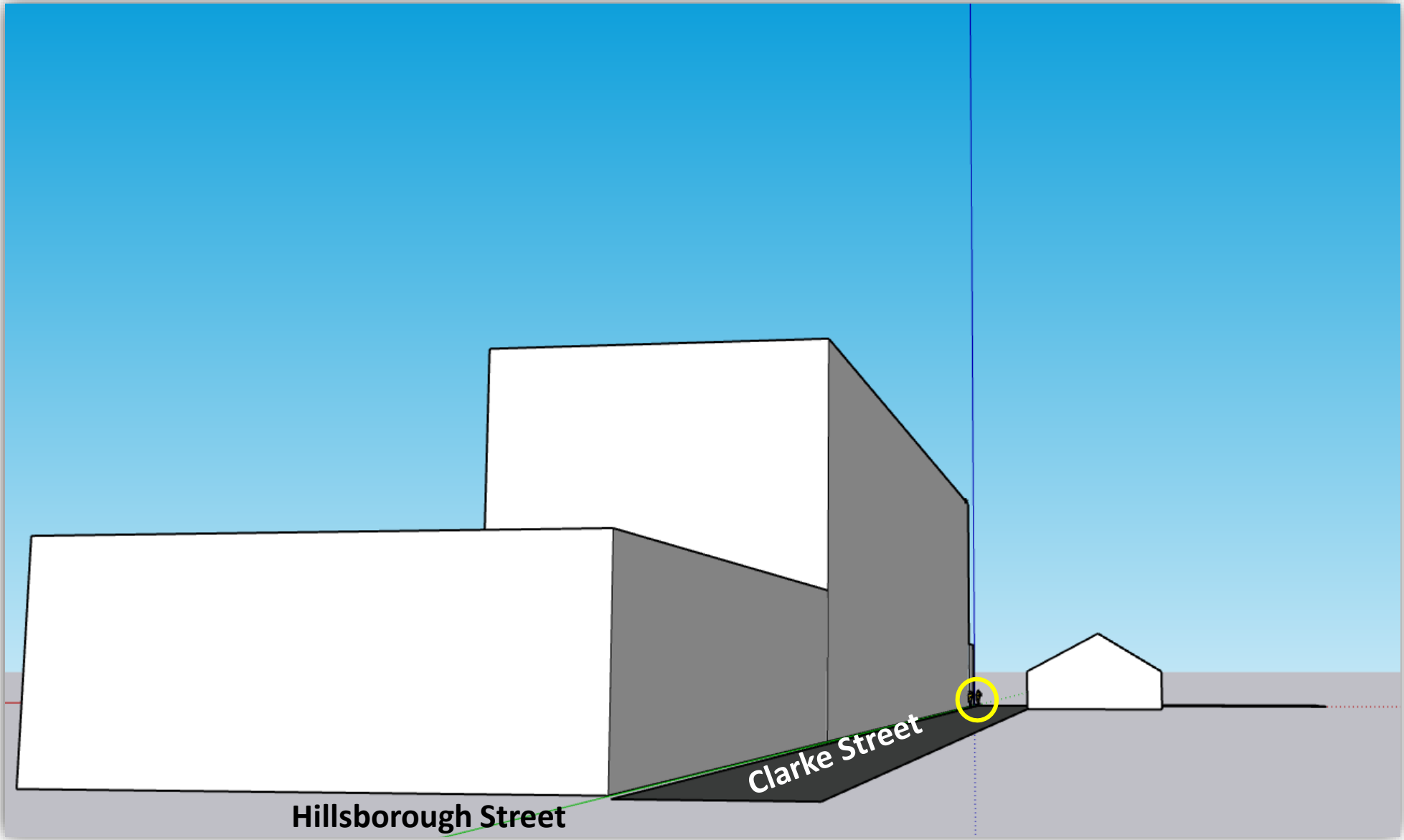
B1



View of Prince Street façade with person to scale (yellow circle).

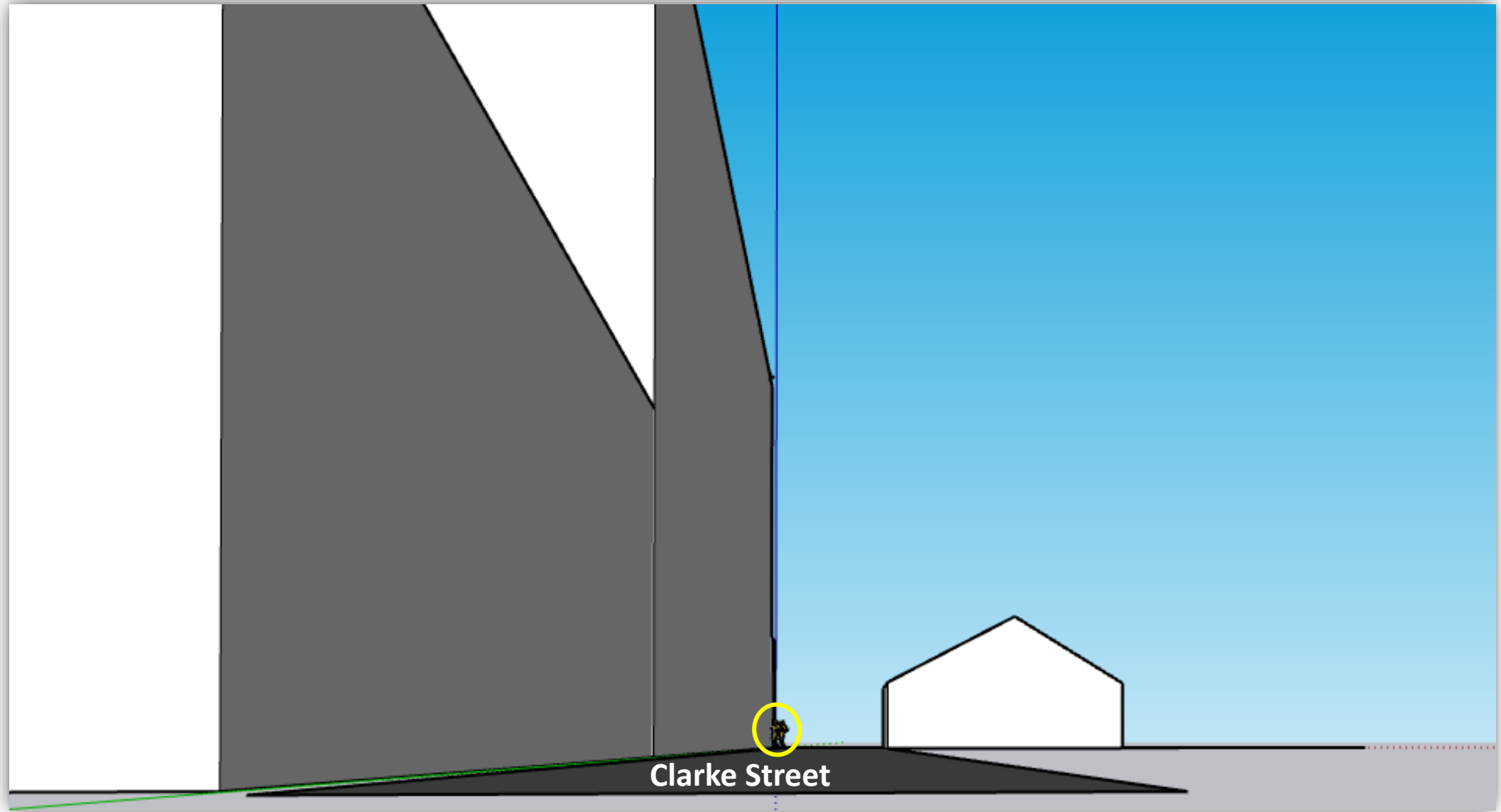


Aerial view of North façade with people to scale (yellow circles).



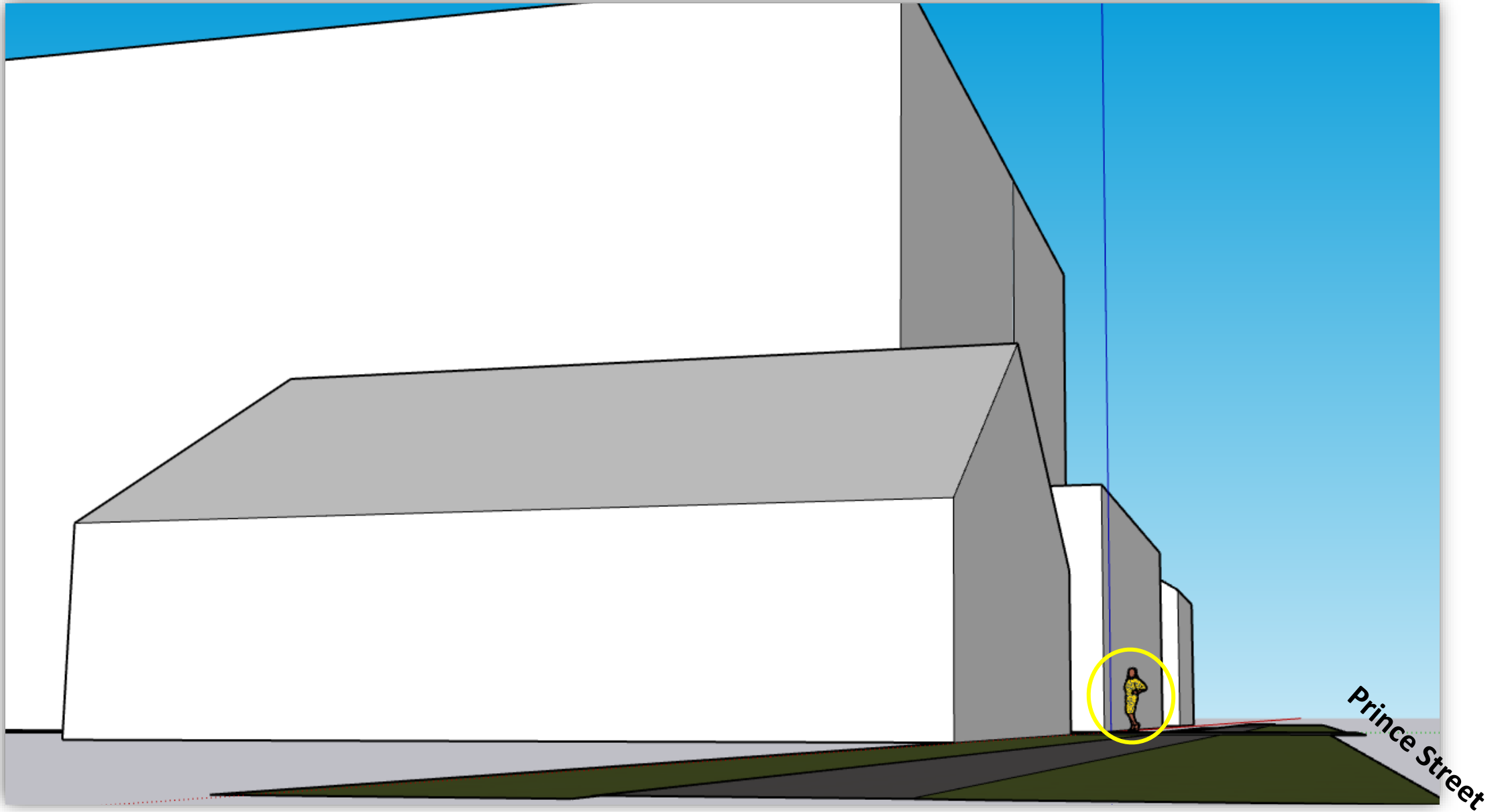
View of 199 Grafton Street proposal from Hillsborough Street with people to scale (yellow circle).

B4



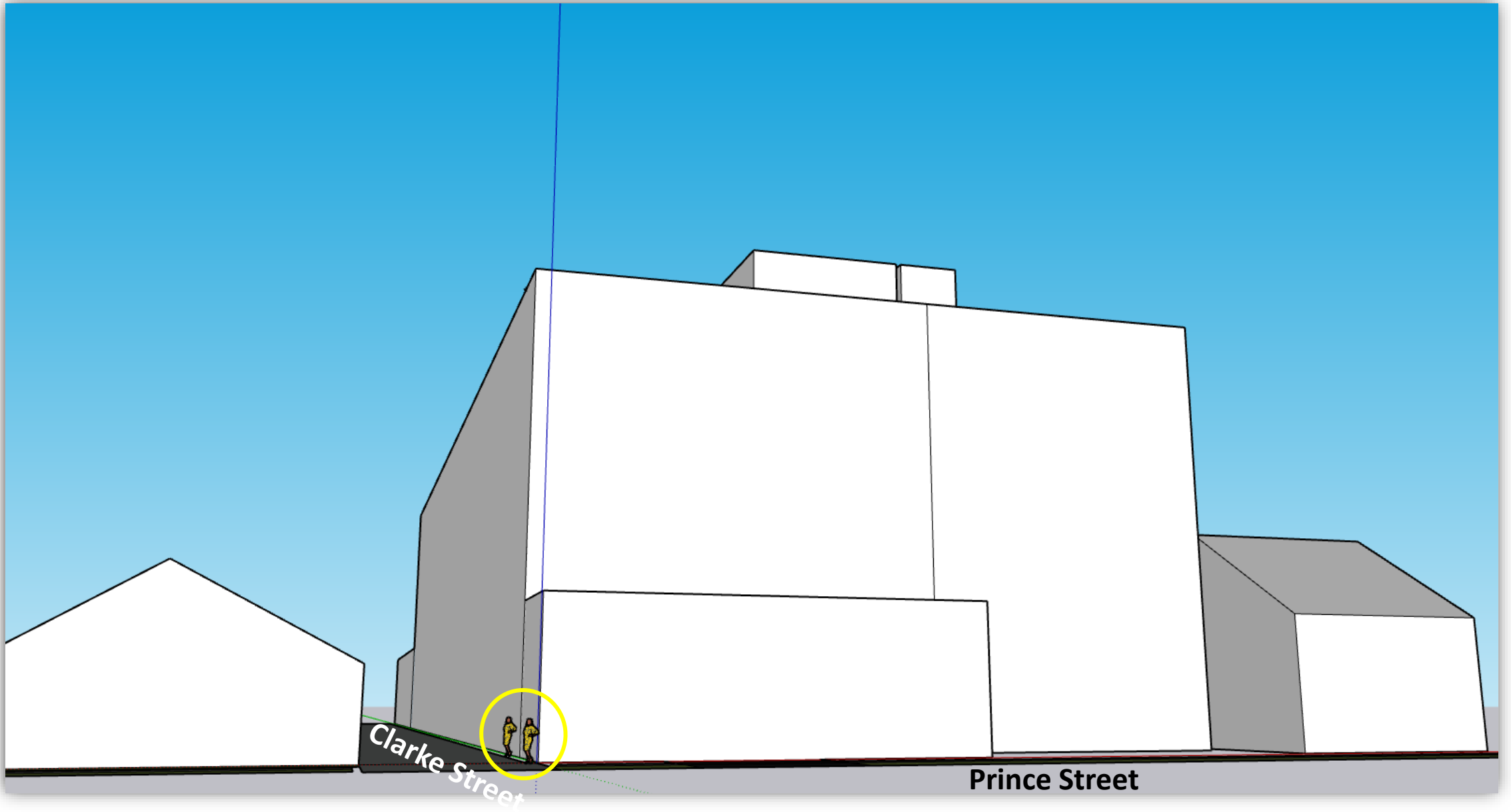
View of 199 Grafton Street proposal from Hillsborough Street with people to scale (yellow circle).

B5



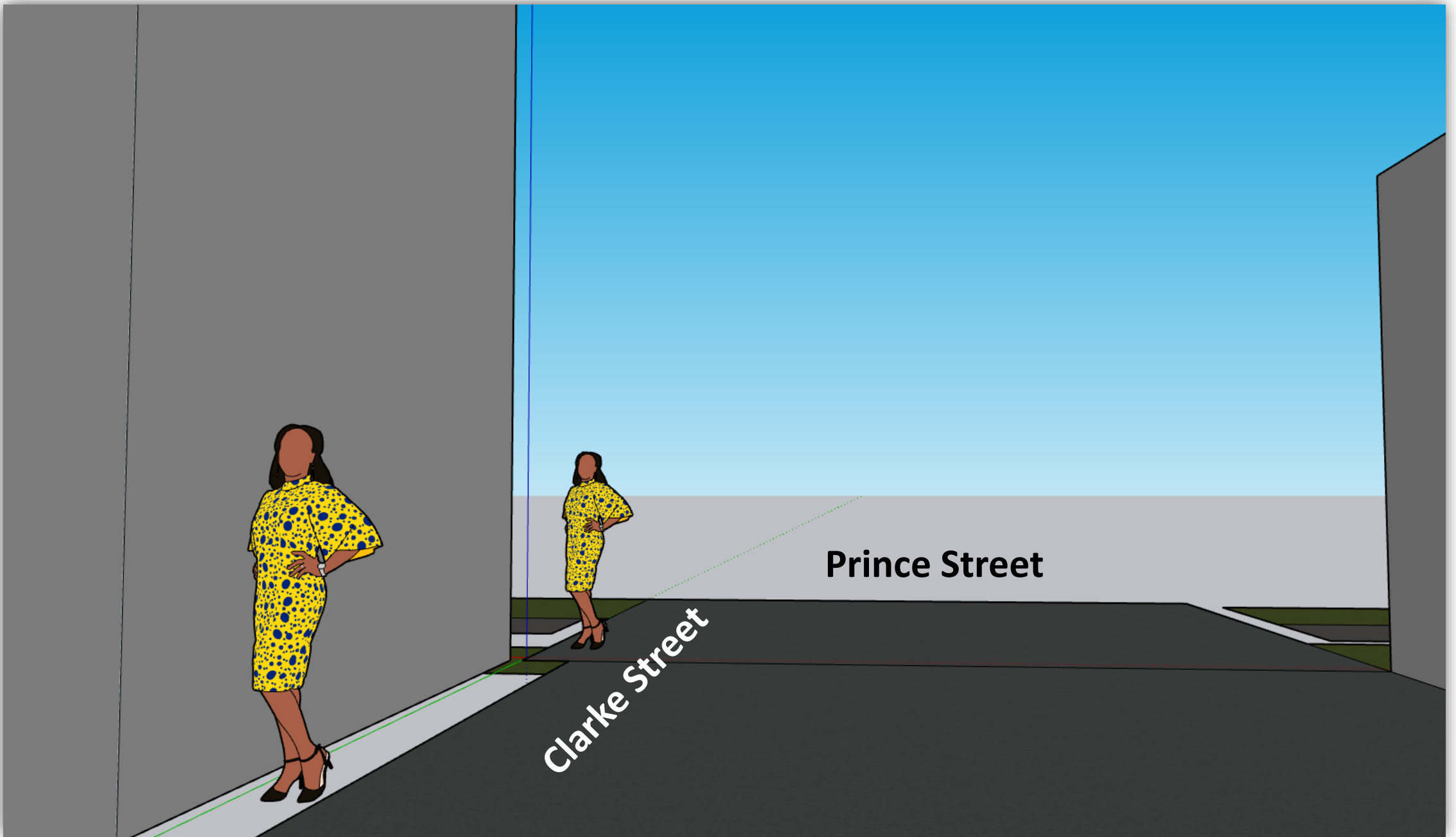
View of North façade from Kent Street with person to scale (yellow circle).

B6



View looking east on Prince Street with people to scale (yellow circle).

B7



Travelling west on Clarke St., views of approaching pedestrians on Prince St. are blocked, creating a public safety hazard.

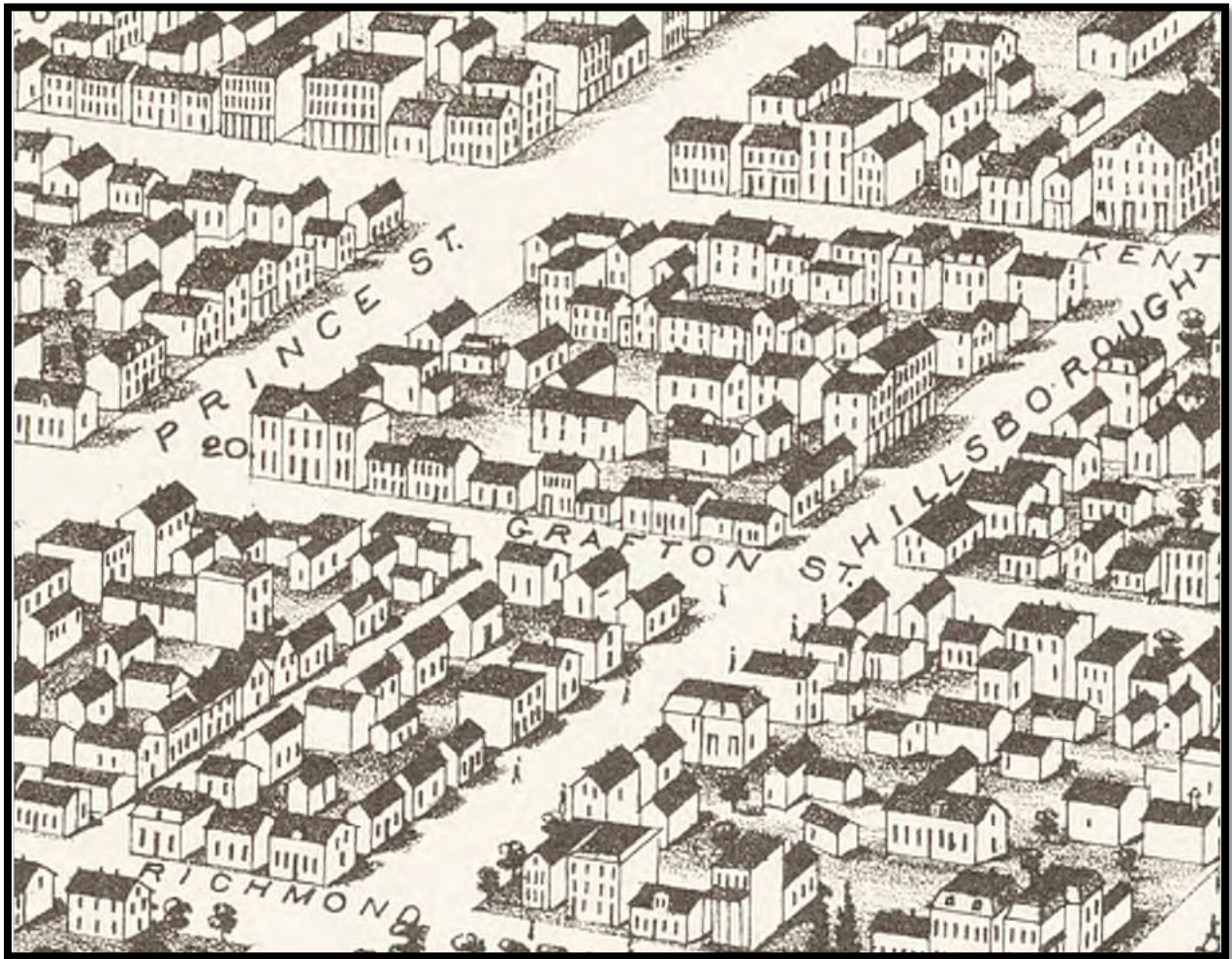
APPENDIX C:

Map summary showing history of Clarke Street

1878 Panoramic View of Charlottetown. Ruger

<http://islandstories.ca/fedora/repository/imagined%3A209257>

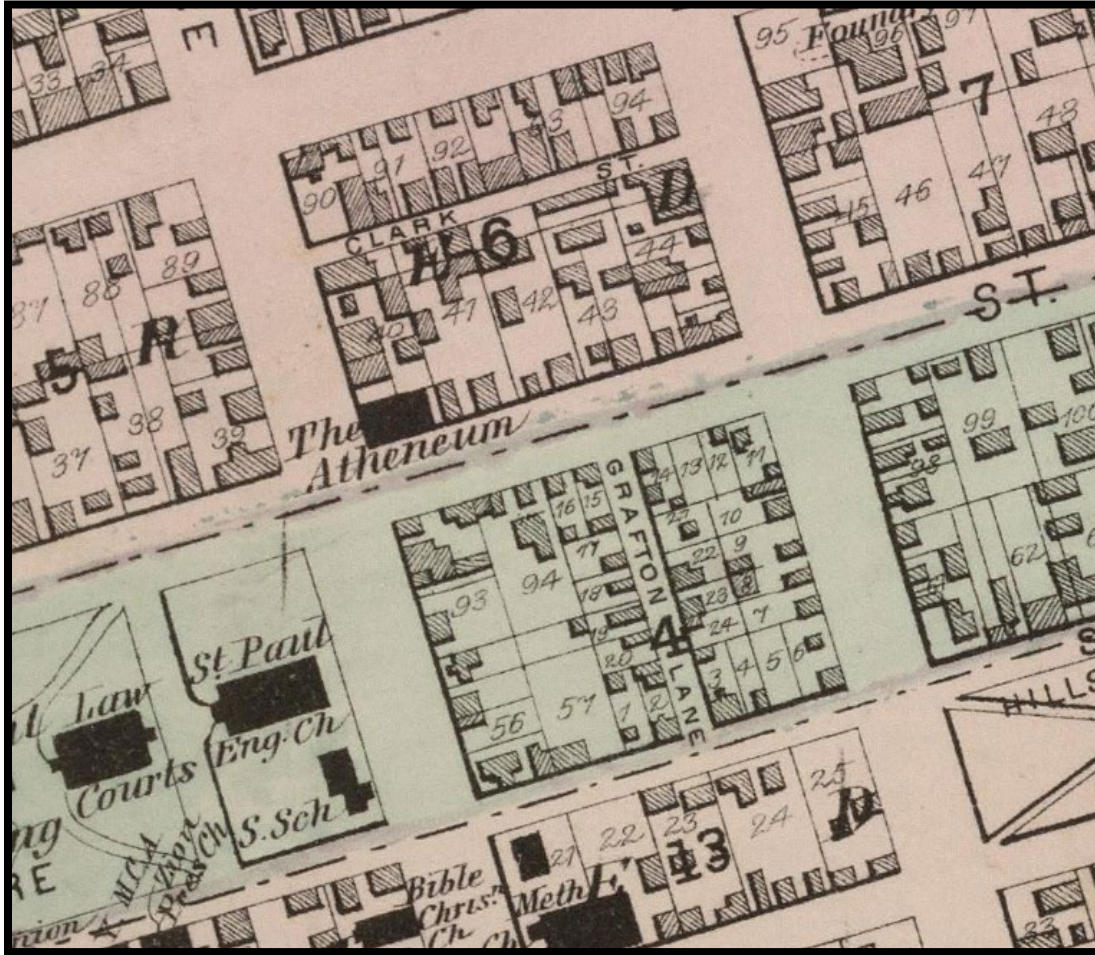
The map clearly shows that Clarke Street exists with numerous buildings.



1880 Meacham Map

<https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~217678~5503787:Map-of-the-City-of-Charlottetown,-P>

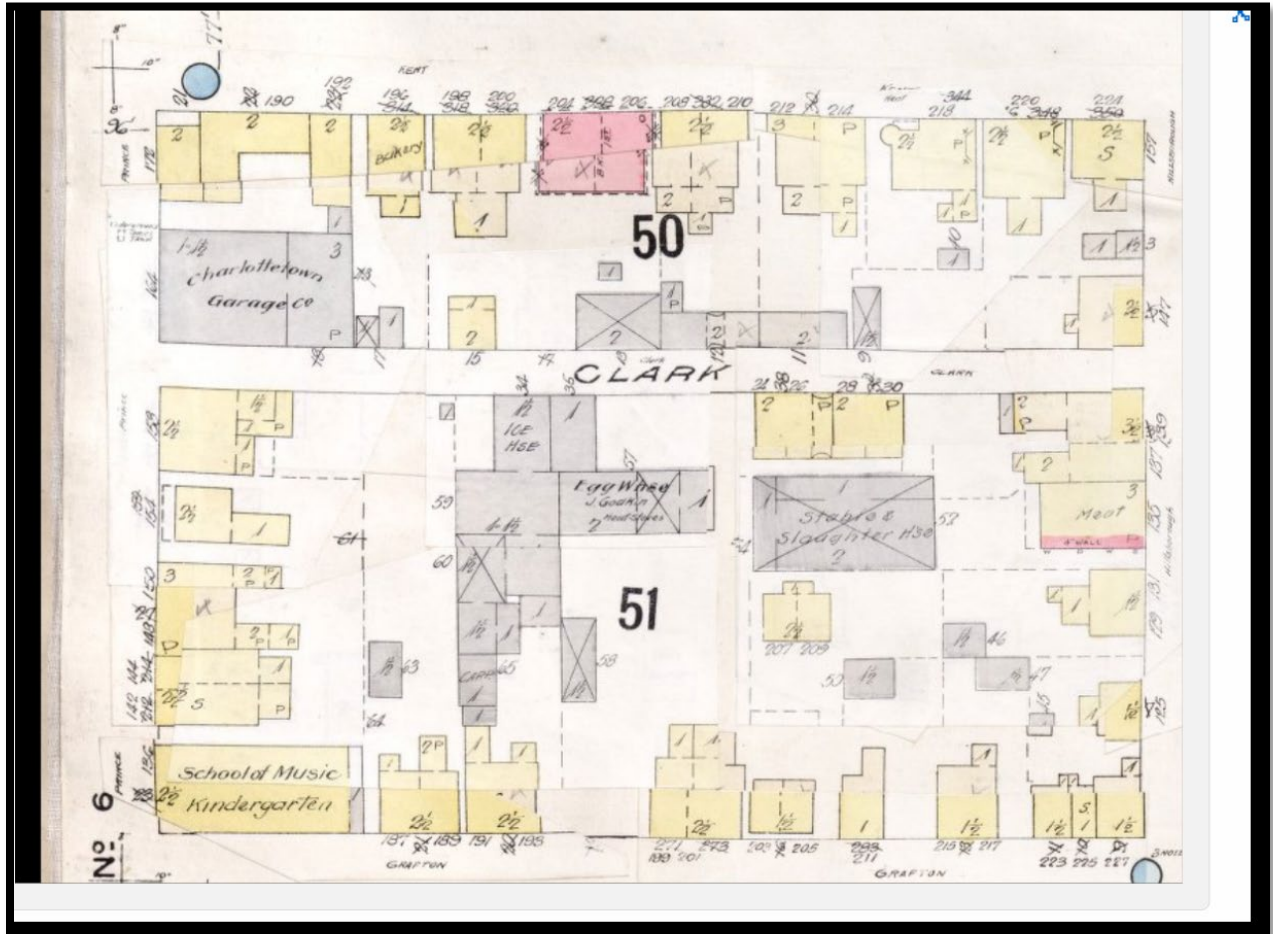
The map shows Clark Street with similar buildings as in 1878.



1910 or 1917 Revision of 1903 Charlottetown Goad Fire Map (section)

<https://www.islandimagined.ca/islandora/object/imagined%3A208610>

This map clearly shows that the highest building is 3 ½ storeys high while most are one or 2 ½ storeys high.



Description

This is Page 7 of 20 pages of fire insurance maps of Charlottetown. It was created in 1903 and revised to either 1910 or 1917. The map shows the area from Kent Street to Sidney Street, between Prince and Weymouth streets. It shows numbered city blocks and the buildings situated on them, the street numbers of the buildings and their heights in storeys. Buildings are colour-coded according to construction materials and/or use. (See Page 1 of the Charlottetown maps for a key explaining the colours, as well as symbols, which are used to identify architectural features.) Labels on buildings indicate their use. Features on this map include First Methodist Church (now Trinity United) and Hillsborough Square. The map shows street widths measured in feet. It shows the locations of hydrants, indicated by blue circles.