

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone: (802) 865-7188

*William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Joseph Cava, Planning Technician
Celeste Crowley, Zoning Clerk
Ted Miles, Zoning Specialist
Charlene Orton, Permitting & Inspections Administrator*



TO: Development Review Board
FROM: Ryan Morrison
DATE: June 21, 2021
RE: ZP-21-800; 501 Pine Street

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: ELM Ward: 5S

Owner/Applicant: Vermont Gas Systems, Inc. / Kurt Schueler

Request: Develop a container kitchen/food truck café on the vacant property (café use).

Applicable Regulations:

Article 3 (Applications, Permits, & Project Reviews), Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 7 (Signs), Article 8 (Parking)

Background Information:

The applicant is requesting approval to develop a container kitchen café on the vacant property. The containers proposed for use are steel shipping containers (20 & 40 ft long). A covered seating area will locate centrally on the property, and a one-way pick-up/drop-off driveway is also proposed at the front.

The property is located within the identified Pine Street Canal Superfund Site, and is also classified as a brownfield site. The applicant has been working with the interested parties to ensure compliance with EPA and State requirements.

A similar project was approved for a food trucks/carts, with no permanent structures, in July 2021. This new project will replace the previously approved development. The DAB reviewed this project on January 11, 2022 and on May 10, 2022. A recommendation of approval was made, with the following conditions:

1. Overhangs/awnings should be provided at each ordering window;
2. Provide sufficient lighting at the restroom entries;
3. Add curbing along the driveway to prevent vehicles from driving onto the sidewalk and planting areas;
4. Consider installing solar panels; and
5. Include staff recommendations and conditions.

The applicant updated the plans to include each recommended condition, with the exception of no solar panels at this time. Documentation/plans pertaining to the brownfield and Pine Street Canal Superfund Site are still pending as the applicant continues to work with the involved agencies.

Previous zoning actions for this property:

- **Zoning Permit ZP-21-446;** Develop a seasonal outdoor patio and picnic area that will support up to 4 food trucks, container kitchens and/or food carts (café use). Approved July 8, 2021.

Recommendation: Certificate of Appropriateness and Conditional Use approval as per, and subject to, the following findings and conditions.

I. Findings

Article 3: Applications, Permits, and Project Reviews

Part 3: Impact Fees

Section 3.3.2 Applicability

Any new development or additions to existing buildings which result in new dwelling units or in any new non-residential buildings square footage are subject to impact fees.

Impact fees shall be calculated based on the total gross square footage of the principal use. Per the submitted plans, an estimate of the fees is:

SF of Project 1,280

Department	Retail	
	Rate	Fee
Traffic	0.839	1,073.92
Fire	0.227	290.56
Police	0.400	512.00
Parks	0.478	611.84
Library	0.000	0.00
Schools	0.000	0.00
Total	1.944	\$ 2,488.32

(Affirmative finding as conditioned)

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 Review Criteria

(a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The project will see new electric and water utilities connected to the site. The proposal should have no appreciable impacts on existing or planned public utilities, services, or facilities. The applicant is advised to check with VT DEC as to whether a state wastewater permit is needed.

(Affirmative finding as conditioned)

2. *The character of the area affected as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The Enterprise-Light Manufacturing zoning district is the primary commercial/industrial center of Burlington, and is intended to accommodate enterprises engaged in the manufacturing, processing, distribution, renovating, or assembling of goods, merchandise, or equipment without potential conflicts from interspersed residential uses. Other commercial uses are allowed as primary or accessory uses to support a wide range of services and employment opportunities. The proposed café use is allowed in the zone as a conditional use. **(Affirmative finding)**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

Contrary to other uses within the district that may be manufacturing or utilizing machinery and equipment that emit greater volumes of noise and dust, the proposed development will not induce similar nuisance impacts. **(Affirmative finding)**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

Pine Street is a major arterial with sidewalks on both sides. There are transit stops within walking distance from the subject property. Pine Street has an articulated bicycle lane as well. There is a robust transportation system in place to support the proposed use. **(Affirmative finding)**

5. *The utilization of renewable energy resources;*

No part of this application would prevent the use of wind, water, solar, or other renewable energy resources. **(Affirmative finding)**

6. *Any standards set forth in existing City bylaws and city and state ordinances;*

Required building and/or life safety codes will be under the review of the building inspector. **(Affirmative finding as conditioned)**

(b) Major Impact Review Standards

Not applicable.

(c) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.*

The café use is not expected to produce adverse effects that would exceed those of other uses allowed in the ELM zoning district. **(Affirmative finding)**

2. *Time limits for construction.*

The zoning permit will have the standard timelines to complete construction: 1 year from the approval date to commence construction, and 2 more years to complete the project. **(Affirmative finding)**

3. *Hours of operation and/or construction to reduce the impacts on surrounding properties.*

Typical construction hours are Monday-Friday 7:30 am to 5:30 pm, Saturdays limited to interior work unless specific allowances are granted by the DRB, and no construction permitted on Sundays. The café use will operate between the hours of 11:00 am and 10:00 pm. **(Affirmative finding as conditioned)**

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,*

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time. **(Affirmative finding as conditioned)**

5. *Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

Not applicable.

Article 4: Maps & Districts

Section 4.4.3 Enterprise Districts

(a) Purpose

1. *The Light manufacturing district is the primary commercial/industrial center of Burlington, and is intended primarily to accommodate enterprises engaged in the manufacturing, processing, distribution, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment without potential conflicts from interspersed residential uses. ...This district is primarily intended to provide for industrial uses suitable for location in areas of proximity to residential development. Development is intended to respect interspersed in historic industrial buildings, and reflect the industrial aesthetic of the district’s past. Parking is intended to be hidden within, behind, or to the side of structures.*

‘Café’ is a conditional use in the ELM zoning district, which will be the primary use of the property. Parking is not required since the property is within the Multimodal Mixed Use Parking District. The site plan, however, includes three short-term pick-up parking spaces along the entrance drive in the front. **(Affirmative finding)**

(b) Dimensional Standards and Density

Table 4.4.3 -1 Dimensional Standards and Density

<i>Districts</i>	<i>Max. Intensity (floor area ratio¹)</i>	<i>Max. Lot Coverage¹</i>	<i>Minimum Building Setbacks¹ (feet)</i>			<i>Max. Height₁ (feet)</i>
			<i>Front</i>	<i>Side</i>	<i>Rear³</i>	
<i>Light Manufacturing</i>	2.0 FAR	80%	5 min	0 ²	10% ²	45’
501 Pine Street	n/a	78.4%	Approx. 17 ft to the closest	5’ to the food truck	A 60’ deep lot requires a	< 45’

			container.	pads.	6 ft rear yard setback. The site plan shows a 6 ft rear yard setback to the containers.	
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1 – Floor area ratio is further described in Art 5. Measurement of and exceptions to coverage, setback, and height standards are found in Art 5. Actual maximum build out potential may be reduced by site plan and architectural design considerations of Art 6.

2 – Structures shall be setback a minimum of 25-feet along any zoning district boundary line that abuts a residential zoning district. Lots of record existing as of September 9, 2015 that are split by enterprise and residential zones are exempt from this district boundary setback.

3 – Percentage of the lot depth.

The property does not abut a residential zoning district. **(Affirmative finding)**

(c) Permitted and Conditional Uses

Cafés are Conditional Uses in the E-LM. See Section 3.5.6 (a), above. **(Affirmative finding)**

(d) District Specific Regulations

1. *Convenience Stores* Not applicable.

2. *Drive Thrus* Not applicable.

Article 5: Citywide General Regulations

Part 5, Performance Standards

Sec. 5.5.2 Outdoor Lighting

The application notes bollard and wall pack lighting. The spec sheets provided for these light fixtures indicate compliance with the lighting standards of this section. **(Affirmative finding)**

Sec. 5.5.3 Stormwater and Erosion Control

The applicant submitted Erosion Prevention / Sediment Control and stormwater plans. These plans will be reviewed by the Stormwater Program Manager to ensure compliance with the wastewater, stormwater and pollution control regulations of Chapter 26, Burlington Code of Ordinances. Approval of these plans will be required prior to release of the zoning permit.

(Affirmative finding as conditioned)

Sec. 5.5.4, Tree Removal

(a) Review criteria for zoning permit requests for tree removal

(1) Grounds for approval

Tree removal involving six (6) or more trees, each of ten (10) inches or greater in caliper or the removal of ten (10) or more trees, each of which is three (3) inches or greater in caliper during any consecutive twelve (12) month period may be permitted for any of the following reasons:

D. As part of a development with an approved zoning permit.

The project site will be cleared of trees as part of the proposed development. **(Affirmative finding)**

Article 6: Development Review Standards

Part 1: Land Division Design Standards

Not applicable.

Part 2: Site Plan Design Standards

(a) Protection of Important Natural Features:

There are no natural features as identified in the Natural Resources Overlay map within the property. The site is currently undeveloped and will be cleared to make way for the proposed development. Tree removal will occur to make way for the proposed development. **(Affirmative finding)**

(b) Topographical Alterations:

The applicant expects there to be 2-4 feet of site grading/excavation to make way for the development. The end result of the project, however, will see insignificant topographic alterations. **(Affirmative finding)**

(c) Protection of Important Public Views:

There are no protected public views from the parcel. Not applicable.

(d) Protection of Important Cultural Resources:

There are no cultural resources on the subject property. Not applicable.

(e) Supporting the Use of Renewable Energy Resources:

Clearing the lot will allow for natural sunlight. No other renewable resources are proposed nor required, but always encouraged. **(Affirmative finding)**

(f) Brownfield Sites:

The property is an identified brownfield site and is also located within the Pine Street Canal Superfund Site. The applicant has stated that he has been working with VT DEC to meet compliance with their requirements in order to develop the property. No information has been submitted regarding this, but ensuring compliance with DEC and EPA requirements will be a condition of this permit. **(Affirmative finding as conditioned)**

(g) Provide for nature's events:

An approved Erosion Prevention and Sediment Control plan, as well as a stormwater plan, will be required prior to the release of the zoning permit. Since the café use will operate between May and November, snow storage should not be a concern. The development will see a covered seating area, and awnings over the customer ordering windows. **(Affirmative finding as conditioned)**

(h) Building Location and Orientation:

The container structures will locate along the periphery of the lot, with a two-story covered seating area. Also a second story container kitchen is also proposed at the property's rear. The general layout provides for an open central area, well seen from Pine Street. **(Affirmative finding)**

(i) Vehicular Access:

The development proposes direct access off Pine Street with two curb cuts to allow for an easy, one-way circulation pattern. See site plan. **(Affirmative finding)**

(j) Pedestrian Access:

Pedestrians will have direct access from the Pine Street sidewalk. Internal walkways and stairs will be provided for access to the café use. **(Affirmative finding)**

(k) Accessibility for the Handicapped:

The building inspector has jurisdiction over ADA requirements, and the proposal must comply with the Burlington Code of Ordinances. **(Affirmative finding as conditioned)**

(l) Parking and Circulation:

The development will have a one-way driveway (with two curb cuts on Pine Street), and three parking spaces for food pick-ups/deliveries. The width is adequate to allow for both the parking spaces and the thru lane. **(Affirmative finding)**

(m) Landscaping and Fences:

The site plan shows two planter boxes that will act as a barrier to the area behind the flanking trailers. Also included is ornamental grass in the Pine Street right-of-way greenspace. A retaining wall will be installed along the rear and south side property lines, and along a small portion of the north side property line. **(Affirmative finding)**

(n) Public Plazas and Open Space:

Not applicable.

(o) Outdoor Lighting:

The applicant has submitted lighting spec sheets, and the plans show where the fixtures will locate. Pendant lighting is shown above the seating area and restroom entrances, and bollard light posts will locate at the front of the covered seating area. **(Affirmative finding)**

(p) Integrate infrastructure into the design:

Electric and water utilities will be provided underground. No other utilities are proposed. The site plan identifies trash/recycling areas. Standard waste/recycling bins will locate in front of the side-flanking containers where customers will pass on their way off the site. These bins will need to be visually screened from the Pine Street right-of-way. Larger trash/recycling bins will be placed in a nook, out of sight from the Pine Street right-of-way. **(Affirmative finding as conditioned)**

Part 3: Architectural Design Standards

Sec. 6.3.2 Review Standards

(a) Relate development to its environment:

1. Massing, Height and Scale:

The massing, height, and scale of the proposed development is less than that of nearby development. The use of shipping containers for the café is unique, but fitting for the ELM zoning district.

2. Roofs and Rooflines.

The container structures will have flat roofs, and the covered seating area will have a glazed roof.

3. Building Openings

The only openings on the containers appear to be for employee access, and customer ordering windows. **(Affirmative finding)**

(b) Protection of Important Architectural Resources:

Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Where the proposed development involves buildings listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8. The introduction of new buildings to a historic district listed on a state or national register of historic places shall make every effort to be compatible with nearby historic buildings.

Not applicable.

(c) Protection of Important Public Views:

Not applicable.

(d) Provide an active and inviting street edge:

In arrangement, design and appearance, the design provides an active and inviting street edge. The site layout is clearly discernable from the street front. **(Affirmative finding)**

(e) Quality of materials:

All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.

The shipping containers are made of steel, so they will be durable throughout all seasons. The glazed roofing and steel beam support structure (covered seating area) will also be durable for all seasons. **(Affirmative finding)**

(f) Reduce energy utilization:

All new construction is required to meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances. The proposal is for an outdoor café, where heating shouldn't be much of a concern. However, it is likely that portable propane heaters will be used on chillier days. The applicant notes that solar panels may be installed on the seating area's roof. While not a requirement, use of solar energy is always encouraged. **(Affirmative finding)**

(g) Make advertising features complementary to the site:

The plans show wall signs for each container café which appear to be compliant with the size and placement requirements/limitations for wall signs. Prior to the release of the zoning permit, the applicant will have to provide details for each sign, highlighting dimensions and the materials to be used. **(Affirmative finding as conditioned)**

(h) Integrate infrastructure into the building design:

Underground electric/water utilities (and assuming gas) will be used. No other infrastructure is noted. Venting will locate on the rear of the container kitchens. **(Affirmative finding as conditioned)**

(i) Make spaces secure and safe:

The proposed development must comply with all building and life safety code as defined by the building inspector and fire marshal. **(Affirmative finding as conditioned)**

Article 7: Signs

Sec.7.2.13: Wall Sign

Specifications

Height (max)	No higher than the floor level of the second story.
Area (max)	<ul style="list-style-type: none"> • 2 sf per linear foot of street frontage, or elevation where no street frontage is available, associated with a first floor tenant. • 10 sf for a second floor tenant with only a ground floor entryway. • In no case may the total area of all Wall Signs exceed the lesser of two hundred (200) square feet or fifteen (15%) per cent of the area of the façade or elevation to which they are attached. • A Wall Sign in any residential district shall not exceed 6-sf in area. • A Wall Sign in a RCO-R/G district shall not exceed 20-sf in area.
Depth/Projection (max)	12-in max. from the facade

Dimensions have not yet been provided, but the wall signs shown on each container kitchen above the ordering windows will easily comply with the size limitations set forth above. The applicant will have to provide specific dimensions for each sign proposed, and note their material. **(Affirmative finding as conditioned)**

Article 8: Parking

Sec. 8.1.8, Minimum Off-Street Parking Requirements

The property is located within the Multimodal Mixed Use Parking District, where parking requirements have been eliminated. The applicant proposes three short term parking spaces along the driveway for to-go food pick-ups. **(Affirmative finding)**

Sec. 8.2.4, Bicycle Parking Requirements

Bicycle parking for retail sales and service is required at the rate of 1 space per 12,000 sf of gross building area (long term) and 1 space per 2,000 sf of gross building area (short term). Based on a total building area of 1,280 sf, the development will require 1 long term space and 1 short term

space. The plans indicate two bike racks with 10 short term bike spaces. The plans do not indicate 1 long term bike space, and will need to. **(Affirmative finding as conditioned)**

II. Conditions of Approval

1. **At least 7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the City Treasurer’s Office or Planning and Zoning office impact fees as calculated by staff based on the net new square footage of the proposed development. As submitted, impact fees are:

SF of Project 1,280

Department	Retail	
	Rate	Fee
Traffic	0.839	1,073.92
Fire	0.227	290.56
Police	0.400	512.00
Parks	0.478	611.84
Library	0.000	0.00
Schools	0.000	0.00
Total	1.944	\$ 2,488.32

2. **Prior to the release of the zoning permit**, the associate Erosion Prevention and Sediment Control plan, as well as the stormwater plan, shall be approved by the Stormwater Program Manager.
3. **Prior to the release of the zoning permit**, the applicant shall submit specs on each proposed sign, including dimensions and materials.
4. **Prior to the release of the zoning permit**, the plans shall be revised to include the following:
 - screening of the trash/recycling bins located in front of the container kitchens; and
 - one long-term bicycle parking space.
5. **Prior to the start of construction**, the applicant shall obtain all necessary approvals/permits from VT DEC and the EPA with regard to the brownfield site and the Pine Street Canal Superfund Site.
6. **Prior to the start of construction**, the applicant shall obtain curb cut approval from the Dept. of Public Works for the proposed curb cuts on Pine Street.
7. All utilities serving the site shall be underground.
8. Construction hours shall be limited to Monday-Friday 7:30 am to 5:30 pm, Saturdays limited to interior work unless specific allowances are granted by the DRB, and no construction permitted on Sundays
9. A state wastewater permit may be required. It is the applicant’s responsibility to inquire with VT DEC as to whether such permit is necessary.
10. Any future enlargement or alteration shall be reviewed under the zoning regulations in effect at that time.
11. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as

may be required, and shall meet all energy efficiency codes of the city and state as required.

12. Standard permit conditions 1-15.