

LEGAL NOTICE

NOTICE IS HEREBY GIVEN IN ACCORDANCE WITH CHAPTER 290-142F., G. OF THE CODE OF THE TOWNSHIP OF RADNOR, THAT A PUBLIC HEARING WILL BE HELD BY THE RADNOR TOWNSHIP ZONING HEARING BOARD ON **THURSDAY, JUNE 21, 2012 AT 7:30 PM** IN THE RADNOR TOWNSHIP MUNICIPAL BUILDING, 301 IVEN AVENUE, WAYNE, PA, AT WHICH TIME THE FOLLOWING MATTERS WILL BE CONSIDERED:

APPEAL #2877

The Applicants, Radnor Fire Company and Metro PCS Pennsylvania, LLC property located at 121 South Wayne Avenue, Wayne, PA. Appeal continued from May hearing.

APPEAL #2881

The Applicant Goshen Holding Company, LP property located at 800 Goshen Road, Lot 9, and zoned R1. Applicant seeks to appeal the Township Zoning Officer's grading permit application denial dated April 5, 2012, received by the Applicant on April 9, 2012 (the "Denial").

APPEAL #2882

The Applicant, PNB Bank National Association, property located at 550 E Lancaster Avenue and zoned PB. The Applicant is seeking relief from Section 280-123.B of the Code to permit the installation of 3 wall signs to identify the PNC Bank in the St David's Square Shopping Center.

Appeal #2883

The Applicant, C F Holloway III & Company Inc, property located at 229 W Wayne Avenue and zoned C1 and R5. The Applicant seeks to appeal the Township Zoning Officer's zoning determination dated and received by the Applicant on May 22, 2012 (the "Zoning Determination").

Please publish: June 6, 2012

June 13, 2012

ZONING HEARING BOARD APPLICATION

TOWNSHIP OF RADNOR

301 IVEN AVENUE

WAYNE, PA 19087

610-688-5600

FAX: 610-971-0450

www.radnor.com

TOWNSHIP USE ONLY
APPEAL # <u>2877</u>
FEE: _____
DATE RECEIVED: _____

GENERAL INFORMATION: Applicants are strongly encouraged to review the "Requirements and Information for Appeals to the Zoning Hearing Board" that are attached to this application. Ten (10) copies of this application with required attachments must be filed with the Community Development Department not less than *thirty (30)* calendar days prior to the hearing.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED FOR PROCESSING

APPLICATION FEE: RESIDENTIAL \$550.00 NONRESIDENTIAL: \$700.00

PLEASE TYPE OR PRINT

Property address: 121 South Wayne Avenue, Wayne, PA 19087

Name of applicant: Radnor Fire Company/MetroPCS Pennsylvania, LLC (Joint Applicants)

Telephone number: 215-619-9300 Email: _____

Property Owner (if different than above): Radnor Fire Company (Deed Attached)

Property address: 121 South Wayne Avenue, Wayne, PA 19087

Telephone number: 610-636-2468 Email: _____

Attorney's name: Nicholas A. Cuce, Jr., Esquire, Riley Riper Hollin & Colagreco

Address: 717 Constitution Drive, Suite 201, Exton, PA 19341

Telephone number: 610-458-4400 Email: Nickc@rrhc.com

Relief requested and/or basis for appearing before the Zoning Hearing Board including *specific citation to any and all sections of the Zoning Code relevant to the appeal. (attach additional pages if necessary)*

See Addendum "A" attached hereto and incorporated by reference.

Description of previous decisions by the Zoning Hearing Board pertinent to the property, or attach copies of decisions: *(attach additional pages if necessary)*

Brief narrative of proposed improvements: *(attach additional pages if necessary)*

None to Applicants' knowledge.

Brief narrative of proposed improvements: *(attach additional pages if necessary)*

See Addendum "A" attached hereto and incorporated by reference.

ATTACHMENTS: Ten (10) copies of each of the following *must be* provided:

Engineered plan or survey of the property drawn to scale, prepared by a registered architect, engineer or surveyor licensed in Pennsylvania, containing the following information:

- a) lot lines and lot dimensions described in metes and bounds (in feet)
- b) total lot area;
- c) location of easements and rights of way, including ultimate rights of way;
- d) location of all setback lines for existing and proposed structures;
- e) location of steep slopes, floodplains, riparian buffers, wetlands, and other pertinent features; f) location of existing and proposed improvements;
- g) table of zoning data including zoning district, required setbacks, existing and proposed building coverage, impervious coverage, height, and other pertinent zoning restrictions, and specifying whether the existing and/or proposed improvements comply with the zoning requirements, or specify the degree of any noncompliance; and,
- h) all other features or matters pertinent to the application

PLANS SHALL NOT EXCEED 24" X 36" , AND MUST BE NEATLY FOLDED TO NO GREATER DIMENSION THAN 8 ½" X 11" AT FILING

Please indicate whether the following additional requirements are included:

Y ___ N X List of witnesses and summary of testimony.

Y X N ___ Photographs of the property at issue and all adjoining properties.

Y X N ___ Copies of written professional reports, including traffic studies, land planning studies, appraisals, floodplain analyses, economic forecasts or other written reports which the applicant wishes to present at the hearing. (*note - the author of the study or a qualified representative of the entity who prepared the study must appear at the meeting and be available for cross-examination*)

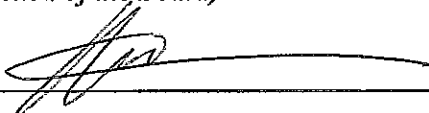
Y X N ___ Copy of deed, lease, agreement of sale, or other authorization to file the appeal. (*note leases or agreements of sale either must expressly permit the tenant or buyer to file the appeal, or must be accompanied by a by a letter from the owner clearly authorizing tenant or buyer to file the appeal*)

Y ___ N X Will this application involve land development or the subdivision of land. Applications that involve land development subdivision of land are referred to the Planning Commission for review and recommendation. *Applicants will be notified of the date and time of the Planning Commission meeting*

Y ___ N X Will briefs or memoranda of law be filed in accordance with requirements of the Zoning Hearing Board. (*note - 10 copies of any brief or memorandum of law to be submitted by the applicant must be received by the Community Development Department no later than 14 days prior to the meeting*)

Y X N

Will the applicant (or duly authorized officer of the applicant, if applicant is not a natural person) be present at the hearing. If not, then power of attorney, notarized and in recordable form, authorizing the person who will testify on behalf of the applicant, and to bind the applicant in any proceedings of the Board must be presented at or before commencement of the hearing. Attorneys, agents, or other representatives of the applicant may not appear and testify on behalf of the applicant without power of attorney. Forms of power of attorney are available in the Community Development Department. *(note- failure to provide power of attorney will result in either the appeal being discontinued, or being dismissed, at the discretion of the Board)*



SIGNATURE OF APPLICANT

Nicholas A. Cuce, Jr., Esquire, Authorized Agent for Applicants

AN ADDITIONAL FEE F \$150 SHALL BE CHARGED FOR ANY CONTINUANCE REQUESTED BY THE APPLICANT. THIS FEE SHALL BE PAID PRIOR TO THE RESCHEDULING OF THE HEARING.

***BEFORE THE ZONING HEARING BOARD
OF RADNOR TOWNSHIP***

**IN RE: JOINT ZONING APPLICATION OF
RADNOR FIRE COMPANY AND METRO PCS PENNSYLVANIA, LLC
SITE #PH0333B/WAYNE/RADNOR FIRE COMPANY
121 SOUTH WAYNE AVENUE**

ADDENDUM "A" TO ZONING HEARING BOARD APPLICATION

I. BACKGROUND

The subject property ("Property") is owned by Radnor Fire Company and is located at 121 South Wayne Avenue, Wayne, Radnor Township, Delaware County, Pennsylvania. The Property is further identified as Tax Parcel No. 32-12-394:000 and is presently within the WBOD-Wayne Business Overlay District. The Property is roughly .882 acres in area and is improved with an existing firehouse and an existing 95 foot lattice tower with emergency services antennas attached thereto (the top of the existing emergency services whip antenna is 109'-3" feet). The lattice tower is housed within an existing fenced compound in the most southeastern portion of the Property.

Radnor Fire Company and MetroPCS Pennsylvania, LLC ("Applicants") both have significant coverage needs in this area. The Applicants propose the removal of the existing lattice tower to be replaced by a proposed 104'-6" foot monopole (118'-6" feet to the top of the relocated emergency services antenna). The Fire Company proposes to place all of its antennas currently on the lattice tower at the top of the proposed monopole to increase emergency service coverage. Metro's installation would consist of the addition of six (6) panel style cabinets (two per sector) at 94'-4" feet (centerline of antennas). Further, Metro proposes the placement of three (3) cabinets and one (1) cabinet on a utility backboard at the base of the proposed monopole on a ten (10) foot by sixteen (16) foot concrete pad. As noted, the existing chain link fencing would be removed and the new expanded compound would be surrounded by a proposed six (6) foot high estate fence to match what is existing on the property. Both access and parking are proposed by use of the existing parking lot.

II. REQUEST FOR RELIEF

Applicants request the following:

1. The grant of a Use Variance from Section 280-53.7 of the Radnor Township Zoning Ordinance (as amended "Zoning Ordinance") to allow for the continued use of emergency services transmissions from a newly constructed tower as well as the addition of the wireless telecommunications facility to be housed at the site on the proposed replacement tower.

2. Dimensional Variances from Section 280-164B of the Zoning Ordinance to allow for the existing lattice tower to be replaced by the proposed monopole. Section 280-164B has set the minimum setback shall be maintained from all property lines at distance equal to 75% of the structure's height or 89.25 (measuring to the top of the proposed whip antenna) feet from all property lines. The proposed replacement monopole will be twelve (12) feet from the southern most property line and 22 feet from the eastern property line.

3. The Applicants also apply for such other interpretations, waivers and/or variances as may ultimately be required.

III. REASONS WHY ZONING RELIEF SHOULD BE GRANTED

The proposed use is suitable for the Property and is in the best interests of the community and the requested relief should be granted for the following reasons:

1. The proposed facility is necessary in order for Applicant to provide telecommunications service in accordance with its Federal Communications commission license and the Telecommunications Act of 1996.

2. The addition of a telecommunication facility, a passive communications use, is a suitable and appropriate use of the Property. The proposed use is consistent with the spirit, purpose and intent of the Ordinance as collocation is encouraged in the Township. Further, the Radnor Fire Company is in need of a new tower to provide additional antenna height and thus greater emergency services signal to the Township.

3. The proposed use will not substantially injure or detract from the use of neighboring properties or from the character of the neighborhood and the use of the properties adjacent to the Property will be adequately safeguarded noting that a lattice tower currently exists on this portion of the property and the new monopole will be constructed utilizing the most recent industry construction standards for this type of structure.

4. The proposed use will serve the best interest of the Township, the convenience of the community, and the public welfare by improving emergency services signal and making additional wireless telecommunications service available.

5. The proposed use will be entirely consistent with the logical, efficient and economical extension of public services and facilities within the Township including police and fire protection.

6. The proposed facility will be designed in accordance with all applicable safety and industry standards, and will not endanger the safety of persons or property.

7. The proposed use will not over crowd the land or create an undue concentration of population.

8. The proposed use will not impair an adequate supply of light and air to adjacent property.

9. The proposed facility will be fully automated and unattended on a daily basis and will be visited only for periodic maintenance or emergency repair.

10. The proposed use will not adversely affect transportation or unduly burden public facilities.

11. The relief, if authorized, will represent the minimum relief necessary in order for Applicant to provide wireless telecommunications services and will represent the least modification possible of the regulation in issue. The height of the telecommunications facility is the minimum height necessary to perform its function.

12. The telecommunications facility complies with all applicable standards established by the Federal Communications Commission.

13. The telecommunications facility shall not cause radio frequency interference with other communications facilities located in the Township.

14. The applicant is licensed by the Federal Communications Commission to operate the telecommunications facility.

15. The telecommunications facility shall comply with all applicable Federal Aviation Administration and Commonwealth Bureau of Aviation Regulations.

16. The surrounding neighborhood will not be subjected to objectionable noise, lighting, glare, heat, ventilation, smoke, fumes, vapors, dust, dirt, gases or radioactive or electrical disturbances by the proposed use or change. No signs or lights will be mounted on the telecommunications facility.

17. The telecommunications facility will be maintained in a safe manner in accordance with the requirements of the Township's Building Code.

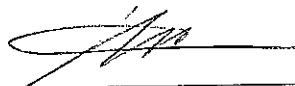
For all of the reasons stated above, Applicant requests the above referenced relief and any other relief the Board deems necessary.

Detailed Plans of the proposed use have been submitted to the Zoning Hearing Board Secretary and Zoning Officer, to be incorporated by reference herein, for consideration before the Zoning Hearing Board.

Respectfully submitted,
RILEY RIPER HOLLIN & COLAGRECO

Date: March 6, 2012

By:



Nicholas A. Cucé, Jr., Esquire
Attorney for Applicant

**ZONING HEARING BOARD APPLICATION
TOWNSHIP OF RADNOR**

**301 IVEN AVENUE
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610-688-5600
FAX: 610-971-0450
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TOWNSHIP USE ONLY
APPEAL # <u>2881</u>
FEE: _____
DATE RECEIVED: _____

GENERAL INFORMATION: Applicants are strongly encouraged to review the "Requirements and Information for Appeals to the Zoning Hearing Board" that are attached to this application. Ten (10) copies of this application with required attachments must be filed with the Community Development Department not less than thirty (30) calendar days prior to the hearing.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED FOR PROCESSING

APPLICATION FEE: RESIDENTIAL \$550 NONRESIDENTIAL: \$700

PLEASE TYPE OR PRINT

Property Address: 800 Goshen Road, Lot 9

Name of applicant: Goshen Holding Company, LP

Telephone number: 610-964-9140 **Email:** cas@cfholloway.com

Property Owner (if different than above): Same as Applicant

Address: 110 Gallagher Road, Wayne, PA

Telephone number: Same as Applicant **Email:** Same as Applicant

Attorney's name: David J. Falcone, Esquire

Address: Saul Ewing, LLP, 1200 Liberty Ridge Drive, Suite 200, Wayne, PA 19087

Telephone number: 610-251-5752 **Email:** dfalcone@saul.com

Relief requested an/or basis for appearing before the Zoning Hearing Board including *specific citation to any and all sections of the Zoning Code relevant to the appeal. (attach additional pages if necessary)*

Appeal of Township Zoning Officer's Grading Permit Application Denial dated April 5, 2012, received by the Applicant on April 9, 2012 (the "Denial"). The Denial misapplies the facts related to the Property and improperly denies a permit that should be granted. The Denial is appealed on the following grounds:

(i) the Denial was issued by an improper officer of the Township (the Township Zoning Officer). The party authorized to either issue or deny such a permit is the Township Engineer who previously advised the applicant that the permit was approved. (ii) The Denial states that the permit application violates Section 280-112.D and E of the Township Zoning Ordinance. At the time the permit application was made, the then acting Township Engineer (Daniel Malloy) reviewed the permit and accompanying plan and approved the plan in its then current form. The plan remains unchanged from that which was approved by the Township Engineer. Notably, no appeal was taken from Mr. Malloy's determination. In fact, the Township proceeded to process the application and request an escrow from the Applicant to finalize the release of the permit. Escrow was posted with the Township in accordance with the Township's request. (iii) With respect to the designation of "Open Space" on the originally recorded land development plan, the Zoning Officer has improperly determined that Lot 9 is undevelopable "Open Space". Records from the time in which the note was placed on the plan, as well as records from subsequent hearings before the Township, evidence the fact that Lot 9 was never intended to be restricted open space. As further clarification, a revised declaration plan which removed the words "Open Space" from Lot 9, was presented to the Board and approved. The revised plan was signed by the Board and recorded with the County Recorder of Deeds. Accordingly, the Township Zoning Officer's denial of the grading permit based on the existence of an "Open Space" lot is factually unsupported. (iv) With respect to the Township Zoning Officer's opinion as to Article XVII (floodplain disturbance), the Denial does not state any grounds on which the permit may be denied. Nor does it purport to deny the permit on any factual basis.

Description of previous decisions by the Zoning Hearing Board pertinent to the property, or attach copies of decisions: *(attach additional pages if necessary)*

N/A

Brief narrative of proposed improvements: *(attach additional pages if necessary)*

Construction of a single family home on Lot 9 located at 800 Goshen. The construction will include retaining walls, sanitary sewer lines, a driveway and related improvements.

ATTACHMENTS: Ten (10) copies of each of the following must be provided:

Engineered plan or survey of the property drawn to scale, prepared by a registered architect, engineer or surveyor licensed in Pennsylvania, containing the following information:

- a) lot lines and lot dimensions described in metes and bounds (in feet)
- b) total lot area;
- c) location of easements and rights of way, including ultimate rights of way;
- d) location of all setback lines for existing and proposed structures;
- e) location of steep slopes, floodplains, riparian buffers, wetlands, and other pertinent features;
- f) location of existing and proposed improvements;
- g) table of zoning data including zoning district, required setbacks, existing and proposed building coverage, impervious coverage, height, and other pertinent zoning restrictions, and specifying whether the existing and/or proposed improvements comply with the zoning requirements, or specify the degree of any noncompliance; and,
- h) all other features or matters pertinent to the application

PLANS SHALL NOT EXCEED 24" X 36", AND MUST BE NEATLY FOLDED TO NO GREATER DIMENSION THAN 8 1/2" X 11" AT FILING

Y ___ N List of witnesses and summary of testimony. *(Undetermined until testimony of Zoning Officer is presented)*

Y N ___ Aerial Photograph of the property at issue and all adjoining properties.

Y ___ N Copies of written professional reports, including traffic studies, land planning studies, appraisals, floodplain analyses, economic forecasts or other written

reports which the applicant wishes to present at the hearing. *(note - the author of the study or a qualified representative of the entity who prepared the study must appear at the meeting and be available for cross-examination)*

Y N

Copy of deed, lease, agreement of sale, or other authorization to file the appeal *(note leases or agreements of sale either must expressly permit the tenant or buyer to file the appeal, or must be accompanied by a by a letter from the owner clearly authorizing tenant or buyer to file the appeal)*

Y N

Will this application involve land development or the subdivision of land. Applications that involve land development subdivision of land are referred to the Planning Commission for review and recommendation. Applicants will be notified of the date and time of the Planning Commission meeting

Y N

Will briefs or memoranda of law be filed in accordance with requirements of the Zoning Hearing Board. *(note - 10 copies of any brief or memorandum of law to be submitted by the applicant must be received by the Community Development Department no later than 14 days prior to the meeting)*

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SIGNATURE OF APPLICANT



By: David J. Falcone, Esq., Attorney for Applicant

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ZONING HEARING BOARD APPLICATION

TOWNSHIP OF RADNOR

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WAYNE, PA 19087

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TOWNSHIP USE ONLY
APPEAL # <u>2882</u>
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PLEASE TYPE OR PRINT

Property address: 550 E. Lancaster Avenue, St. Davids, PA

Name of applicant: PNC Bank National Association

Telephone number: 215-749-5577 Email: joseph.hanley@pnc.com

Property Owner (if different than above): KMO-361 Realty Associates, LLC

Property address: Ryan Guheen, Mall Properties, Inc., 654 Madison Ave. 11th Floor, New York NY 10005

Telephone number: 212-217-6673 Email: rguheen@mallproperties.com

Attorney's name: Craig R. Lewis, Esquire

Address: 910 Harvest Drive, Blue Bell, PA 19422

Telephone number: 610-941-2584 Email: rlewis@kaplaw.com

Relief requested and/or basis for appearing before the Zoning Hearing Board including *specific citation to any and all sections of the Zoning Code relevant to the appeal. (attach additional pages if necessary)*

Variance from Section 280-123.B

See attached narrative for further explanation

Description of previous decisions by the Zoning Hearing Board pertinent to the property, or attach copies of decisions: *(attach additional pages if necessary)*

Brief narrative of proposed improvements: *(attach additional pages if necessary)*

See attached narrative

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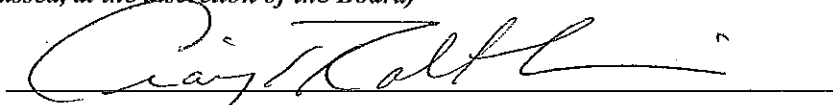
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- Y N** List of witnesses and summary of testimony.
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- Y N** Copies of written professional reports, including traffic studies, land planning studies, appraisals, floodplain analyses, economic forecasts or other written reports which the applicant wishes to present at the hearing. (*note - the author of the study or a qualified representative of the entity who prepared the study must appear at the meeting and be available for cross-examination*)
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- Y N** Will briefs or memoranda of law be filed in accordance with requirements of the Zoning Hearing Board. (*note – 10 copies of any brief or memorandum of law to be submitted by the applicant must be received by the Community Development Department no later than 14 days prior to the meeting*)

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SIGNATURE OF APPLICANT
~~ATTORNEY FOR APPLICANT~~

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George W. Broseman, Esquire Attorneys for Applicant
Craig Robert Lewis, Esquire
Identification Nos. 62649 and 83564
Union Meeting Corporate Center
910 Harvest Drive
Post Office Box 3037
Blue Bell, PA 19422
(610) 941-2459
gbroseman@kaplaw.com
rlewis@kaplaw.com

**BEFORE THE ZONING HEARING BOARD
OF THE TOWNSHIP OF RADNOR, DELAWARE COUNTY, PENNSYLVANIA**

In the Matter of:

**PNC Bank National Association
Lessee/Applicant
T.M.P. 36-03-01702-02**

Premises:

**St. David's Square Shopping Center
550 E. Lancaster Avenue
St. David's, PA**

ADDENDUM TO ZONING HEARING BOARD APPLICATION

PNC Bank National Association, through their attorneys George W. Broseman and Craig Robert Lewis, hereby file this Zoning Hearing Board Application seeking relief to permit the installation of three (3) wall signs totaling 139.04 sq. ft. (+/-) to identify the PNC Bank located at 550 E. Lancaster Avenue, known as the St. David's Square Shopping Center, and in support thereof state as follows:

1. Name and Address of Applicant. Applicant is PNC Bank National Association ("PNC") c/o Joseph Hanley, The Eastwick Center, 8800 Tinicum Boulevard, Philadelphia, Pennsylvania 19153. PNC is the lessee of a pad site located in the St. David's Square Shopping Center ("Center").¹ The Center is owned by KMO-361 Realty Associates, LLC ("KMO") as

¹ A redacted copy of the lease between KMO and PNC is attached hereto and incorporated herein as Exhibit "A". The Lease specifically authorizes PNC to seek any necessary permits and approvals for the signs that are the subject of this Application.

evidenced by a deed dated May 7, 1986, which was recorded in the Delaware County Recorder of Deed's Office in Deed Book 338, page 1066. A copy of that deed is attached hereto as Exhibit "B". As set forth in the Lease, KMO has authorized the filing of the instant application.

2. **Description of Property.** The real estate affected by this application is located at 550 E. Lancaster Avenue, St. David's, PA and consists of approximately 24 acres (+/-) (gross) (collectively hereinafter the "**Property**"). The Property is depicted on a plan prepared by Site Engineering Concepts, LLC, entitled "550 E. Lancaster Avenue – KMO-361 Realty Associates, LLC – Overall Proposed Plan" dated November 8, 2011, last revised April 2, 2012 ("**Site Plan**"), a copy of which is attached hereto and incorporated herein as Exhibit "C". It is noted that this plan depicts improvements to be constructed pursuant to a Preliminary/Final land development plan recently approved by the Radnor Township Board of Commissioners by Resolution No. 2012-20, specifically permitting the construction of the PNC Bank pad site that is the subject of this application. As depicted on the Site Plan, the Property is irregularly shaped with frontage along both Lancaster Avenue and Iven Avenue. Vehicular access to the Property is by means of two access points along Lancaster Avenue. According to the Radnor Township Zoning Map, the Property is primarily located in the PB Planned Business Zoning District ("**PB District**"), while an undeveloped portion of the Property is located in the R-1 Residential Zoning District.

3. **Description of St. David's Square Shopping Center.** The Center is located on a 24 acre (+/-) (gross) tract of land fronting on Lancaster and Iven Avenues. The Property is, but for two narrow strips of ground, located along the northwest and southeast property lines, zoned PB Planned Business District. The narrow strips of ground are zoned R-1 Residence District and serve as a buffer space. The Property is across Lancaster Avenue from other PB Planned Business District lands which include the Radnor Hotel, various retail uses, restaurants,

the Radnor Financial Center, a bank with drive-through facilities, office buildings and a fitness facility.

In the 1960's, the Property was developed with the B. Altman Department Store. Some time *circa* 1989-1990, the B. Altman's Department Store ceased operations and the Property underwent redevelopment to deal with the loss of B. Altman's Department Store. Pursuant to a 1991 land development plan approved by Radnor Township ("**1991 Development Plan**"), the former B. Altman's Department Store two-story building was converted to a multi-use structure which now houses the TJ Maxx, Bed, Bath & Beyond, Genuardi's Supermarket, and Home Goods. The 1991 Development Plan included construction of two additional buildings, a 50,000 s.f. (+/-) building now occupied by Micro Center, and a 10,000 s.f. (+/-) building devoted to multiple uses.

Contemporaneously with the 1991 Development Plan approval, KMO entered into a Declaration of Covenants dated October 25, 1991 ("**Declaration**") which, among other things, precluded the construction of additional floor area on the Property for a 25-year period ending in 2016. The Declaration is "for the sole benefit of an enforceable solely by the Township of Radnor (and not for the benefit of, and enforceable by, any neighboring or other property owners)." The Declaration provides that it may be terminated, modified or amended by mutual agreement of the Radnor Township Board of Commissioners and by the owner of the Property.

In 2011, the Township Commissioners approved an amendment to the Declaration to allow for construction of a 5,000 s.f. stand-alone bank (with drive-thru facilities) as well as an addition to the 10,000 s.f. Building. The Declaration amendment process involved substantial outreach to and dialog with surrounding landowners and multiple reviews by the Township Planning Commission and Board of Commissioners. As part of that process KMO agreed to

include other improvements to the Property unrelated to the Bank on the proposed land development plans for the Bank. Those improvements are described as follows:

- a) A new walk on the west side of the Property to provide an improved pedestrian connection between Lancaster Avenue and the lower and upper portions of the shopping center;
- b) An expanded walk at the main entrance connecting Lancaster Avenue to the lower portion of the shopping center, with a proposed crosswalk to the Block B Building (now occupied by "Micro Center");
- c) Additional plantings within the buffer areas adjacent to St. David's Park condominium and Radnor Crossing apartments;
- d) Reconfiguration of the parking and circulation area adjacent to the Genuardi's loading area to improve truck access, together with new plantings to improve visual screening of this area from adjacent residential uses;
- e) Widened landscape islands and with new plantings within the Genuardi's parking area;
- f) New way-finding signage;
- g) A new fence on the "slope" between Genuardi's loading area and the 10,000 s.f. Building.

In or about November, 2011, KMO filed an application seeking preliminary/final land development approval for the construction of the Bank with drive-through facilities. By Resolution 2012-20 the Radnor Township Board of Commissioners approved KMO's proposed development of the Center in accordance with the Site Plan. Business signage necessary to identify the approved Bank is the subject of this Application.

4. **Bank Location** As depicted on the Site Plan, the Bank with drive-through facilities ("Bank Pad") will be built over an existing paved area in the middle portion of the Property proximate to Lancaster Avenue and the primary site access from Lancaster Avenue. The location for the proposed bank is distant from the nearest residential neighbors. The Bank will not have direct access from Lancaster Avenue.

5. **Proposed Signage.** Given the configuration of the Bank Pad, PNC has determined that certain business signs are needed to properly identify the bank to vehicular and pedestrian traffic. The proposed signs are detailed on plans prepared by Bohler Engineering, Inc., entitled "Building Elevations – PNC Bank NA, St. David's Square Signage Zoning Plans" dated May 21, 2012, consisting of 2 sheets ("**Sign Details**"). The Sign Details are attached hereto as Exhibit "D". As set forth on the Sign Details, PNC proposes to install three (3) wall signs each consisting of 46.35 sq. ft. (+/-), for a total sign area of 139.04 sq. ft. (+/-). One wall sign to be located on the North façade facing Lancaster avenue, one wall sign to be located on the west façade facing the principal parking lot of the Shopping Center, and one sign to be located on the South façade facing the Shopping center access drive (collectively hereinafter the "**Proposed Signs**"). A plan prepared by Bohler Engineering, entitled "Signage Zoning Plan", dated April 27, 2012, ("**Zoning Plan**"), identifies the locations of the proposed signs. The Zoning Plan is attached hereto as Exhibit "E".

6. **Relief Requested.** PNC request relief in the form of dimensional variances from § 280-123.B of the Radnor Township Code ("**Code**"), which permits only one (1) wall sign with a maximum total sign area of 60 sq. ft. As set forth on the Sign Details, the Proposed Signs consist of three (3) signs with a total of 139.04 sq. ft. (+/-) of sign area.

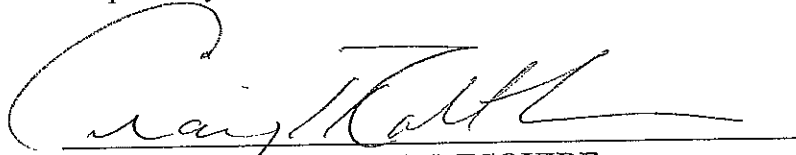
In light of the location of the Bank Pad, it's elevation above Lancaster Avenue, and the angles and sight lines of approach that will be required of customers attempting to locate the PNC Bank the proposed signs are necessary to properly identify the PNC Bank and to direct customers to the Bank Pad.

7. **List of Witnesses and Summary of Testimony.** PNC anticipates calling two (2) witnesses for direct testimony. The anticipated witnesses are as follows:

Joseph F. Hanley - Construction Project Manager, PNC Bank Realty Services:
Mr. Hanley will testify regarding the need for the proposed signs.

Eric A. Britz, PE – Bohler Engineering, Inc.: Mr. Britz will testify regarding the
proposed signs and the requests for relief.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "George W. Broseman", written over a horizontal line.

GEORGE W. BROSEMAN, ESQUIRE
CRAIG ROBERT LEWIS, ESQUIRE
Attorneys for Applicant

Date: May 21, 2012

ZONING HEARING BOARD APPLICATION

TOWNSHIP OF RADNOR

301 IVEN AVENUE

WAYNE, PA 19087

610-688-5600

FAX: 610-971-0450

www.radnor.com

TOWNSHIP USE ONLY
APPEAL # <u>2882</u>
FEE: _____
DATE RECEIVED: _____

GENERAL INFORMATION: Applicants are strongly encouraged to review the "Requirements and Information for Appeals to the Zoning Hearing Board" that are attached to this application. Ten (10) copies of this application with required attachments must be filed with the Community Development Department not less than thirty (30) calendar days prior to the hearing.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED FOR PROCESSING

APPLICATION FEE: RESIDENTIAL \$550

NONRESIDENTIAL: \$700

PLEASE TYPE OR PRINT

Property Address: 229 West Wayne Avenue

Name of applicant: C. F. Holloway, III & Company, Inc.

Telephone number: 610-964-9140

Email: cas@cfholloway.com

Property Owner (if different than above): Same as Applicant

Address: 110 Gallagher Road, Wayne, PA

Telephone number: Same as Applicant

Email: Same as Applicant

Attorney's name: David J. Falcone, Esquire

Address: Saul Ewing, LLP, 1200 Liberty Ridge Drive, Suite 200, Wayne, PA 19087

Telephone number: 610-251-5752

Email: dfalcone@saul.com

Relief requested and/or basis for appearing before the Zoning Hearing Board including *specific citation to any and all sections of the Zoning Code relevant to the appeal. (attach additional pages if necessary)*

Appeal of Township Zoning Officer's Zoning Determination dated and received by the Applicant on May 22, 2012 (the "Zoning Determination"). The Zoning Determination improperly interprets and misapplies the Township Zoning Ordinance. Specifically, the Zoning Officer opines that "when calculating the maximum amount of permitted impervious surfaces on a lot, the area within the right-of-way shall not be included in the calculations. *This would apply to both the lot area* and any improvements within the right-of-way." By refusing to allow the portion of the Lot located within the right-of-way to be calculated as part of the underlying lot area, the Zoning Officer has effectively shrunk the size of all lots in the Township abutting dedicated rights-of-way. Nothing within the Township Zoning Ordinance supports such a finding.

For more than twenty (20) years the Township has interpreted its Zoning Ordinance to allow the right-of-way to be calculated as part of the underlying lot, while further allowing such area within the right-of-way to be deemed pervious. The Township's Zoning Ordinance definitions of "Impervious Surface", "Street" and "Lot" all work together to guide an applicant, and the Township, in furtherance of this well established determination.

The Zoning Ordinance defines "Impervious Surface" as: "surfaces that do not absorb rainwater. All buildings, parking areas, driveways, interior roads, sidewalks and areas of concrete and nonporous asphalt or other areas of a lot as determined by the Township Engineer. This definition shall not include any portion of a lot located within the street." The term "Street" is defined as: "A strip of land, including the entire right-of-way, intended primarily as a means of vehicular and pedestrian travel, which may also be used to provide space for sewers, public utilities, shade trees and sidewalks." The term "Lot" is defined in the Zoning Ordinance as: "A parcel of land on which a principal building or, where authorized in this chapter, a unified group of buildings and any accessory buildings are or may be placed, together with the required open spaces, such open spaces and the area and dimensions of such lot being not less than the

minimum required by this chapter. The use of a lot for more than one principal building or for a unified group of buildings shall be considered as a subdivision, and the plan for any such use shall be subject to approval in accordance with Chapter 255, Subdivision of Land.”

Most notably, there is no definition of “Lot Area” in the Zoning Ordinance. Instead, Lot Area is defined only in the Subdivision and Land Development Ordinance and is defined as follows: “The area contained within the property lines of a lot shown on a subdivision plan or required by this chapter less the following: [Amended 7-17-2000 by Ord. No. 2000-20] (1) Seventy-five percent of the calculated one hundred year floodplain; (2) Seventy-five percent of the wetlands as defined by § 255-20B(4)(d) of the Code not within the calculated one hundred year floodplain; (3) Seventy-five percent of the slopes equal to or in excess of 20% of the area not within the one hundred year floodplain and wetlands; (4) The land area within an existing public right-of-way located within any R-1, R-1A, R-2, R-3, R-4, R-5 and R-6 Residential Zoning District.”

Based on the above definitions and the practice in the Township for the past twenty (20) plus years, the project engineer prepared plans which shows the right-of-way in the C-1 portion of the Property as part of the underlying Lot for purposes of calculating the impervious coverage in the C-1 District. Further, in accordance with the Zoning Ordinance, the Street (which includes the entire right of way) was calculated as pervious. Based upon those calculations, the proposed portion of the development in the C-1 District is compliant with the impervious coverage requirement set forth in the Zoning Ordinance.

In light of the foregoing, the Applicant appeals the Zoning Determination. If, however, the Board should deem the appeal unsuccessful, the Applicant seeks a Variance from the requirements of Section 280-48 with respect to impervious coverage calculations.

Description of previous decisions by the Zoning Hearing Board pertinent to the property, or attach copies of decisions: *(attach additional pages if necessary)*

N/A

Brief narrative of proposed improvements: *(attach additional pages if necessary)*

Renovation and development of the property into six (6) townhomes. The existing commercial building located on the Property will remain active but will be reduced in size per plans submitted to the Township

ATTACHMENTS: Ten (10) copies of each of the following must be provided:

Engineered plan or survey of the property drawn to scale, prepared by a registered architect, engineer or surveyor licensed in Pennsylvania, containing the following information:

- a) lot lines and lot dimensions described in metes and bounds (in feet)
- b) total lot area;
- c) location of easements and rights of way, including ultimate rights of way;
- d) location of all setback lines for existing and proposed structures;
- e) location of steep slopes, floodplains, riparian buffers, wetlands, and other pertinent features;
- f) location of existing and proposed improvements;
- g) table of zoning data including zoning district, required setbacks, existing and proposed building coverage, impervious coverage, height, and other pertinent zoning restrictions, and specifying whether the existing and/or proposed improvements comply with the zoning requirements, or specify the degree of any noncompliance; and,
- h) all other features or matters pertinent to the application

PLANS SHALL NOT EXCEED 24" X 36" , AND MUST BE NEATLY FOLDED TO NO GREATER DIMENSION THAN 8 1/2" X 11" AT FILING

- Y _____ N List of witnesses and summary of testimony. *(Undetermined until testimony of Zoning Officer is presented)*
- Y N _____ Aerial Photograph of the property at issue and all adjoining properties.
- Y _____ N Copies of written professional reports, including traffic studies, land planning studies, appraisals, floodplain analyses, economic forecasts or other written reports which the applicant wishes to present at the hearing. *(note - the author of the study or a qualified representative of the entity who prepared the study must appear at the meeting and be available for cross-examination)*
- Y N _____ Copy of deed, lease, agreement of sale, or other authorization to file the appeal *(note leases or agreements of sale either must expressly permit the tenant or buyer to file the appeal, or must be accompanied by a by a letter from the owner clearly authorizing tenant or buyer to file the appeal)*
- Y _____ N Will this application involve land development or the subdivision of land. Applications that involve land development subdivision of land are referred to the Planning Commission for review and recommendation. Applicants will be notified of the date and time of the Planning Commission meeting

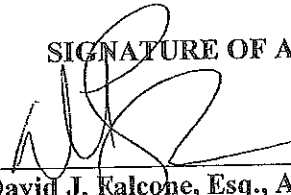
Y N

Will briefs or memoranda of law be filed in accordance with requirements of the Zoning Hearing Board. *(note - 10 copies of any brief or memorandum of law to be submitted by the applicant must be received by the Community Development Department no later than 14 days prior to the meeting)*

Y N

Will the applicant (or duly authorized officer of the applicant, if applicant is not a natural person) be present at the hearing. If not, then power of attorney, notarized and in recordable form, authorizing the person who will testify on behalf of the applicant, and to bind the applicant in any proceedings of the Board must be presented at or before commencement of the hearing. Attorneys, agents, or other representatives of the applicant may not appear and testify on behalf of the applicant without power of attorney. Forms of power of attorney are available in the Community Development Department *(note-failure to provide power of attorney will result in either the appeal being discontinued, or being dismissed, at the discretion of the Board)*

SIGNATURE OF APPLICANT



By: David J. Falcone, Esq., Attorney for Applicant

AN ADDITIONAL FEE OF \$150 SHALL BE CHARGED FOR ANY CONTINUANCE REQUESTED BY THE APPLICANT. THIS FEE SHALL BE PAID PRIOR TO THE RESCHEDULING OF THE HEARING.