

NOTICE OF PUBLIC HEARING  
BOARD OF ADJUSTMENT  
March 28, 2023

TO WHOM IT MAY CONCERN:

The applicant(s) listed below has requested a variance which is regulated by one or more of the following ordinances: Chapter 23, the Town/County Zoning Code, Chapter 26, the Floodplain Zoning Code, and Chapter 27, the Shoreland Zoning Code. You are receiving this notice because this application or petition for action: 1. affects area in the immediate vicinity of property which you own; 2. requires your agency to be notified; 3. requires your Town to be notified; or 4. requires you, as the applicant, to be notified.

The Winnebago County Board of Adjustment will be holding a public hearing on March 28, 2023 at 5:30 PM in Conference Room 120 of the County Administration Building located at 112 Otter Ave, Oshkosh, WI.

All interested persons wishing to be heard at the public hearing may appear in person or via Zoom using the meeting information below. A direct link to the Zoom Meeting is available on the Winnebago County Meetings and Agenda Calendar on the above indicated date.

**ZOOM MEETING INFORMATION LINK:** <https://www.co.winnebago.wi.us/planning-and-zoning/boa-meeting-links>

Additional Instructions can be found at: <https://www.co.winnebago.wi.us/planning-and-zoning>.

For further detailed information concerning this notice, contact the Town Clerk or the Winnebago County Zoning office where the application is available for viewing.

INFORMATION ON VARIANCE REQUEST

**Application No.:** 2023-VA-6290

**Applicant:** MARSH, STEPHEN & CHRISTINA

**Agent:** KALKOFEN, COREY MCMAHON ASSOCIATES

**Location of Premises:** 7579 MALLARD LN

**Tax Parcel No.:** 032-0726-0107

**Legal Description:** Being all of Units 7 and 7-2 of Poygan Shores Condominium Plat, located in Government Lot 2 of Section 36, Township 20 North, Range 14 East, Town of Wolf River, Winnebago County, Wisconsin.

**\* Explanation:** Applicant is requesting a variance for a sub standard side yard and floodplain fill requirement.

DESCRIPTION:	CODE REFERENCE:	REQUIRED:	PROPOSED:
The elevation of the lowest floor shall be at or above the flood protection elevation on fill unless the requirement in subsection (b)(2) can be met. The fill shall be one foot or more above the regional flood elevation extending at least 15 ft beyond the limits of the structure.	26.5-23(b)(1) Exhibit 8-2	Floodplain Fill: 15 ft Side Yard 5 ft	Floodplain Fill: 4.7 ft & 6.0 ft Side Yard: 4.7 ft
The side yard setback from the nearest point of a principle structure shall be at least 7 ft on one side & 10 ft on the other.			

## INITIAL STAFF REPORT

**Sanitation:** Existing; Private System

**Overlays:** Shoreland, floodplain

**Current Zoning:** PDD Planned Development District

**Surrounding Zoning:** **North:** PDD; **South:** PDD; **East:** PDD; **West:** Lake Poygan;

**Code Reference:** 26.5-23(b)(1)  
Exhibit 8-2

**Description of Proposed Use:** Applicant is requesting a variance for a sub-standard floodplain fill requirement.

### THE FOLLOWING INFORMATION HAS BEEN PROVIDED BY THE OWNER/APPLICANT

**Describe your project, include the proposed dimensions and setbacks:** See attached.

**Describe how compliance with the requirement in question unreasonably prevents or restricts development of a permitted use on the property:** See attached.

**Describe the unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question:** See attached.

**Describe how the granting of the requested variance will not harm the public interest or have adverse affects on surrounding properties:** See attached.

### SECTION REFERENCE AND BASIS OF DECISION

**Basis of Decision:** Town/County Zoning Code: 23.7-234

When making its decision, the Board of Adjustment shall consider each of the following standards:

- (1) The requirement in question would unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with such requirement unnecessarily burdensome and such circumstances were not self-created.
- (2) The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question.
- (3) The granting of the variance will not be contrary to or harm the public interest given the general purposes of the zoning regulations and the specific purposes of the requirement in question.

The board shall grant a variance only if the board can make an affirmative finding for all of the criteria listed in this section.

### Floodplain Zoning Code

#### 26.6-7 Variances

(a) **Review criteria.** The Board of Adjustment may, upon appeal, grant a variance from the standards of this chapter if an applicant convincingly demonstrates that (1) literal enforcement of this chapter will cause unnecessary hardship; (2) the hardship is due to adoption of the floodplain chapter and unique property conditions, not common to adjacent lots or premises—in such case the chapter or map must be amended—; (3) the variance is not contrary to the public interest; and (4) the variance is consistent with the purpose of this chapter in s. 26.1-5.

(b) **Additional criteria.** In addition to the criteria in subsection (a), to qualify for a variance under FEMA regulations, the following criteria must be met: (1) The variance shall not cause any increase in the regional flood elevation; (2) Variances can only be granted for lots that are less than 0.5 acres and are contiguous to existing structures constructed below the regional flood elevation; (3) Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts, and shall not be contrary to the purpose of the chapter.

(c) **Limitations.** A variance shall not (1) grant, extend, or increase any use prohibited in the zoning district; (2) be granted for a hardship based solely on an economic gain or loss; (3) be granted for a hardship which is self-created; (4) damage the rights or property values of other persons in the area; (5) allow actions without the amendments to this chapter or map(s) required in s. 26.6-4; or (6) allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

## VARIANCE APPLICATION

Responses may be typed on a separate sheet and attached to this form.

Applicant, please fill out all of the questions in your own words.

**C-1 Describe your project, include the dimensions and proposed setbacks:**

The project consist of a 16 foot wide by 12.5 foot deep (200 square foot) addition to the street side of the existing cottage.

The existing setbacks for the existing cottage are: Private Street = 46.05 feet, Shore = 26.5 feet, North side = 4.7 feet, South side = 6.0 feet.

The proposed setbacks for the proposed addition are: Private Street = 33.9 feet, Shore = 26.5 feet, North side = 4.7 feet, South side = 6.0 feet.

See additional sheet attached.

**C-2 Describe how compliance with the requirement in question unreasonably prevents or restricts development of a permitted use on the property:**

Compliance with the required shoreland setback, side yard setback, distance between detached structures and floodplain fill with 15 feet around the foundation would make this lot unbuildable.

**C-3 Describe the unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question:**

The property is an unit within a condominium plat, condominium units are typically treated different than standard lots/parcels. A condominium unit is defined as "The portion(s) of a condominium intended for any type of independent ownership and use, including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on one or more floors, or parts thereof, in a building."

See additional sheet attached.

**C-4 Describe how the granting of the requested variance will not harm public interest or have adverse affects on surrounding properties. :**

See additional sheet attached.

#### C-1

The setbacks per the Winnebago County Zoning Code are: road right-of-way (street yard) = 30 feet min., shore = 75 feet min. (25.5 feet per setback averaging), side = 5 feet due to lot width. A variance for the shore setback, side yard setback, 10 feet separation between detached buildings and the floodplain fill within 15 feet around the foundation is requested.

#### C-3

The 30 foot setback from the private street was not part of the planning for this condominium plat.

Per Poygan Shores Condominium Plat, "No improvements other than parking area or expanded paving area is allowed within 5 feet of Mallard Lane without approval of the Board of Directories of Poygan Shores Inc."

The parcel is entirely within the floodplain district, the proposed house will be elevated to 2 feet above the floodplain elevation to comply with the floodplain zoning requirement. However, due to how narrow the parcel is, the requirement of the floodplain zoning code, "fill must be placed around the foundation 15 feet in all directions at an elevation of 1 foot above the 100 year flood elevation" will not be met. A retaining wall is proposed around the proposed cottage, 1 foot around in all directions with a height from ground grade of approximately 1.5 feet.

#### C-4

Granting of the request variance will not have an adverse impact on the public health, safety and welfare. Existing drainage along the common lot lines will be maintained.



\\s:\projects\m0723\092200668\cadd\chc30\Survey Documents\202406 PERMIT\7579 MALLARD LANE-202406 PERMIT\7579 MALLARD LANE-202406 PERMIT.dwg, sheet 1, Plot Date: 1/19/2023 1:18 PM, arlis (dggayford)

**EROSION CONTROL NOTES:**  
-INSTALL GRAVEL TRACKING PADS AT CONSTRUCTION ACCESS POINTS PRIOR TO THE START OF CONSTRUCTION. CLEAN UP ANY TRACKING ON STREETS AT THE END OF EACH DAY (AGGREGATE CONSISTING OF 3-6 INCH CLEAR OR WASHED STONE-12 INCH THICK).  
-INSTALL D.O.T. APPROVED SILT SOCK & DITCH CHECKS AS SHOWN PRIOR TO LAND DISTURBANCE ACTIVITIES.  
-CONTRACTOR SHALL INSPECT AND MAINTAIN EROSION CONTROL MEASURES ON DAILY BASIS.  
-UPON COMPLETION OF SITE WORK SEED ALL DISTURBED AREAS WITH A PERENNIAL GRASS SEED MIX AND MULCH AS A MINIMUM.  
-MAINTAIN EROSION CONTROL MEASURES UNTIL ALL DISTURBED AREAS HAVE BEEN RE-VEGETATED.  
-ALL BMP'S SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH THE APPROPRIATE DNR TECHNICAL STANDARDS.  
-DISTURBED AREAS LEFT INACTIVE FOR MORE THAN 7 DAYS SHALL BE STABILIZED BY SEEDING, OR BY OTHER COVER, SUCH AS TARPING OR MULCHING.  
-ALL VEGETATED SLOPES STEEPER THAT 5:1 REQUIRE EROSION MATTING. EROSION MAT TO BE WISCONSIN DOT CLASS I TYPE A OR EQUIVALENT.  
-IDENTIFIED EROSION CONTROL CAN BE MODIFIED OR AMENDED BY THE CONTRACTOR. CONTRACTOR TO NOTIFY COUNTY OF DEVIATIONS FROM THE EROSION CONTROL PLAN.

**PARCEL DESCRIPTION**

ALL OF UNIT 7 OF POYGAN SHORES CONDOMINIUM PLAT, LOCATED IN GOVERNMENT LOT 2 OF SECTION 36, TOWNSHIP 20 NORTH, RANGE 14 EAST, TOWN OF WOLF RIVER, WINNEBAGO COUNTY, WISCONSIN.

TAX PARCEL No. 03207260107

**McMAHON**  
ENGINEERS ARCHITECTS  
1445 McMAHON DRIVE NEENAH, WI 54956  
Mailing: P.O. BOX 1025 NEENAH, WI 54957-1025  
Tel: (920) 751-4200 Fax: (920) 751-4284  
www.mcmgrp.com

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**ZONING MAP-7579 MALLARD LANE**  
**UNIT 7 POYGAN SHORES CONDOMINIUM PLAT**  
**TOWN OF WOLF RIVER, WINNEBAGO COUNTY, WI**

DESIGNED CWK	DRAWN CWK
PROJECT NO. M0723 092200668	
DATE NOV. 2022	
SHEET NO. <b>1</b>	

**NOTES:**

-THIS IS NOT A PROPERTY SURVEY. THE BOUNDARY AS SHOWN IS PER THE RECORDED PLAT OR SURVEY OF RECORD.  
-THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THAT THE LOCATION OF THE FOUNDATION AS SHOWN IS IN CONFORMANCE WITH ALL RECORDED EASEMENTS, PRIVATE COVENANTS AND BUILDING SETBACKS.  
-PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL VERIFY PROPOSED SITE GRADES BY FIELD CHECKING TWO (2) BENCHMARKS AND A MINIMUM OF ONE (1) SITE FEATURE AS SHOWN ON THIS PLAN. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY McMAHON OF ANY VERTICAL DISCREPANCY.

**FOR:** -STEVE MARSH  
-W48N8368 SANDPIPER LANE  
-CEDARBURG, WI 53012  
-PHONE: (262) 483-7134

**LEGEND**

==749== - EXISTING CONTOURS

**NOTE:**  
THE EXISTING COTTAGE IS ON A CONCRETE SLAB. DIMENSIONS TO THE SIDE YARDS ARE FROM THE CONCRETE SLAB.

**LAKE POYGAN**  
100 YEAR FLOODPLAIN  
ELEVATION = 750.4

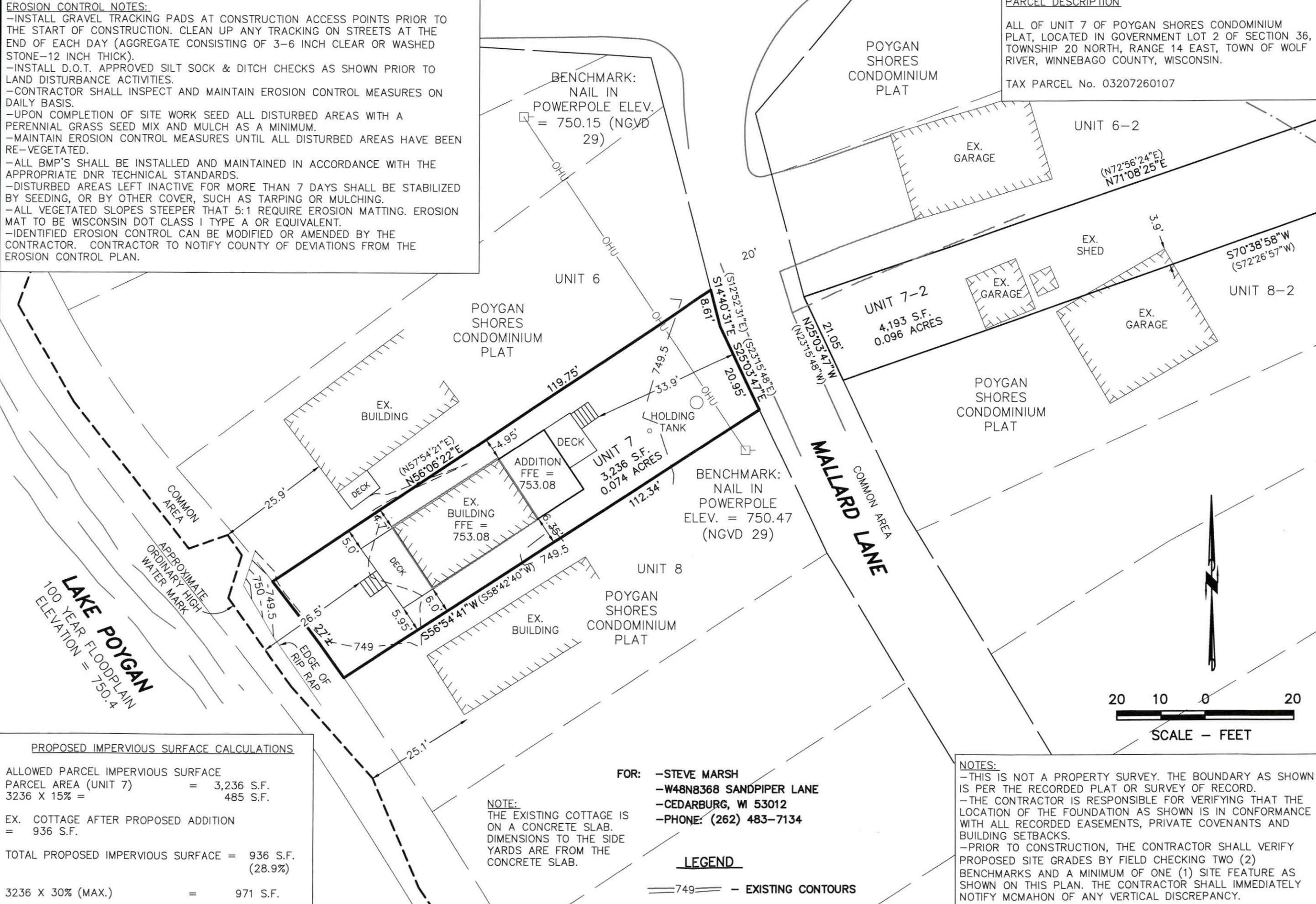
**PROPOSED IMPERVIOUS SURFACE CALCULATIONS**

ALLOWED PARCEL IMPERVIOUS SURFACE  
PARCEL AREA (UNIT 7) = 3,236 S.F.  
3236 X 15% = 485 S.F.

EX. COTTAGE AFTER PROPOSED ADDITION  
= 936 S.F.

TOTAL PROPOSED IMPERVIOUS SURFACE = 936 S.F.  
(28.9%)

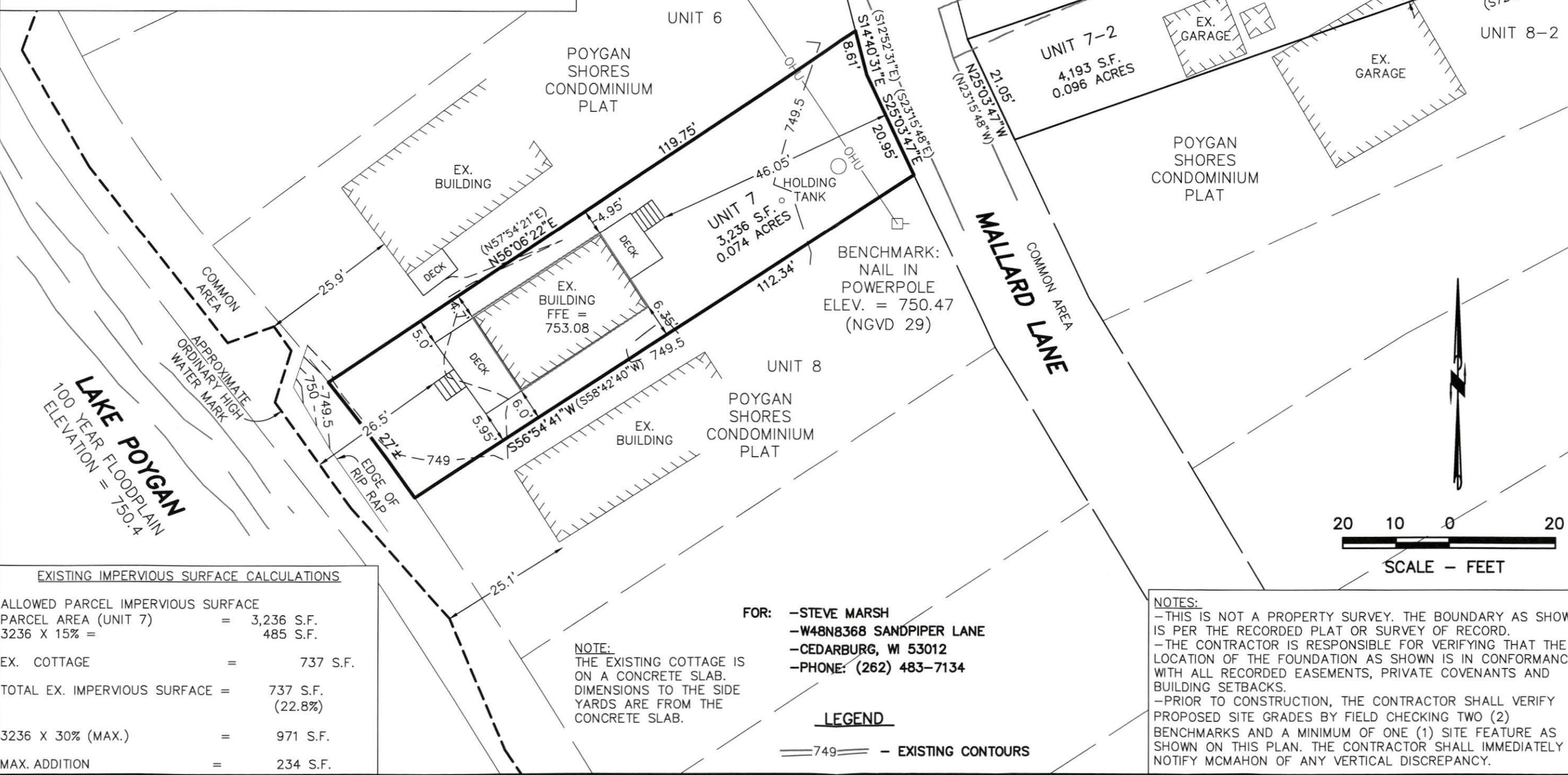
3236 X 30% (MAX.) = 971 S.F.





C:\Users\jmc\OneDrive\Documents\Zoning\Zoning Map\7579 MALLARD LANE-ZONING MAP EXISTING.dwg, sheet 1, Plot Date: 1/17/2023 10:37 AM, xref: (topofland)

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DESIGNED CWK	DRAWN CWK
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SHEET NO. 1	





## Application #23-VA-6290

Date of Hearing:

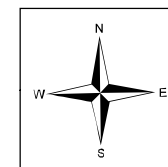
March 28, 2023

Owner(s):

MARSH, STEPHEN /  
MARSH, CHRISTINA

Subject Parcel(s):

03207260107



Winnebago County  
WINGS Project

Scale

1 inch : 300 feet

## County Zoning Districts

R-1	PDD	B-1
R-2	A-1	B-2
R-3	A-2	B-3
R-4	I-1	M-1
R-8	I-2	Town Zoning

City of Oshkosh Extraterritorial  
Zoning Jurisdiction

Incorporated Area

○ = SITE



1 inch : 2,000 feet

**Application #23-VA-6290**

Date of Hearing:

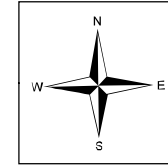
**March 28, 2023**

Owner(s):

**MARSH, STEPHEN /  
MARSH, CHRISTINA**

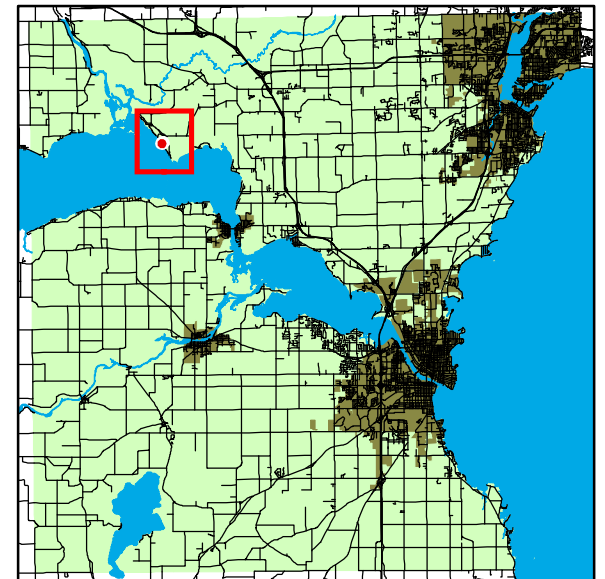
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*Winnebago County  
WINGS Project*

● = SITE



**WINNEBAGO COUNTY**