

AN EXAMPLE FOR FINDING THE BEST ATTORNEY

MARYLAND SPECIAL EXCEPTION INTERVIEW QUESTIONS

Frequently citizens make the mistake of hiring the first attorney who agrees to take their case. This can be a *very expensive mistake*. Instead, citizens should do what CEDS always does on behalf of our clients: *Interview at least three attorneys*. Prior to the first interview we'll construct a series of questions designed to probe each attorney's expertise. Following is an example of these questions. This example focuses on questions critical to winning a special exception case in our home state. We've found that very few attorneys will give a good answer to all seven questions. In fact, of the 34,000 attorneys practicing in Maryland no more than two or three dozen could provide good answers to all seven questions.

QUESTION	EXAMPLE OF A GOOD ANSWER
How many special exception cases have you argued?	At least two or three; the more experience the better. Ideally, at least one or two cases were argued at the appellate court level.
How many cases have you won on behalf of citizen clients?	Most attorneys who appear in special exception cases do so on behalf of the applicant while few have represented citizens in these cases. Arguing a special exception on behalf of opponents (citizens) is quite different. An attorney with lots of pro-applicant experience is not necessarily the best for those on the other side of the hearing room.
What are the criteria for granting a special exception?	The local zoning ordinance will contain up to a dozen or more criteria that must be considered as part of decision-making on a special exception. The criteria include items such as: effect on development of adjoining property; traffic impacts; adequacy of water-sewer services; school capacity; noise; light; dust; etc. Most attorneys can answer this question with a bit of research.
What court precedents govern the denial of a special exception?	Failure to meet zoning ordinance criteria does not necessarily mean the decision-making body can deny a special exception request, though it does allow conditions which could reduce impacts. The Maryland appellate courts have ruled that a special exception can only be denied if it is found that: 1) the impact of the proposed use, 2) at the proposed site, 3) is significantly greater than if the same use were pursued on any similarly zoned site. This <i>extraordinary impact</i> test was established in a case known as <i>Schultz v. Pritts</i> .
What experience do you have evaluating a project for these precedents?	Applicants are only required to show that the special exception criteria has been met. They are not required to prove that project impacts will be the same when compared to all similarly zoned lands. It is the burden of opponents to prove <i>extraordinary impact</i> , assuming the goal is to kill the project. Attorneys who have never argued this point frequently fail to grasp how to construct an argument which will satisfy the test and, thereby, survive appeal.
What is the decision-making history of the body which will act on the special exception application?	In Maryland, special exceptions are usually decided by a local Board of Appeals. By reviewing past decisions one can determine if a Board has ever denied a similar special exception request. This research shows whether the special exception offers the best place to achieve your goals and, if so, how to structure your case to maximize the likelihood of success.
What relevant technical expertise can you bring to the case?	Unless an attorney has a network of consultants and other professional they will not be able to do the analysis required to identify extraordinary impact issues, much less conditions that reliably resolve citizen concerns. Unfortunately, most of the professionals with the right expertise make their living servicing the development industry. As a result they lack the motivation and experience required to examine a case from the citizens perspective. Experts in the national CEDS network are both pro-citizen and very knowledgeable.