




**City of Annapolis**  
Planning Commission  
Department of Planning & Zoning  
145 Gorman Street, 3<sup>rd</sup> Floor  
Annapolis, MD 21401-2535

410-263-7961 • Fax 410-263-1129 • [www.annapolis.gov](http://www.annapolis.gov)  
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September 5, 2017

**MEMORANDUM**

**To:** Annapolis Planning Commission

**From:** C. Pete Gutwald, Director of Planning and Zoning 

**Re:** Ordinance 34-17, for the purpose of clarifying the scope of factors the Historic Preservation Commission may consider in reviewing applications for exterior changes to buildings in the Historic District.

**Purpose**

The purpose of Ordinance 34-17 is to clarify the scope of factors the Historic Preservation Commission may consider in reviewing applications for exterior changes to buildings in the Historic District. The intent of the changes to this section of the Code is to address the District Court Judges Opinion of a municipal infraction citation.

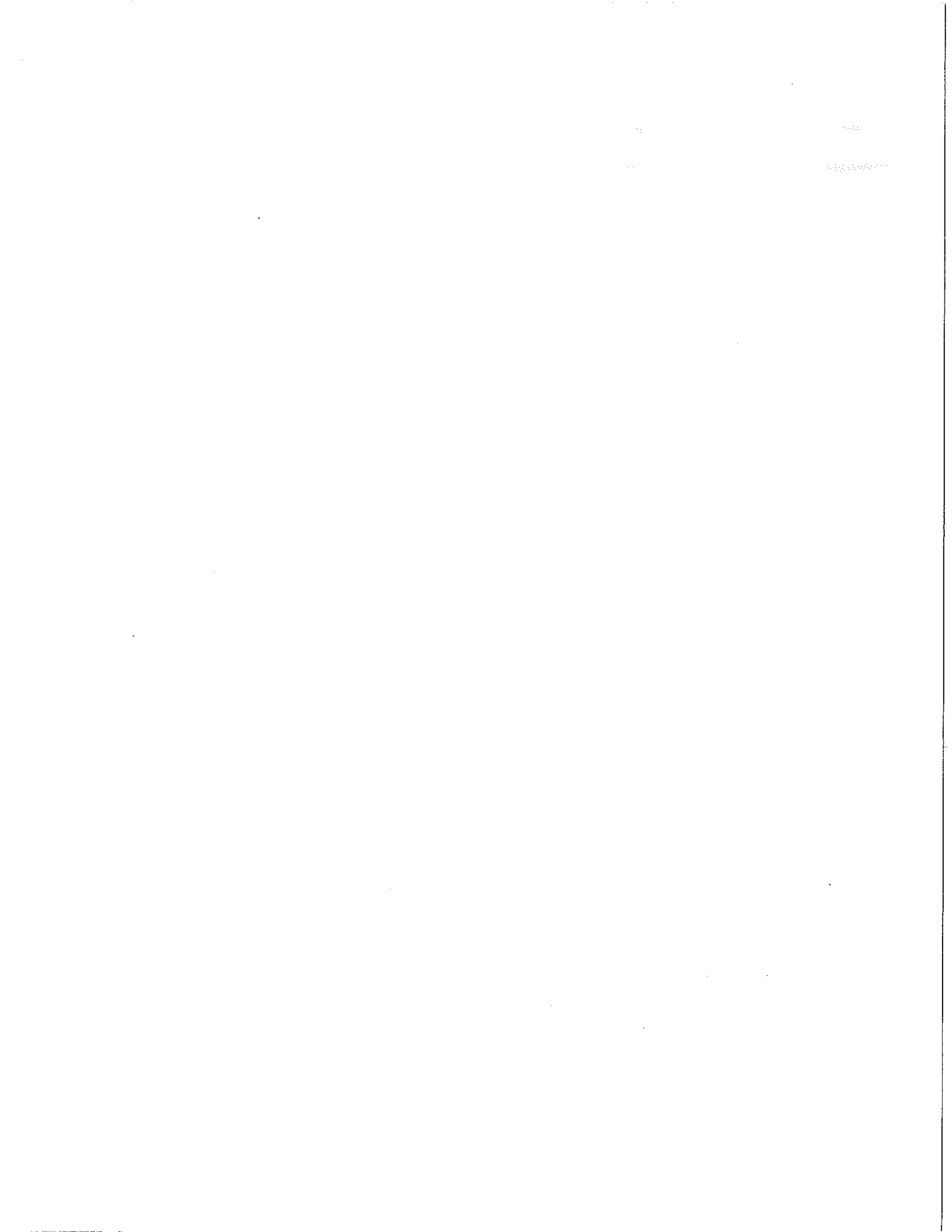
**Analysis**

This legislation stems from the May 10, 2017, District Court Opinion issued by The Hon. John P. McKenna, Jr. the Judge who presided over the trial of a municipal infraction citation issued to the owners of 51-53 West Street for the unpermitted mural painting on said property.

Judge McKenna ruled in favor of the City of Annapolis on all outstanding defenses raised during trial. In his opinion, however, he wrote that there was one part of Chapter 21.56 ( Historic District Overlay) that he deemed unconstitutional, Section 21.56.060A. That section of the City Code establishes the review criteria that the Historic Preservation Commission must follow in considering applications for a certificate of approval to perform work on the exterior of structures in the Historic District. After reciting specific factors, Section 21.56.060A states that the Historic Preservation Commission may also consider "any other factors....which the Commission deems to be pertinent." This legislation will amend Section 21.56.060A to limit the scope of the Historic Preservation Commission's consideration to "....any other RELEVANT AND PROBATIVE factors...."

**Recommendation**

The change is a recommendation to address a legal decision that the City Attorney finds consistent with the Judge's opinion therefore the Department recommends approval of this Code change.



1 **..Title**  
2 **Approvals of Exterior Changes in the Historic District** – For the purpose of clarifying  
3 the scope of factors the Historic Preservation Commission may consider in reviewing  
4 applications for exterior changes to buildings in the Historic District of Annapolis.

5 **..Body**

6  
7 **CITY COUNCIL OF THE**  
8 **City of Annapolis**

9  
10 **Ordinance 34-17**

11  
12 **Introduced by: Aldermen Littmann and Budge**

13  
14 **Referred to**  
15 Historic Preservation Commission  
16 Planning Commission  
17 Rules and City Government Committee

18  
19 **AN ORDINANCE** concerning

20  
21 **Approvals of Exterior Changes in the Historic District**

22  
23 **FOR** the purpose of clarifying the scope of factors the Historic Preservation  
24 Commission may consider in reviewing applications for exterior changes to  
25 buildings in the Historic District of Annapolis.

26  
27 **BY** repealing and re-enacting with amendments the following portions of the Code of  
28 the City of Annapolis, 2016 Edition  
29 21.56.060

30  
31  
32 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS**  
33 **CITY COUNCIL** that the Code of the City of Annapolis shall be amended to read as  
34 follows:

35  
36 **TITLE 21 – PLANNING AND ZONING**  
37 **Division IV – Overlay District Regulations**

38  
39 **Chapter 21.56 - HISTORIC DISTRICT**  
40 **Article I - Approval of Exterior Changes**

41  
42 **Section 21.56.060 - Application review.**

43  
44 **A.** In reviewing applications, the Commission shall give consideration to the historic,  
45 cultural, archaeological, or architectural significance of the landmark, site, or  
46 structure and its relationship to the historic, cultural, archaeological, or architectural

1 significance of the surrounding area; the relationship of the exterior architectural  
2 features of a landmark, site, or structure to the remainder of the landmark, site, or  
3 structure and to the surrounding area; the general compatibility of proposed exterior  
4 design, scale, proportion, arrangement, texture, and materials to the landmark, site,  
5 or structure and to the surrounding area; and any other RELEVANT AND  
6 PROBATIVE factors, including aesthetic factors, which the Commission deems to  
7 be pertinent.  
8

9 B. The Commission shall consider only exterior features of a landmark, site, or  
10 structure and shall not consider any interior arrangements.  
11

12 C. The Commission shall not disapprove an application except with respect to the  
13 several factors specified in Subsection A of this section.  
14

15 D. The Commission shall be strict in its judgment of plans for landmarks, sites or  
16 structures determined by research to be of historic, cultural, archaeological, or  
17 architectural significance. The Commission shall be lenient in its judgment of plans  
18 for landmarks, sites or structures of little historic, cultural, archaeological, or  
19 architectural significance, or of plans involving new construction, unless in the  
20 Commission's judgment such plans would seriously impair the historic, cultural,  
21 archaeological, or architectural significance of surrounding landmarks, sites or  
22 structures. The Commission is not required to limit construction, reconstruction, or  
23 alteration to any one period of architectural style.  
24

25 E. Special Considerations.  
26

27 1. If an application is submitted for construction, reconstruction, or alteration  
28 affecting a landmark, site or the exterior of a structure or for the moving or  
29 demolition of a structure, the preservation of which the Commission considers to  
30 be of unusual importance to the City, State, or Nation, the Commission shall  
31 attempt to formulate an economically feasible plan with the owner(s) of the site or  
32 structure for the preservation of the landmark, site or structure.  
33

34 2. In the circumstances described above in Subsection (E)(1) of this section, unless  
35 the Commission is satisfied that the proposed construction, alteration, or  
36 reconstruction will not materially impair the historic, cultural, archaeological, or  
37 architectural significance of the landmark, site or structure, the Commission shall  
38 reject the application, filing a copy of its rejection with the Department of Public  
39 Works.  
40

41 3. If an application is submitted for construction, reconstruction, or alteration, or for  
42 the moving or demolition of a landmark, site or structure that the Commission  
43 considers to be of unusual importance and no economically feasible plan can be  
44 formulated, the Commission shall have ninety days, from the time it concludes  
45 that no economically feasible plan can be formulated, to negotiate with the  
46 owner(s) and other parties in an effort to find a means of preserving the landmark,

1 site or structure. At the end of such ninety day period, if no means of preserving  
2 the landmark, site or structure has been found, the Commission shall either  
3 approve, approve with modifications, or reject the application.  
4

5 4. In the case of a landmark, site or structure considered to be valuable for its  
6 historic, cultural, archaeological, or architectural significance, the Commission  
7 may approve the proposed construction, reconstruction, alteration, moving, or  
8 demolition despite the provisions of Subsection (E)(2) of this section, if the  
9 Commission finds that:

- 10 a. The landmark, site or structure is a deterrent to a major improvement program  
11 which will be of substantial benefit to the City;  
12 b. Retention of the landmark, site or structure would cause undue financial  
13 hardship to the owner; or  
14 c. Retention of the landmark, site or structure would not be in the interests of a  
15 majority of persons in the City.  
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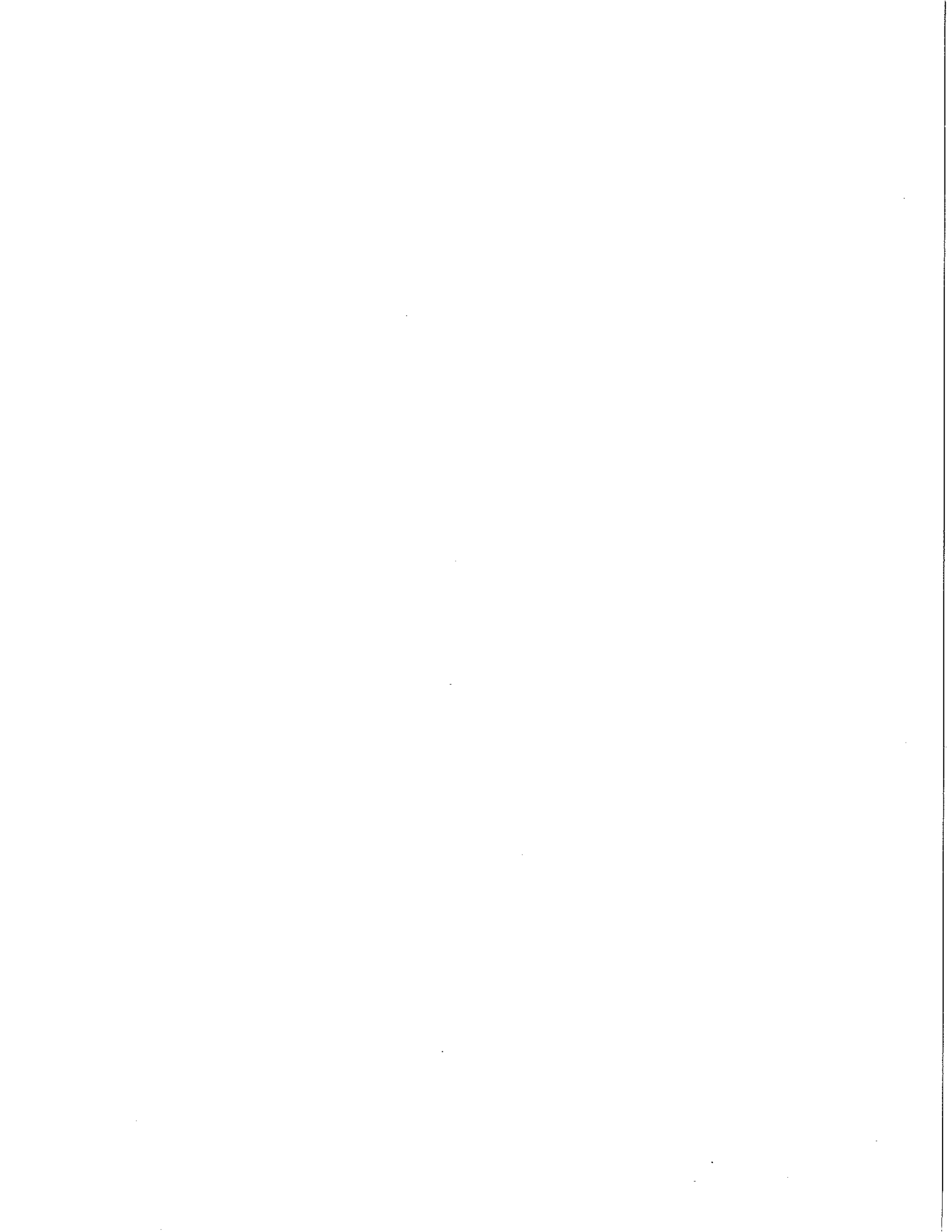
17  
18  
19 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY**  
20 **THE ANNAPOLIS CITY COUNCIL** that this ordinance shall take effect from the date  
21 of its passage.  
22

23  
24  
25 **EXPLANATION**

26 CAPITAL LETTERS indicate matter added to existing law.

27 ~~Strikethrough~~ indicates matter stricken from existing law.

28 Underlining indicates amendments  
29



Approvals of Exterior Changes in the Historic District

The purpose of this legislation is to clarify the scope of factors the Historic Preservation Commission may consider in reviewing applications for exterior changes to buildings in the Historic District of Annapolis.

This legislation stems from the May 10, 2017, District Court Opinion issued by The Hon. John P. McKenna, Jr., the Judge who presided over the trial of a municipal infraction citation issued to the owners of 51-53 West St, Gavin Buckley and Jody Danek, for the unpermitted mural painting on said property.

Judge McKenna ruled in favor of the City of Annapolis on all outstanding defenses raised during trial. In his opinion, however, he wrote that there was one part of Chapter 21.56 (historic preservation laws) that he deemed unconstitutional, Section 21.56.060A. That section of the City Code establishes the review criteria that the Historic Preservation Commission must follow in considering applications for a certificate of approval to perform work on the exterior of structures in the historic district. After reciting specific factors, Section 21.56.060A states that the Commission may also consider “any other factors . . . which the Commission deems to be pertinent.” This legislation will amend Section 21.56.060A to limit the scope of the Commission’s consideration to “any other *relevant and probative* factors.”

