

MacRo Report Blog

Regulations too onerous to open cupcake shop, couple contends *Originally published in the Frederick News Post January 16, 2011 by Meg Tully*

Charles and Angela Packan wanted to open a cupcake shop in downtown Frederick, but they said government regulations have made it too hard to do so.

As the recession continues to hinder businesses across the country, lawmakers and county officials have been turning their attention to making regulations more business-friendly. But the Packans say there are still reforms to be made before entrepreneurs and small-business owners will be able to succeed.

The Packans, who live in Frederick County, have been working since August to establish Sweet Angela's Cupcakery, selling a variety of cupcakes "homemade with love."

But after learning how much equipment would be required for a commercial kitchen, they decided to bake the cupcakes at another site, such as Clustered Spires bakery, and just sell the cupcakes in their [store](#).

The Packans said the health department told them that in order to do so, they would only need a hand-washing sink on the premises. They would be required to do the baking and washing at the commercial kitchen instead, and thought it was a good arrangement.

They looked at several locations and in January settled on a building on North Market Street.

But after they signed a lease for a building, they found out from the health department that establishing a shop, even if no baking would be done there, would require them to add a three-compartment sink, a mop sink and a grease trap to the plumbing.

"If this is the letter of the [law](#), just to sell cupcakes out of, then someone really needs to take a hard look at our regulations with the health department because it is not at all business friendly and it's unfair," Charles Packan said.

He estimates the improvements would cost at least \$10,000 -- and make it impossible for them to start the business. The property owner on North Market Street let them out of their lease, but otherwise they would have faced costly bills for doing so.

"Frederick should be business friendly and want businesses to come to town and not be so un-

wavering in what they want and what the rules really are," Charles Packan said.

The Frederick County Health Department implements state regulations. But it turns out that the requirement for a grease trap is actually not a health department guideline, but required by sewer providers -- in this case, the City of Frederick.

Terri Cool, a pre-treatment coordinator for the city, said that icing on cupcakes is full of fats, oil and grease that can cause blockages in the sewer system and in the pipes.

She said some exceptions can be granted for commercial food establishments, if they can prove that they will be selling pre-packaged products where icing would not get in the sewer system.

The health department requirements for sinks, however, pertain to whenever food is served. The three-compartment sink is used for washing, rinsing and sanitizing, and mop sinks are required for cleanup and can't be the same ones used as hand sinks because of the potential for cross-contamination.

There are no waivers for small businesses, but George Keller, director of environmental health services at the Frederick County Health Department, said they are working with the Packans to see if operational changes could eliminate the need for some of the requirements.

For instance, he said if they do not use utensils to provide samples to the cupcakes or cut into them, then they would not need a three-compartment sink. All of the washing, including the serving trays, would need to be done off-site at the approved kitchen.

Keller said the health department worked with the Packans to come up with those alternatives when it became clear they could not afford additional sinks, and told them about it within two hours of a meeting last week.

"We do our best to be responsive and understanding but are also charged with fulfilling regulatory mandates that all of our licensed facilities must adhere," Keller said.

But Charles Packan says he never heard from the health department after the meeting, and he's already broken his lease.

Keller said the department does not have any exceptions for small businesses.

State requirements "do not generally provide for waivers or specifically distinguish business size because public health/food-borne outbreaks do not distinguish business size but rather the specific types of operations involved with food service," Keller said.

One Frederick County delegate hopes to allow more flexibility for all types of state regulations.

Delegate Michael Hough, a Republican who represents portions of Frederick and Washington counties, said he plans to introduce a bill next week that would give more flexibility to state regulators when dealing with small businesses.

He said he understands, for example, why a Krispy Kreme doughnut factory should have a grease trap. But if a small cupcake shop did its baking off-site and could wipe excess icing off trays into the trash can, he thinks allowances should be granted.

"Now's the time when government should be working with small-business owners to be more flexible with these regulations because there's not a lot of people opening small businesses," Hough said.

He would also like the state to establish a small-business advocate or ombudsman to help guide business owners through the regulatory processes and hold agencies accountable. He said regulators should make sure the requirements are clear and predictable.

"Half the time when people try to comply with them, they get punished with extra money, extra procedures they have to go through," Hough said.

The Frederick County Commissioners are also making a big push to reduce government regulation, but they are starting with agencies under local control, such as permitting and development review. Although the health department is located in Frederick County, it is a state agency.

Delegate Galen Clagett, a Democrat, represents the City of Frederick. He is also a small-business owner, and said he has faced his own problems with regulations.

When he was opening a new office on Third Street years ago, he had to add a mop sink, handicapped facilities and a drinking fountain, which added a couple of thousand dollars.

"Some of it's absurd, and there ought to be flexibility in how we do these things," Clagett said. "If you're going to do business, you don't have any choice but to eat it, if you want to open up."

—