

[REDACTED]

lot in a different manner than it does all the other lots on the plan. The defendants' lot is the only one not enclosed with a line separating the property from Ossipee Lake. Moreover, there is an opening on the northern side of the lot where a road running south (apparently Old Eaton Road) abuts the defendants' land. This depiction of the defendants' property is consistent with the plaintiffs' contention and the court's finding that S. O. Huckins intended that the right-of-way created in 1932 cross the defendants' lot.

[REDACTED] There is other evidence in the record that might support the trial court's finding. We need not elaborate on the evidence any further, however, because we will not overturn the trial court's findings of fact unless they are unsupported by the evidence or the court abused its discretion. *Chagnon Lumber Co., Inc. v. DeMulder*, 121 N.H. 173, 175, 427 A.2d 48, 50 (1981); *Kierstead v. Betley Chevrolet-Buick, Inc.*, 118 N.H. 493, 497, 389 A.2d 429, 432 (1978). The trial court's function was to "determine what the parties [to the Dieterich deed] intended at the time of the conveyance." *Seely v. Hand*, 119 N.H. 303, 306, 402 A.2d 162, 165 (1979). The court has done so, and there is evidence to support its findings. Those findings must stand, and the judgment below is therefore

Affirmed.

DOUGLAS and BATCHELDER, JJ., did not sit.

[REDACTED]

Hillsborough
No. 80-225

TOWN OF MILFORD

v.

LOUIS BOTTAZZI

August 5, 1981

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

District, the highest residential zone in Milford. See *Hackett v. Gale*, 104 N.H. 90, 93, 179 A.2d 451, 453 (1962).

█ The defendant's interpretation overlooks the fact that "home occupation" is a term widely used in zoning ordinances throughout the country. See 2 R. ANDERSON, AMERICAN LAW OF ZONING § 13.02 (2d ed. 1976). Although the definitions of the term vary from one ordinance to another, they all have as a common purpose the allowance of only those businesses that do not adversely affect or undermine the residential character of the neighborhood. *Id.* Consequently, "[a] home occupation will be permitted in a residential district only if it is customarily incidental to the use of the premises as a dwelling, and . . . is subordinate to the residential use of the property." *Id.* at 512. Uses which are not traditionally conducted at the home of the proprietor generally do not fall within the category of home occupations. *Id.*; see *Town of Kittery v. Hoyt*, 291 A.2d 512, 514 (Me. 1972).

█ Examples of the kinds of uses generally accepted as home occupations include such activities as dressmaking, hair-dressing and tutoring. See *Liolis v. Franklin Zoning Board*, 118 N.H. 928, 929, 395 A.2d 1255, 1256 (1978); *Hancock v. Concord*, 111 N.H. 413, 414, 285 A.2d 791, 792 (1971); *Ruhnke v. Cantrell*, 280 Or. 297, 300-01, 570 P.2d 652, 654 (1977). The operation of a public garage, however, has been held not to be a home occupation. See *Perez v. Boro of Kennett Sq.*, 18 Pa. Commw. Ct. 425, 427, 336 A.2d 437, 438 (1975); *Piper v. Moore*, 163 Kan. 565, 574, 183 P.2d 965, 972 (1947); 2 R. ANDERSON, AMERICAN LAW OF ZONING § 13.02. Accordingly, we agree with the court below that the defendant's activities did not constitute a home occupation.

█ The defendant argues that the absence of a definition of examples of a home occupation in the ordinance renders the term vague and that his use of the premises for an automobile and truck repair business should therefore be permitted. We reject this argument. Although the ordinance is not a model of clarity, and we cannot determine with precision what uses fall within the meaning of the term "home occupation," it is clear that the operation of an automobile and truck repair shop is not a home occupation. An automobile and truck repair shop, unlike dressmaking or the practice of the learned professions, is not "customarily" conducted from a home and changes the character of the neighborhood.

█ Finally, the defendant argues that the plaintiff violated his civil rights by seeking to enjoin the operation of his automotive repair business from his home. The essence of the defendant's position is that the plaintiff violated his right to conduct a home occupation while allowing others to conduct businesses from their homes within the district. This argument fails for two reasons. First, we have already ruled that the defendant's use of his property was not a "home occupation," and he therefore had no right to operate his business within the district. Second, we have previously held that the existence of other violations within a zone does not excuse a violation which the town seeks to enjoin. See *Becker v. Town of Hampton Falls*, 117 N.H. 437, 441, 374 A.2d 653, 655 (1977); *Hancock v. Concord*, 111 N.H. at 414, 285 A.2d at 792. Furthermore, the court specifically found that the plaintiff had acted in good faith in seeking to enforce the zoning ordinance and that the defendant had failed to prove the existence of other violations of the ordinance.

The order of the court enjoining the operation of an automobile and truck repair business from the defendant's home is affirmed.

Affirmed.

DOUGLAS and BATCHELDER, JJ., did not sit.

█
Concord District Court
No. 80-240

SHARON L. BAKER

v.

DENNIS BROWN REALTY

August 5, 1981
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